



## Terms and Conditions of Business

### 1. Macks Solicitors

- 1.1 Macks Solicitors is constituted as a Private Unlimited Company and is registered at Companies House in accordance with the Companies Act 2006. The firm's Company Number is 04609487 and the firm's Registered Office is: 4 Woodlands Road, Middlesbrough, TS1 3BE; telephone number: 01642 252828; Web Site: [www.mackssolicitors.co.uk](http://www.mackssolicitors.co.uk); Value Added Tax ('VAT') number 660001395.
- 1.2 Macks Solicitors is Authorised and Regulated by the Solicitors Regulation Authority with SRA number 37039.
- 1.3 In these Terms of Business all first person terms such as 'we', 'us' and 'our' refer to Macks Solicitors and not to any Director, Partner, Consultant or Employee personally or to any combination of Directors, Partners, Consultants or Employees collectively. By entering into this Agreement, you are entering into a contract with Macks Solicitors and not with any Director, Partner, Consultant or Employee personally or with any combination of Directors, Partners, Consultants or Employees collectively.
- 1.4 We are bound by various professional rules of conduct which can be viewed at [www.sra.org.uk](http://www.sra.org.uk) or by writing to 'Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, B98 0TD' or calling the Solicitor's Regulation Authority's contact centre on 0870 606 2555 (inside the UK), 09.00 to 17.00, Monday to Friday.
- 1.5 A list of Directors is available for inspection at our Registered Office. We may from time-to-time use the word 'partner' to refer to a Director or an employee or consultant of Macks Solicitors.
- 1.6 The [SRA Indemnity Rules 2011](#) require us to take out and maintain professional indemnity insurance and the [Provision of Services Regulations 2009](#) require us to provide you with relevant details. All information about the compulsory layer of professional indemnity insurance we carry, including the contact details of our insurers and the territorial coverage of our insurance, are available in hard copy at our registered office.

### 2. Terms of Business

- 2.1 These Terms of Business may not be varied unless agreed in writing and signed by Nicholas Mack (Director). They should be read in conjunction with our engagement letter, which sets out the basis on which we act for you, and any documents referred to in that letter. Together, these form the 'Agreement' between us relating to each matter on which we advise you.
- 2.2 These Terms of Business, including the limits on our liability, shall apply to all work done by us for you (and any work to be done in the future) unless we otherwise notify you in writing.
- 2.3 If any term of this Agreement is inconsistent with our legal obligations under the relevant laws then the relevant laws shall apply instead of those terms.

### 3. Excluded Advice

- 3.1 We do not (unless otherwise agreed by us in writing) advise on the laws and regulations of jurisdictions other than England & Wales (which for these purposes includes the law of the European Union as applied in

England & Wales). If your claim involves the laws of jurisdiction other than England & Wales we may refer you to another firm of solicitors if we judge it to be in your best interests.

- 3.2 Whilst we have a degree of understanding of taxation, unless we specifically advise you to the contrary in writing, we will proceed on the basis that you have sought appropriate taxation advice from a third party such as your own accountant. If you wish us to help you to appoint an appropriate accountant, please ask.
- 3.3 We do not provide financial advice or comment upon the commercial viability of any transactions upon which we advise. You should rely on your own judgment in such matters, or on advice from other professionals.

### 4. Your Duty to Retain and Preserve Documents

- 4.1 If now, or at any time in the future, any matter on which we act for you is the subject of formally contested proceedings, whether in the courts or other tribunals, you will almost certainly have to disclose documents, including electronic documents, relevant to the matter. You should ensure that you do not destroy or allow to be destroyed any documents that relate to such matter in any way (however slight you believe the connection may be), as your position in such proceedings could be seriously compromised if you do so.

### 5. Copyright

- 5.1 Unless we agree otherwise, all copyright which exists in the documents and other materials that we create whilst carrying out work for you will remain our property. You have the right to use such documents and materials for the purposes for which they are created, but not otherwise.
- 5.2 If you use such documents for any purpose other than that for which they were created we are not responsible to you for any losses that you may suffer as a result.
- 5.3 Unless otherwise required by law or court order, you agree not to make our work, documents or materials produced by us available to third parties without our prior written permission. Our work is undertaken for your benefit alone and we are not responsible to third parties for any aspect of our professional services or work that you make available to them.

### 6. Client Satisfaction

- 6.1 We operate strict client care and quality policies and always aim to provide you with the highest level of legal expertise and to be available, approachable, understandable, prompt and courteous. We will keep you informed about all important developments in your case and we will respond to your letters, emails and telephone calls promptly and efficiently.
- 6.2 We pride ourselves on our exceptional levels of client care and it is extremely rare for our clients to have cause for complaint. In the unlikely event that you have any cause for concern, including about a bill, then please be aware that you are entitled to make a complaint, and that you can do so by contacting our designated Complaints Manager Nicholas Mack who is the Managing Director. We take all feedback from clients seriously and operate a Complaints Handling Procedure, a copy of which is available upon request. We are usually able to deal with any concerns you have promptly and to your satisfaction, but if this is not the

case, you may be able to make a complaint to the Legal Ombudsman, provided you do so within one year of becoming aware of the problem or within six months of the end of our internal complaints procedure, if you are still not satisfied with the outcome. The Legal Ombudsman does have discretion to extend these time scales. You should also be aware that, when your complaint relates to a bill, the Legal Ombudsman will not consider your complaint while your bill is being assessed by a court.

(e) We will add VAT to our fees at the applicable rate.

### 7.3 Value Element

(a) In the administration of Estates or Trusts we will charge a value element equal to 0.5% of the value of any real estate (0.75% if a Solicitor with the firm is an Executor or Trustee) and 1% of the value of all other assets (1.5% if an Executor or Trustee), plus VAT.

### 7.4 Estimates

(a) If we have provided to you a written estimate of the total charges, it is given only as a guide to assist you in budgeting and should not be regarded as a fixed quotation unless otherwise agreed in writing. We will inform you if any unforeseen but significant additional work becomes necessary.

(b) It is often impossible to tell at the outset what the overall cost of a matter will be. If this is the case we will provide you with as much information as possible at the start and keep you updated as the matter progresses. If a precise figure cannot be given at the outset, we shall explain the reason to you and give you the opportunity to set a ceiling figure beyond which you do not want us to act without your consent or we shall agree a review date with you on which we shall try to give you more information about the likely overall cost.

### 7.5 All Services

(a) All expenses (which includes and may sometimes also be referred to as 'disbursements') which we incur in working on your matter will be payable by you in addition to our fees. Examples of these expenses include Land Registry and Companies House fees, search fees, stamp duty land tax (and similar taxes), fees charged by experts, agents, couriers and barristers, court fees, commissioners fees, travel expenses and subsistence, delivery charges (whether or not insured), faxes, international telephone calls, use of on-line databases and telegraphic transfer fees. In addition, we may also charge you for photocopying and other document production at a rate of £0.10p for each page and £0.50p for each colour page. VAT is payable on certain expenses, which you will need to pay in addition.

(b) Unless acting under the terms of a Conditional Fee Agreement or on a fixed fee basis, we will usually submit bills monthly but may choose to submit bills at other intervals during the course of working on your matter. We may also submit a bill on or at any time after conclusion of the matter or at the end of this Agreement. Our bills are payable when they are submitted to you. All bills, whenever they are submitted, will be for final bills for the period to which they relate but this does not prevent us from invoicing you for expenses for that period on a subsequent bill.

(c) We may also ask you initially and/or at any time during the matter to pay money in advance of any fees and expenses being incurred by us (known as a 'payment on account'). If we ask you to make a payment on account, we will not be obliged to undertake any further work on your matter until you have made that payment, and if you do not make the payment we may cease acting for you.

(d) Where we decide to extend credit to you by carrying out urgent work on your matter after the money you have paid on account has all been used, you agree to remain liable for our fees regardless of whether or not we give you advance notification that we are going to extend credit to you.

(e) It is your responsibility to tell us when first instructing us if you have any form of insurance cover (such as legal expenses insurance) that you think will pay our fees. You must also tell us when first instructing us if there is a third party who may pay our fees. If a third party agrees to pay all or

6.3 A complainant to the Legal Ombudsman must be one of the following:

- (a) An individual;
- (b) A micro-enterprise as defined in European Recommendation 2003/361/EC of 6 May 2003 (broadly, an enterprise with fewer than 10 staff and a turnover or balance sheet value not exceeding €2 million);
- (c) A charity with an annual income less than £1 million;
- (d) A club, association or society with an annual income less than £1 million;
- (e) A trustee of a trust with a net asset value less than £1 million; or a personal representative or the residuary beneficiaries of an estate where a person with a complaint died before referring it to the Legal Ombudsman.

6.4 If you do not fall into any of these categories, you should be aware that you can only obtain redress by using our Complaints Handling Procedure or by mediation or arbitration, or by taking action through the Courts.

6.5 Legal Ombudsman Contact Details:

- (a) Address: PO Box 6806, Wolverhampton, WV1 9WJ
- (b) Telephone: 0300 555 0333
- (c) Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)
- (d) Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

6.6 Alternative complaints bodies such as Ombudsman Services, ProMediate and Small Claims Mediation also exist which are competent to deal with complaints about legal services should both you and our firm wish to use such a scheme.

## 7. Fees

### 7.1 Fixed Fee Services

(a) Where our engagement letter states that we are charging on a fixed fee basis, additional services may be provided on request and (unless otherwise agreed by us in writing) will be charged at our standard hourly rates as set out in our engagement letter plus expenses (if any) and VAT.

### 7.2 Hourly Rate Services

(a) Where our engagement letter states that we are charging on an hourly basis, the hourly rate varies according to the experience and expertise of the person dealing with the matter. The rates which apply to each matter are set out in our engagement letter or alternatively (where appropriate) in the Conditional Fee Agreement.

(b) The time spent on your matter for which you will be charged includes meetings with you and others, travelling, waiting, researching and considering, sending and receiving correspondence (including emails), making and receiving telephone calls, preparing and working on documents, and making file notes.

(c) The time spent on your matter is recorded as units of one tenth of an hour (6 minutes). Therefore, this is the minimum amount of time we will charge for any piece of work undertaken on your matter.

(d) We review our hourly rates periodically. We will notify you in writing of any change in our hourly rates.

part of our bills, you will remain responsible to us for payment until those bills have been paid in full.

(f) If we are advising more than one person (usually individuals, companies or other entities) unless otherwise agreed by us in writing, we will act for those persons jointly and severally. If we are asked to address bills only to one person, those bills will nevertheless be payable in full by all other persons we act for under this Agreement.

(g) If you are instructing us jointly in relation to any matter it is your responsibility to tell us at the outset of the Agreement if you require more than one person to give us instructions in relation to that matter. Otherwise, we will accept instructions from any one person on behalf of all joint clients and will not be responsible to any other person for any losses they may suffer as a result. If you are a company, a limited liability partnership or other commercial entity it is your responsibility to tell us at the outset of the Agreement if you require more than one director, member (or equivalent) to give us instructions. Any director or member (or equivalent) giving us initial instructions or instructions at any time during the conduct of the file agrees by doing so to be a joint client with the Company for the purposes of payment of fees VAT and expenses to Us.

7.6 If we do not receive prompt payment of any bill, then:

(a) We may charge you interest (on a daily basis) on the unpaid element of the bill at the rate payable on judgment debts from the date of the bill until payment, unless it is determined that you do not have to pay that element;

(b) We may refuse to undertake any further work for you (whether in respect of the matter to which the bill relates or any other matter on which we are acting for you) until that bill is paid and/or we may stop acting for you; and

(c) We may retain any papers or documents belonging to you, together with our own records.

7.7 If you have any queries in respect of any element of a bill, you should still promptly pay all other elements of the bill.

7.8 Where we hold money for you, whether because you have made a payment on account or we otherwise receive funds on your behalf, we may use this money toward payment of our bills. We will advise you when this is being done. If we take any security for our fees, whether from you or any third party, this shall not affect any rights we have (or which we may have) to retain your papers.

7.9 If you wish to make a complaint about one of our bills, you may do so by using the firm's Complaints Handling Procedure (copy available on request). You may also have a right to object to a bill by making a complaint to the Legal Ombudsman and/or applying to the court for an assessment of the bill under part III of the Solicitors Act (1974). The contact details for the Legal Ombudsman can be found in the section relating to 'Client Satisfaction'.

## 8. Storage of Documents and Deeds

8.1 We retain all documents relating to your matter (other than any documents which are in your possession or returned to you) for at least six years from the conclusion of our involvement in the matter. You agree that we may destroy your file and documents after six years, so if you do not want them destroyed you must notify us immediately upon receiving our file closure letter. We will not destroy documents you ask us to deposit in our deeds store.

## 9. Termination

9.1 You may end this Agreement (and therefore, your instructions to us) at any time by writing to us but we may be entitled to keep all of your

documents and deeds while there is money owing to us (including fees and expenses which have not yet been billed).

9.2 We may end this Agreement (and, therefore, cease acting for you) in relation to any matter or all matters of yours, but only on reasonable written notice and for good reason. Examples of a good reason include where you have not given us sufficient instructions, where you have not provided appropriate evidence of identification or we reasonably believe that the relationship between you and us has broken down.

9.3 If your matter does not conclude, or we are prevented from continuing to act because of our legal obligations or our professional rules, you will pay us for any work we have actually done. Our charges will be based on our hourly rates set out in our engagement letter (and where a fixed fee has been agreed, the charges will not exceed that fixed fee).

9.4 If we cease acting for you, we shall (where relevant) inform the court or tribunal that we no longer act for you and shall apply to be removed from their records. We may charge you for doing so at our hourly rates applicable at the relevant time and those charges will be applied on the same basis set out in clause 7 and for any expenses which we incur on the same basis – also set out in clause 7.

9.5 If you are an individual and we have not met with you, the [Consumer Protection \(Distance Selling\) Regulations 2000](#) and the [Consumer Protection \(Distance Selling\) \(Amendment\) Regulations 2005](#) will apply to our agreement. Similarly, if we made this agreement in your home or place of work then the [Consumer Protection \(Cancellation of Contracts made in a Consumer's home or place of work etc.\) Regulations 2008](#) will apply. These regulations mean that you may terminate this agreement within seven days without any obligation. By accepting these terms of business you agree that you would like our service to start before the end of the usual cancellation period and you agree that your cancellation rights shall end as soon as we commence work on your matter.

9.6 By accepting these Terms of Business you agree that you would like our service to start before the end of the usual cancellation period and you agree that your cancellation rights shall end as soon as we commence work on your matter.

## 10. Financial Services

10.1 [The Law Society of England and Wales](#) is a designated professional body under Part XX of the [The Financial Services & Markets Act 2000](#) which means that we may carry on certain regulated activities without being regulated by [The Financial Conduct Authority](#). This means that we may be able to provide limited financial services to you where such services arise out of, or are complementary to, the provision of legal services.

10.2 The Law Society is the designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation has been delegated to the Solicitors Regulation Authority (the independent regulatory body of the Law Society), and responsibility for handling complaints has been delegated to the Legal Ombudsman. The contact details for the Solicitors Regulation Authority can be found at clause 1.3 and the contact details for the Legal Ombudsman can be found at clause 6.5.

10.3 The limited regulated activities that we carry out are issuing certain insurance policies, such as after the event legal expenses insurance, defective title insurance and other property indemnity insurance (such as breach of covenant, absence of easement, lack of planning permission, unknown rights and covenants policies).

10.4 We are 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 Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk](http://www.fca.org.uk)

10.5 Any insurance policy arranged by us on your behalf, shall, in our opinion, be adequate to meet your needs, but you are hereby informed that we do not recommend any policy over and above any other and that it is your responsibility to check that you are satisfied with the excess levels, exclusions, limitations and other policy terms. We do not conduct a fair analysis of the insurance market prior to arranging insurance policies. You can request details of the insurance undertakings with which we conduct business at any time.

10.6 You hereby agree to provide us with details of any relevant existing insurance policies you may have and you agree that we shall not be liable to you for any losses you sustain as a result of your failure to provide us with such details.

## 11. Limitation of Liability

11.1 You agree that the limitations on our liability as set out in this Agreement are reasonable having regard to the nature of your instructions and the work involved and the availability and cost of professional indemnity insurance. We are, however, happy to consider options to increase these limitations, should you so require (which may result in an increase to our fees).

11.2 We will undertake the work relating to your matter with reasonable skill and care.

11.3 We accept liability without limit for the consequences of fraud by us or any of our directors, partners or employees which is affected in their capacity as directors, partners, consultants or employees and for any other liability which we are not permitted by law or rules of professional conduct to limit or exclude. If any part of this Agreement which seeks to exclude, limit or restrict liability (including provisions limiting the amount we will be required to pay or limiting the time you have to bring a claim) is found by a court to be void or ineffective for any reason, the remaining provisions shall continue to be effective.

11.4 We will not be liable under this Agreement or laws of negligence for any deficiencies in the work we have undertaken if and to the extent that deficiencies are due to any false, misleading or incomplete information or documentation which has been provided to us (whether by you or any third party) or due to the acts or omissions of you or any third party. However, where any failure by us to identify any such false, misleading or incomplete information (or any failure by us to inform you that we have identified such information or any failure to act on your resulting instructions) constitutes negligence then we shall, subject to the other provisions of this Agreement, remain liable for such failure.

11.5 Despite anything else contained in this Agreement, we are not under any obligation to act for you (or to continue to act for you) if to do so would breach any laws or professional rules. Therefore, we will not be responsible or liable to you for any loss which you or any other party may suffer as a result of our refusal to proceed with your matter where we would be in breach (or we reasonably believe that we would breach) of our legal obligations or our professional rules.

11.6 Except as stated in 11.3 and 11.12, the total aggregate liability of Macks Solicitors to you under or in connection with this Agreement (including any addition or variation to it), whether for breach of contract, negligence, breach of statutory duty, or otherwise, shall not exceed £2,000,000 (two million pounds).

11.7 Where we are instructed jointly by more than one party, the limit on our liability applies, in total, to all of you collectively (including anyone claiming through you or on your behalf).

11.8 You agree that you will not bring any claims or proceedings in connection with this Agreement against our consultants or employees personally, unless (and to the extent that) you are otherwise permitted to do so by law or our professional rules. Our employees may enforce this clause even though they are not parties to this Agreement (but despite having such rights, this Agreement may be varied or ended without their consent).

11.9 Proceedings in respect of any claim against us must be commenced within 3 years after you first had (or ought reasonably to have had) both the knowledge for bringing an action for damages and the knowledge that you had the right to bring such an action and in any event no later than 6 years after any alleged breach of contract, negligence or other cause of action. This provision expressly overrides any statutory provision which would otherwise apply; it will not increase the time within which proceedings may be commenced and may reduce it.

11.10 If we and any other party or parties are liable to you together in respect of the same claim, then we shall only be liable to pay you the portion which is found to be fair and reasonable having regard to the level of our default. Therefore, we shall not be liable to pay you the portion which is due to the fault of such party, even if you do not recover all or any money from such other party for any reason.

11.11 If we are liable to you and any other party or parties would have been found liable to you together with us in respect of the same claim if either:

- (a) You had also brought proceedings or made a claim against them; or
  - (b) We had brought proceedings or made a claim against them for a contribution towards our liability,
- then any sum due from us to you shall be reduced by the proportion for which such other party or parties would have been found liable had those proceedings been brought or those claims been made.

11.12 Nothing in this Agreement excludes or limits the liability of Macks Solicitors for:

- (a) Death or personal injury caused by negligence;
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any liability if and to the extent that it is not permissible in law for such liability to be limited or excluded.

## 12. Client Money

12.1 Subject to certain conditions set out in Rule 22 to 25 of the SRA Accounts Rules, a sum in lieu of interest must be accounted to clients when it is fair and reasonable to do so in all the circumstances. Our policy seeks to provide for a fair and reasonable outcome for both our clients and this practice.

12.2 Our policy on interest shall be kept under review. The policy may change if the Bank of England base rate increases or decreases. At the date of the preparation of this policy, the interest rates payable on client accounts was extremely low – around 0.1% and the Bank of England base rate is 0.5%. This means that the sums of money involved are negligible. The rate of interest available on client accounts is significantly lower than the rate of interest which can be obtained on other bank or building society accounts. This reflects the fact that immediate access is required to client accounts in order to comply with the accounts rules and to facilitate the smooth completion of transactions. It is therefore unlikely that the funds will attract as much interest as if you had invested those funds yourself.

12.3 All interest arising from cleared funds held on behalf of a trust will be credited to the trust whether those funds are held in a general client

account or a separate designated client account (formerly known as a Designated Deposit Account).

12.4 For cleared funds paid into general client accounts, the practice shall account for interest unless one of the following circumstances applies:

- a. The amount of interest calculated on the balance held is £20.00 or less; or
- b. The client money was held in cleared funds in client account for a period of five working days or less.

12.5 All other clients shall be paid interest at the rate payable upon the practice's client account from time to time, unless there are specific circumstances which lead the client to contract out of the right to receive interest payments (for example where the client agrees the practice may keep interest payments to remunerate the practice for acting as stakeholder in the transaction or where the client's religious beliefs prohibit the receipt of interest).

12.6 In certain circumstances a separate designated client account will be opened on behalf of clients. All interest arising from funds held in separate designated client accounts will be credited to the client.

12.7 Where sums of money are held in relation to separate matters for the same client, the money relating to the different matters shall be treated separately unless it is fair and reasonable in the circumstances to consider the sums together.

12.8 Interest will not accrue on any advances from the practice under rule 14(2)(b) of the accounts rules to fund a payment on behalf of a client or trust in excess of funds held for that client or trust.

12.9 Where a client fails to present a cheque to his or her bank for payment we will not recalculate any amount due to the client unless it is fair and reasonable to do so, for example if the cheque has been sent to an incorrect address.

12.10 We will usually account to you for interest arising under our policy at the conclusion of your matter, but might, in some cases, consider it appropriate to account to you at intervals throughout.

12.11 We shall not be liable for any loss which you or any third party may suffer in connection with an Insolvency Event occurring in relation to any deposit provider with whom we have deposited funds or through whom transfers are made, save if and to the extent that any such loss was caused by or contributed to by any breach by us of clause.

12.12 In clauses 12.11 and 12.13 an "Insolvency Event" means:

- (a) Any deposit provider is unable or admits inability to pay its debts as they fall due (or is deemed to be or declared to be unable to pay its debts under applicable law), suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) The value of the assets of any deposit provider is less than its liabilities (taking into account contingent or prospective liabilities);
- (c) A moratorium is declared in respect of any indebtedness of any deposit provider;
- (d) Any corporate or government action, legal proceedings or other procedure or steps taken in relation to:
  - (i) The suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any deposit provider;

- (ii) A composition, compromise, assignment or arrangement with any creditor of any deposit provider;

- (iii) The appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any deposit provider or any of its assets;

- (iv) Enforcement of any security interest (however so described) over any assets of any deposit provider; or

- (v) The prevention or restriction (whether by way of freezing order or otherwise) of a deposit provider's ability to dispose of, deal with or diminish the value of its assets or any of them;

- (e) Any event analogous to those set out in clause 12.12(d) occurs in any jurisdiction in respect of any deposit provider.

12.13 If an Insolvency Event occurs in relation to any deposit provider which holds money that we have deposited on your behalf, you agree that we may where applicable disclose to the Financial Services Compensation Scheme ("FSCS") all relevant details in our possession about you and the money that we hold on your behalf with such a deposit provider. However, if you do not wish us to make any such disclosure, please notify us in writing addressed to 'The Data Protection Compliance Officer'. Please note that by withholding consent to our disclosure of your details to the FSCS in such circumstances, you may forfeit any right you may have to receive compensation from the FSCS where an Insolvency Event occurs in relation to a deposit provider holding money which we have deposited on your behalf. Compensation for deposits is limited to £85,000 for any individual's total deposit with that service provider, including any personal finances. Further information regarding the FSCS can be found at [www.fscs.org.uk](http://www.fscs.org.uk) telephone number 020 7892 7300.

### 13. Confidentiality, Privacy & Data Protection

13.1 We keep information passed to us confidential and will not disclose it to third parties except as authorised by you or required by law. In certain circumstances the law requires us to disclose information relating to you (for example, payments of interest earned on a client's account may have to be disclosed under the EU Savings Directive). If on your authority we are working with other professional advisers or lawyers, we will assume that we may disclose any relevant aspect of your affairs to them.

13.2 We may in some cases consult credit reference agencies in order to assess your creditworthiness so that we can decide whether or not to ask you to pay our fees in advance. This is known as 'payment on account' and is explained in more detail below. If you are an individual, we require your consent before we do this. Your continuing instructions to us will constitute your consent to us carrying out such a search. Details of the credit agency we use are available on request. We have procedures designed to ensure that personal data is used only by appropriately authorised and trained personnel and to safeguard such information against accidental loss or unauthorised disclosure. We will keep that information strictly confidential unless otherwise required by law or court order.

13.3 Where we act for you and your lender we have a duty to fully reveal to your lender or HM Revenue and Customs all relevant facts about your purchase, your mortgage and what makes up the purchase price. Your continuing instructions amount to your consent to us to disclose all relevant information to your lender and to HM Revenue and Customs. This includes any difference between information given in your mortgage application and information you or we receive during the transaction including any cashback payments or discount schemes or other incentives that the seller is providing or allowing or giving to you.

- 13.4 You must disclose all information which may affect your liability for stamp duty land tax or other stamp duty (duty) as we can then ensure you pay the correct duty. If you fail to disclose all information (and if in doubt please disclose it as it can be disregarded if it is not relevant) or delay in giving us information or authorisation to give information you must accept full liability for any penalties or action or other proceedings that any authority may take against you for failing to disclose or delaying in disclosing information which resulted in a penalty, a duty or greater liability to pay such duty.
- 13.5 During the course of our work it may be necessary to discuss your case with cost specialists, experts or counsel. Your acceptance of these Terms of Business amounts to your consent to us to disclose information which we consider necessary to progress your case.
- 13.6 In addition, Macks Solicitors may, from time to time, utilise external service providers who, through providing those services, may have access to information relating to your file, (locum solicitors, work experience individuals, cleaners etc). These service providers are all required to provide a confidentiality agreement. Your acceptance of these Terms of Business amounts to your consent to such disclosure.
- 13.7 Where you provide us with fax numbers or computer network addresses for sending material to you or some other person at your direction or on your behalf, we will assume, unless you tell us otherwise, that your arrangements are sufficiently secure and confidential to protect your interests.
- 13.8 The internet is not secure and there are risks if you send sensitive information in this manner or you ask us to do so. Data we send by email is not routinely encrypted, so please tell us if you do not want us to use email as a form of communication with you or if you require data to be encrypted.
- 13.9 We will take reasonable steps to protect the integrity of our computer systems by screening for viruses on email sent or received. We expect you to do the same for your computer systems.
- 13.10 We promise to respect the data we hold on you. Your acceptance of these Terms of Business authorises us to keep your details on our database so that we can provide you with legal services and for administration and accounting purposes, so that we can make credit searches and send you relevant information on our services and on events that may interest you. All information that we hold concerning you as an individual will be held and processed by us strictly in accordance with the provisions of the Data Protection Act 1998.
- 13.11 We will not, without your consent, supply your name and address to any third party except where:
- It is necessary as part of the legal services that we undertake: or
  - We are required to do so by law or our professional rules.
- 13.12 The firm may become subject to periodic checks by Law Society approved Consultants and/or Assessors. This could mean that your file is selected for checking, in which case we would need your consent for the checking to occur. All such checks are conducted by individuals who have provided the firm with a confidentiality agreement. Your acceptance of these Terms of Business amounts to your consent to make your file available for checking. If you do not want us to make your file available for checking you must notify us immediately and we will mark your file accordingly. If you refuse to give us consent to checks, your refusal will not affect the way your case is handled in any way.
- 13.13 If you are an individual, you have a right under the [Data Protection Act 1998](#) to obtain information from us, including a description of the data that we hold on you. Should you have any queries concerning this right, please contact our Data Protection Compliance Officer. We may charge you £10 for providing you with any such information. VAT will not be added to the charge.
- 13.14 We may correspond with you by email unless you advise us in writing that you do not wish us to do so. You acknowledge that email may not be secure. Email will be treated as written correspondence and we are entitled to assume that the purported sender of an email is the actual sender and that any express or implied approval or authority referred to in an email has been validly given. You consent to us monitoring and reading any email correspondence travelling between you and any mail recipient at Macks Solicitors.
- 13.15 We will aim to communicate with you by such method as you request. More often than not this will be in writing, but may be by telephone if it is appropriate. We may need to virus check disks or emails, but unless you withdraw consent we may communicate with others when appropriate by email or fax but we cannot be responsible for the security of correspondence and documents sent by email or fax.
- 13.16 You may be aware that cyber-crime is on the increase and that like other business sectors, law firms and their clients are being targeted. We take our responsibilities to look after your information extremely seriously, which is why we employ the latest security measures to try and avoid you and our firm from becoming victims. One way criminals try and steal money is to hack into legitimate emails passing between law firms and their clients, they then try and convince the client that their law firm has changed its bank account details and get them to transfer money into a fraudulent account. We will not be changing our bank account details, so if you ever receive correspondence saying we have, then please contact us before transferring any money into the 'new' account to ensure that we have not fallen victim to a scam.
- #### 14. Referrals to Third Parties
- 14.1 If we recommend that you use a particular firm, agency or business, we shall do so in good faith and because we believe it to be in your best interests. If we recommend that you use a particular firm, agency or business that can only offer products from one source, we shall notify you in writing of this limitation. We will pay to you any commission that we receive from any particular firm, agency or business that we recommend you use.
- 14.2 If we recommend that you use a particular firm, agency or business, we shall not be liable to you for any advice you may be given by that firm, agency or business and you are advised that if that firm, agency or business is not another firm of solicitors you will not be afforded the regulatory protection of the Solicitors Regulation Authority or of the SRA Code of Conduct and SRA Indemnity Insurance Rules, nor shall you be entitled to the benefit of the SRA Compensation Fund.
- #### 15. Hours of Business
- 15.1 Our office is open between 08.45am and 5.15pm, Monday to Friday, excepting bank holidays. We do not provide an out of office or emergency service to clients. The person responsible for your matter may, at his or her absolute discretion, provide you with a mobile telephone number, and may endeavour to take your telephone calls outside of office hours, but nothing he or she says should be interpreted as an agreement to routinely deal with your matter or to take your telephone calls outside of office hours.
- #### 16. Other Parties' Charges & Expenses: Litigation/Contested Matters Only
- 16.1 We will discuss with you whether your charges and expenses might be paid by another person. Even if you are successful, the other party is very unlikely to be ordered to pay all your costs and expenses, usually it will be only a proportion and you will have to pay the balance of our charges and expenses. In "small claims" cases you will not recover more

than a nominal amount and in any claim where your opponent has public funding, you may recover nothing at all.

16.2 In Employment Tribunal cases, the normal rule is that each side has to pay their own costs. It is only in exceptional circumstances that the Employment Tribunal awards costs to the winner.

16.3 If you are successful and the court orders the other party to pay some or all of our charges and expenses, interest may be claimed on them from the other party from the date of the court order. We will account to you for such interest to the extent that you have paid our charges or expenses account, but we are entitled to the rest of that interest.

16.4 You will also be responsible for payment of the charges and expenses of seeking to recover any charges and expenses the court orders the other party to pay.

16.5 In some circumstances, the court may order you to pay the other party's legal charges and expenses; for example if you lose the case or lose on certain issues. In addition, the court has the power to assess costs and make orders for immediate payment during the course of a case. Such summary assessment may take place following any hearing, and will usually be made against the losing party at that hearing.

16.6 Any money so ordered or assessed by the court to be paid will in these circumstances be a liability payable by you in addition to our charges and expenses and in the case of summary assessment costs, within 14 days of making of the order. We will discuss with you whether our charges and expenses and your liability for another party's charges and expenses may be covered by insurance, and, if not, whether it would be advisable for you to have insurance to meet the other party's charges and expenses.

16.7 You remain liable to pay our bills in full to the extent that they have not been paid by any third party.

## 17. Funding Options – Litigation/Contested Matters Only

### 17.1 Our Policy

(a) Macks Solicitors recognises the need for flexibility in funding litigation, and at the outset we will investigate with you the best way of paying for your legal representation. The purpose of this clause is to set out details of the various options, though not all may be available through this practice or for your particular type of case. Those that are will be discussed with you.

17.2 You can explore the following ways to fund your case:

- (a) Paying privately;
- (b) Legal expenses insurance;
- (c) After-the-event insurance;
- (d) Conditional fee agreement;
- (e) Damages Based Agreements;
- (f) Community Legal Funding ('Legal Aid')

### 17.3 Paying privately

(a) If you pay privately you are responsible for paying our fees, including expenses. A consequence of you funding litigation is that you may also be responsible for paying the costs of your opponent. That liability can arise in the following situations:

(i) during the course of the case there may be 'interim' hearings and matters which you could win or lose. If you lose one of these, then you can be ordered to pay the costs associated with that interim/matter hearing (regardless of the outcome of the case as a whole), in which case the costs will be payable within 14 days of the date of the order; and

(ii) at the end of the case, if you lose at trial or agree to pay your opponent's costs as part of the settlement.

### 17.4 Legal Expenses Insurance (LEI)

(a) You may find that you already have an insurance policy to cover your legal costs. This can be part of your buildings and contents insurance (for example). We would recommend that you check those policies (and any other relevant policies of your own or your spouse or partner) to see if such cover is provided. If it is, you need to get in touch with your insurer straight away to see if they will cover your claim. Some insurers have their own panel of solicitors, so you will need to check that your insurers will cover us for acting for you.

(b) Similarly, you may be a member of a trades union or other affinity group, which may entitle you to have some or all of your legal expenses funded by a third party. We recommend that you check the terms of any such membership to see if you are so entitled.

(c) Even if you have this type of cover or entitlement, any work which we do on your behalf prior to confirmation of cover from your insurer will be at your expense, regardless of whether cover is subsequently granted or not.

(d) Often LEI covers not only the costs we incur acting for you, but also all or part of any costs that you are ordered to pay to the other side.

### 17.5 After the Event Insurance (ATE)

(a) As your case progresses, and depending upon the response from your opponent you may wish (and we may require you) to take out an ATE insurance policy. This will be subject to an insurer accepting your application and the payment of a premium. The cost of the ATE premium is not recoverable from your opponent.

(b) ATE may cover you against just your opponent's costs or it may cover your opponent's costs and our costs. If you opt for insurance that covers your opponent's costs only, you will still be liable to pay our costs on an ongoing basis, whether you win or lose.

(c) There will sometimes be a fee payable to the insurer on making the application, which fee is non-returnable (though it may be set against the premium if cover is granted). You may have to pay the insurer additional costs to investigate your claim. The insurer will carry out its own assessment of your claim before deciding whether to grant cover or not. The premiums payable typically vary between 15% and 40% of the cover required.

(d) Should the circumstances of your case change (for example if something comes out as the case progresses which was not disclosed at the outset) you may find that the insurer withdraws cover.

(e) If you lose, or settle on terms that both sides pay their own costs (or the insurer withdraws cover) then you will be liable for our costs (including all expenses and VAT) unless you have a valid insurance policy in place that covers those costs. You should note that if you win and obtain a costs order against your opponent, unless you can and do recover those costs from the opponent you will still be liable to pay us in full because the insurance policy is unlikely to cover you in those circumstances. This is the case even if you have cover for your own costs under your insurance policy.

### 17.6 Conditional Fee Agreement (CFA)

(a) A CFA is an agreement between us under which we agree that you will not have to pay our costs if your claim is unsuccessful. You may know this as a 'no win, no fee' arrangement. If you win, whilst you are liable to pay all of our basic charges, expenses and a success fee, you will normally be entitled to recover part of the basic charges and expenses from your opponent. The success fee is not recoverable. The shortfall

and success fee will be deducted from any compensation recovered. Any deduction will however be limited to a maximum of 25%. If you lose, you do not have to pay any of our charges but you will have to pay expenses and you may have to pay some or all of your opponent's legal charges and expenses. If we are prepared to enter into a CFA with you in this case, we will set out the detail of this separately.

- (b) At the outset we will need to investigate your claim to get to a stage where we are able to make proper assessment of its strengths and weaknesses.
- (c) You may wish, and we may require you, to take out an insurance policy to cover your opponent's costs and your own expenses. This will be subject to an insurer accepting your application and the payment of a premium.
- (d) A CFA only works where you are likely to recover damages and/or costs from your opponent. It is therefore not appropriate for all types of cases, for example where there are any doubts about the ability actually to recover costs from the opponent in the event that they are ordered to pay them.
- (e) As with ATE, if the circumstances of the case change, particularly if matters which were not disclosed at the outset, we (and any insurer) will reserve the right to withdraw from the CFA, in which case you may become liable to pay our past and future fees on a privately paying basis.
- (f) Separate CFAs will be needed with any third party whose services are used in the case (such as a barrister), or you will be liable for their charges as and when they fall due. Expert witnesses are not able to enter into a CFA, because of their overriding duty to the court.

#### 17.7 Damages Based Agreements

- a) A Damages Based Agreement is a form of No Win No Fee Agreement whereby the costs payable if the claim is successful are limited to a maximum charge of 25% of the damages awarded.
- b) Macks Solicitors does not conduct work funded on this basis and if you do wish to pursue a claim on the basis of a Damages Based Agreement you will need to consult another Firm.

#### 17.8 Public Funding

- (a) In some circumstances you may be entitled to Community Legal Funding, formerly known as 'Legal Aid'.
- (b) Macks Solicitors does not conduct work funded on this basis. We will however discuss with you whether you are likely to qualify for such funding and may refer you to another local firm that could assist.
- (c) Should you not be entitled to Community Legal Funding or not wish to use such a funding method then we will be glad to conduct your matter on the most suitable funding arrangement for your case.

#### 17.9 Summary

- (a) The options available for funding litigation are numerous. If you have any questions about funding which we have not already discussed with you, please contact us.

### 18. Anti- Money Laundering

#### 18.1 Identity Checks

- (a) We shall inform you in our engagement letter whether the Anti-Money Laundering Legislation applies to you.
- (b) All solicitors are obliged to carry out customer due diligence ("CDD") in accordance with the UK anti-money laundering and counter-terrorist financing regime. This includes us obtaining and keeping documentary evidence of the identity of clients and gaining an understanding of their financial status and normal business affairs.

- (c) In the case of individuals (including directors, secretaries and shareholders of a company or members of a limited liability partnership), we require to see and keep a photocopy of a passport, photo driving licence, or national identity card (or similar document) as evidence of your identity and a recent utility or council tax bill (or similar type of document) as additional evidence of your address. We need to see original documents and will discuss with you acceptable documents and methods of certification if the original is not available. We may also utilise external agencies to assist with these checks and may charge you any expenses associated with such checks.

- (d) For all companies we will carry out a search of Companies House (or similar registry in foreign jurisdictions) and may ask for further information.

- (e) For non-listed companies and other organisations, we will also require the evidence for individuals for one or more directors, company secretaries, shareholders, partners or other persons authorised to represent the organisation.

- (f) For other legal entities we will inform you of the evidence required to confirm identity.

#### 18.2 Disclosure to the Authorities etc.

- (a) We are in certain circumstance obliged under Money Laundering Regulations 2007, Proceeds of Crime Act 2002 ('POCA') as amended by the Serious Organised Crime and Police Act 2005 ('SOCPA') to make a report to the National Crime Agency ('NCA') where we are suspicious that any matter or transaction in which we are instructed involves the proceeds of criminal conduct. We may be prohibited by law from informing you or anyone else when such a report has been made, and it is possible that we may not be allowed to proceed with the transaction or matter concerned until NCA gives us permission to do so. We may not be permitted to tell you anything about any of these circumstances should they occur.

- (b) If any term or provision of these Terms of Business or our engagement letter is inconsistent with complying with our legal obligations under Anti-Money Laundering Legislation, our legal obligations will override the inconsistent term which shall be deemed modified accordingly.

- (c) We will not accept any liability for any loss caused to you or any other party as a result of our refusal to proceed with a matter or transaction or otherwise complying with our legal obligations.

#### 18.3 Cash Payments

- (a) We will not accept payments from you in cash of over £500 regardless of whether the payment is to settle our bill, to pay money on account, or in respect of transactions we may be acting upon (such as sales and purchases of businesses or property).

- (b) For the avoidance of doubt the £500 cash limit applies to each matter in which we are acting for you and not just to each transaction relating to that matter.

- (c) We shall not be liable to you for any losses you may suffer as a result of any refusal by us to accept cash payments of over £500.

### 19. Equality & Diversity

- 19.1 We are committed to encouraging equality of opportunity and respect for diversity in all of our dealings with clients, third parties and employees. Please contact us if you would like a copy of our Equality and Diversity Policy.

- 19.2 If you consider yourself to have a disability, or if you have any special requirements in relation to the way in which you would like us to handle your work, please let us know.



## **20. Rights of Third Parties**

20.1 Except as stated otherwise in clause 11.8, a person who is not a party to this Agreement shall not be entitled to enforce any of its terms.

## **21. Applicable Law, etc.**

21.1 These Terms of Business and our engagement letter shall be governed by, and interpreted in accordance with English law. Any disputes or claims concerning this Agreement and any matters arising from it shall be dealt with only by the courts of England & Wales.

21.2 If we or you do not enforce our respective rights under this Agreement at any time it will not prevent either us or you from doing so later.

21.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

## **22. Macks Solicitors**

22.1 Macks Solicitors is constituted as a Private Unlimited Company and is registered at Companies House in accordance with the Companies Act 2006. The firm's Company Number is 04609487 and the firm's Registered Office is: 4 Woodlands Road, Middlesbrough, TS1 3BE; telephone number: 01642 252828; Web Site: [www.mackssolicitors.co.uk](http://www.mackssolicitors.co.uk); Value Added Tax ('VAT') number 660001395.

22.2 Macks Solicitors is Authorised and Regulated by the Solicitors Regulation Authority with SRA number 37039.

22.3 In these Terms of Business all first person terms such as 'we', 'us' and 'our' refer to Macks Solicitors and not to any Director, Partner, Consultant or Employee personally or to any combination of Directors, Partners, Consultants or Employees collectively. By entering into this Agreement, you are entering into a contract with Macks Solicitors and not with any Director, Partner, Consultant or Employee personally or with any combination of Directors, Partners, Consultants or Employees collectively.

22.4 We are bound by various professional rules of conduct which can be viewed at [www.sra.org.uk](http://www.sra.org.uk) or by writing to 'Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, B98 0TD' or calling the Solicitor's Regulation Authority's contact centre on 0870 606 2555 (inside the UK), 09.00 to 17.00, Monday to Friday.

22.5 A list of Directors is available for inspection at our Registered Office. We may from time-to-time use the word 'partner' to refer to a Director or an employee or consultant of Macks Solicitors.

22.6 The [SRA Indemnity Rules 2011](#) require us to take out and maintain professional indemnity insurance and the [Provision of Services Regulations 2009](#) require us to provide you with relevant details. All information about the compulsory layer of professional indemnity insurance we carry, including the contact details of our insurers and the territorial coverage of our insurance, are available in hard copy at our registered office.

## **23. Terms of Business**

23.1 These Terms of Business may not be varied unless agreed in writing and signed by Nicholas Mack (Director). They should be read in conjunction with our engagement letter, which sets out the basis on which we act for you, and any documents referred to in that letter. Together, these form the 'Agreement' between us relating to each matter on which we advise you.

23.2 These Terms of Business, including the limits on our liability, shall apply to all work done by us for you (and any work to be done in the future) unless we otherwise notify you in writing.

23.3 If any term of this Agreement is inconsistent with our legal obligations under the relevant laws then the relevant laws shall apply instead of those terms.

## **24. Excluded Advice**

24.1 We do not (unless otherwise agreed by us in writing) advise on the laws and regulations of jurisdictions other than England & Wales (which for these purposes includes the law of the European Union as applied in England & Wales). If your claim involves the laws of jurisdiction other than England & Wales we may refer you to another firm of solicitors if we judge it to be in your best interests.

24.2 Whilst we have a degree of understanding of taxation, unless we specifically advise you to the contrary in writing, we will proceed on the basis that you have sought appropriate taxation advice from a third party such as your own accountant. If you wish us to help you to appoint an appropriate accountant, please ask.

24.3 We do not provide financial advice or comment upon the commercial viability of any transactions upon which we advise. You should rely on your own judgment in such matters, or on advice from other professionals.

## **25. Your Duty to Retain and Preserve Documents**

25.1 If now, or at any time in the future, any matter on which we act for you is the subject of formally contested proceedings, whether in the courts or other tribunals, you will almost certainly have to disclose documents, including electronic documents, relevant to the matter. You should ensure that you do not destroy or allow to be destroyed any documents that relate to such matter in any way (however slight you believe the connection may be), as your position in such proceedings could be seriously compromised if you do so.

## **26. Copyright**

26.1 Unless we agree otherwise, all copyright which exists in the documents and other materials that we create whilst carrying out work for you will remain our property. You have the right to use such documents and materials for the purposes for which they are created, but not otherwise.

26.2 If you use such documents for any purpose other than that for which they were created we are not responsible to you for any losses that you may suffer as a result.

26.3 Unless otherwise required by law or court order, you agree not to make our work, documents or materials produced by us available to third parties without our prior written permission. Our work is undertaken for your benefit alone and we are not responsible to third parties for any aspect of our professional services or work that you make available to them.

## **27. Client Satisfaction**

27.1 We operate strict client care and quality policies and always aim to provide you with the highest level of legal expertise and to be available, approachable, understandable, prompt and courteous. We will keep you informed about all important developments in your case and we will respond to your letters, emails and telephone calls promptly and efficiently.

27.2 We pride ourselves on our exceptional levels of client care and it is extremely rare for our clients to have cause for complaint. In the unlikely event that you have any cause for concern, including about a bill, then please be aware that you are entitled to make a complaint, and that you can do so by contacting our designated Complaints Manager Nicholas Mack who is the Managing Director. We take all feedback from clients seriously and operate a Complaints Handling Procedure, a copy of which is available upon request. We are usually able to deal with any

concerns you have promptly and to your satisfaction, but if this is not the case, you may be able to make a complaint to the Legal Ombudsman, provided you do so within one year of becoming aware of the problem or within six months of the end of our internal complaints procedure, if you are still not satisfied with the outcome. The Legal Ombudsman does have discretion to extend these time scales. You should also be aware that, when your complaint relates to a bill, the Legal Ombudsman will not consider your complaint while your bill is being assessed by a court.

27.3 A complainant to the Legal Ombudsman must be one of the following:

- (a) An individual;
- (b) A micro-enterprise as defined in European Recommendation 2003/361/EC of 6 May 2003 (broadly, an enterprise with fewer than 10 staff and a turnover or balance sheet value not exceeding €2 million);
- (c) A charity with an annual income less than £1 million;
- (d) A club, association or society with an annual income less than £1 million;
- (e) A trustee of a trust with a net asset value less than £1 million; or a personal representative or the residuary beneficiaries of an estate where a person with a complaint died before referring it to the Legal Ombudsman.

27.4 If you do not fall into any of these categories, you should be aware that you can only obtain redress by using our Complaints Handling Procedure or by mediation or arbitration, or by taking action through the Courts.

27.5 Legal Ombudsman Contact Details:

- (a) Address: PO Box 6806, Wolverhampton, WV1 9WJ
- (b) Telephone: 0300 555 0333
- (c) Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)
- (d) Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

6.6 Alternative complaints bodies such as Ombudsman Services, ProMediate and Small Claims Mediation also exist which are competent to deal with complaints about legal services should both you and our firm wish to use such a scheme.

## 28. Fees

### 28.1 Fixed Fee Services

- (a) Where our engagement letter states that we are charging on a fixed fee basis, additional services may be provided on request and (unless otherwise agreed by us in writing) will be charged at our standard hourly rates as set out in our engagement letter plus expenses (if any) and VAT.

### 28.2 Hourly Rate Services

- (a) Where our engagement letter states that we are charging on an hourly basis, the hourly rate varies according to the experience and expertise of the person dealing with the matter. The rates which apply to each matter are set out in our engagement letter or alternatively (where appropriate) in the Conditional Fee Agreement.
- (b) The time spent on your matter for which you will be charged includes meetings with you and others, travelling, waiting, researching and considering, sending and receiving correspondence (including emails), making and receiving telephone calls, preparing and working on documents, and making file notes.
- (c) The time spent on your matter is recorded as units of one tenth of an hour (6 minutes). Therefore, this is the minimum amount of time we will charge for any piece of work undertaken on your matter.
- (d) We review our hourly rates periodically. We will notify you in writing of any change in our hourly rates.

- (e) We will add VAT to our fees at the applicable rate.

### 28.3 Value Element

- (a) In the administration of Estates or Trusts we will charge a value element equal to 0.5% of the value of any real estate (0.75% if a Solicitor with the firm is an Executor or Trustee) and 1% of the value of all other assets (1.5% if an Executor or Trustee), plus VAT.

### 28.4 Estimates

- (a) If we have provided to you a written estimate of the total charges, it is given only as a guide to assist you in budgeting and should not be regarded as a fixed quotation unless otherwise agreed in writing. We will inform you if any unforeseen but significant additional work becomes necessary.
- (b) It is often impossible to tell at the outset what the overall cost of a matter will be. If this is the case we will provide you with as much information as possible at the start and keep you updated as the matter progresses. If a precise figure cannot be given at the outset, we shall explain the reason to you and give you the opportunity to set a ceiling figure beyond which you do not want us to act without your consent or we shall agree a review date with you on which we shall try to give you more information about the likely overall cost.

### 28.5 All Services

- (a) All expenses (which includes and may sometimes also be referred to as 'disbursements') which we incur in working on your matter will be payable by you in addition to our fees. Examples of these expenses include Land Registry and Companies House fees, search fees, stamp duty land tax (and similar taxes), fees charged by experts, agents, couriers and barristers, court fees, commissioners fees, travel expenses and subsistence, delivery charges (whether or not insured), faxes, international telephone calls, use of on-line databases and telegraphic transfer fees. In addition, we may also charge you for photocopying and other document production at a rate of £0.10p for each page and £0.50p for each colour page. VAT is payable on certain expenses, which you will need to pay in addition.
- (b) Unless acting under the terms of a Conditional Fee Agreement or on a fixed fee basis, we will usually submit bills monthly but may choose to submit bills at other intervals during the course of working on your matter. We may also submit a bill on or at any time after conclusion of the matter or at the end of this Agreement. Our bills are payable when they are submitted to you. All bills, whenever they are submitted, will be for final bills for the period to which they relate but this does not prevent us from invoicing you for expenses for that period on a subsequent bill.
- (c) We may also ask you initially and/or at any time during the matter to pay money in advance of any fees and expenses being incurred by us (known as a 'payment on account'). If we ask you to make a payment on account, we will not be obliged to undertake any further work on your matter until you have made that payment, and if you do not make the payment we may cease acting for you.
- (d) Where we decide to extend credit to you by carrying out urgent work on your matter after the money you have paid on account has all been used, you agree to remain liable for our fees regardless of whether or not we give you advance notification that we are going to extend credit to you.
- (e) It is your responsibility to tell us when first instructing us if you have any form of insurance cover (such as legal expenses insurance) that you think will pay our fees. You must also tell us when first instructing us if there is a third party who may pay our fees. If a third party agrees to pay all or

part of our bills, you will remain responsible to us for payment until those bills have been paid in full.

(f) If we are advising more than one person (usually individuals, companies or other entities) unless otherwise agreed by us in writing, we will act for those persons jointly and severally. If we are asked to address bills only to one person, those bills will nevertheless be payable in full by all other persons we act for under this Agreement.

(g) If you are instructing us jointly in relation to any matter it is your responsibility to tell us at the outset of the Agreement if you require more than one person to give us instructions in relation to that matter. Otherwise, we will accept instructions from any one person on behalf of all joint clients and will not be responsible to any other person for any losses they may suffer as a result. If you are a company, a limited liability partnership or other commercial entity it is your responsibility to tell us at the outset of the Agreement if you require more than one director, member (or equivalent) to give us instructions. Any director or member (or equivalent) giving us initial instructions or instructions at any time during the conduct of the file agrees by doing so to be a joint client with the Company for the purposes of payment of fees VAT and expenses to Us.

28.6 If we do not receive prompt payment of any bill, then:

(a) We may charge you interest (on a daily basis) on the unpaid element of the bill at the rate payable on judgment debts from the date of the bill until payment, unless it is determined that you do not have to pay that element;

(b) We may refuse to undertake any further work for you (whether in respect of the matter to which the bill relates or any other matter on which we are acting for you) until that bill is paid and/or we may stop acting for you; and

(c) We may retain any papers or documents belonging to you, together with our own records.

28.7 If you have any queries in respect of any element of a bill, you should still promptly pay all other elements of the bill.

28.8 Where we hold money for you, whether because you have made a payment on account or we otherwise receive funds on your behalf, we may use this money toward payment of our bills. We will advise you when this is being done. If we take any security for our fees, whether from you or any third party, this shall not affect any rights we have (or which we may have) to retain your papers.

28.9 If you wish to make a complaint about one of our bills, you may do so by using the firm's Complaints Handling Procedure (copy available on request). You may also have a right to object to a bill by making a complaint to the Legal Ombudsman and/or applying to the court for an assessment of the bill under part III of the Solicitors Act (1974). The contact details for the Legal Ombudsman can be found in the section relating to 'Client Satisfaction'.

## 29. Storage of Documents and Deeds

29.1 We retain all documents relating to your matter (other than any documents which are in your possession or returned to you) for at least six years from the conclusion of our involvement in the matter. You agree that we may destroy your file and documents after six years, so if you do not want them destroyed you must notify us immediately upon receiving our file closure letter. We will not destroy documents you ask us to deposit in our deeds store.

## 30. Termination

30.1 You may end this Agreement (and therefore, your instructions to us) at any time by writing to us but we may be entitled to keep all of your

documents and deeds while there is money owing to us (including fees and expenses which have not yet been billed).

30.2 We may end this Agreement (and, therefore, cease acting for you) in relation to any matter or all matters of yours, but only on reasonable written notice and for good reason. Examples of a good reason include where you have not given us sufficient instructions, where you have not provided appropriate evidence of identification or we reasonably believe that the relationship between you and us has broken down.

30.3 If your matter does not conclude, or we are prevented from continuing to act because of our legal obligations or our professional rules, you will pay us for any work we have actually done. Our charges will be based on our hourly rates set out in our engagement letter (and where a fixed fee has been agreed, the charges will not exceed that fixed fee).

30.4 If we cease acting for you, we shall (where relevant) inform the court or tribunal that we no longer act for you and shall apply to be removed from their records. We may charge you for doing so at our hourly rates applicable at the relevant time and those charges will be applied on the same basis set out in clause 7 and for any expenses which we incur on the same basis – also set out in clause 7.

30.5 If you are an individual and we have not met with you, the [Consumer Protection \(Distance Selling\) Regulations 2000](#) and the [Consumer Protection \(Distance Selling\) \(Amendment\) Regulations 2005](#) will apply to our agreement. Similarly, if we made this agreement in your home or place of work then the [Consumer Protection \(Cancellation of Contracts made in a Consumer's home or place of work etc.\) Regulations 2008](#) will apply. These regulations mean that you may terminate this agreement within seven days without any obligation. By accepting these terms of business you agree that you would like our service to start before the end of the usual cancellation period and you agree that your cancellation rights shall end as soon as we commence work on your matter.

30.6 By accepting these Terms of Business you agree that you would like our service to start before the end of the usual cancellation period and you agree that your cancellation rights shall end as soon as we commence work on your matter.

## 31. Financial Services

31.1 [The Law Society of England and Wales](#) is a designated professional body under Part XX of the [The Financial Services & Markets Act 2000](#) which means that we may carry on certain regulated activities without being regulated by [The Financial Conduct Authority](#). This means that we may be able to provide limited financial services to you where such services arise out of, or are complementary to, the provision of legal services.

31.2 The Law Society is the designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation has been delegated to the Solicitors Regulation Authority (the independent regulatory body of the Law Society), and responsibility for handling complaints has been delegated to the Legal Ombudsman. The contact details for the Solicitors Regulation Authority can be found at clause 1.3 and the contact details for the Legal Ombudsman can be found at clause 6.5.

31.3 The limited regulated activities that we carry out are issuing certain insurance policies, such as after the event legal expenses insurance, defective title insurance and other property indemnity insurance (such as breach of covenant, absence of easement, lack of planning permission, unknown rights and covenants policies).

31.4 We are 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 Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk](http://www.fca.org.uk)

31.5 Any insurance policy arranged by us on your behalf, shall, in our opinion, be adequate to meet your needs, but you are hereby informed that we do not recommend any policy over and above any other and that it is your responsibility to check that you are satisfied with the excess levels, exclusions, limitations and other policy terms. We do not conduct a fair analysis of the insurance market prior to arranging insurance policies. You can request details of the insurance undertakings with which we conduct business at any time.

31.6 You hereby agree to provide us with details of any relevant existing insurance policies you may have and you agree that we shall not be liable to you for any losses you sustain as a result of your failure to provide us with such details.

### **32. Limitation of Liability**

32.1 You agree that the limitations on our liability as set out in this Agreement are reasonable having regard to the nature of your instructions and the work involved and the availability and cost of professional indemnity insurance. We are, however, happy to consider options to increase these limitations, should you so require (which may result in an increase to our fees).

32.2 We will undertake the work relating to your matter with reasonable skill and care.

32.3 We accept liability without limit for the consequences of fraud by us or any of our directors, partners or employees which is affected in their capacity as directors, partners, consultants or employees and for any other liability which we are not permitted by law or rules of professional conduct to limit or exclude. If any part of this Agreement which seeks to exclude, limit or restrict liability (including provisions limiting the amount we will be required to pay or limiting the time you have to bring a claim) is found by a court to be void or ineffective for any reason, the remaining provisions shall continue to be effective.

32.4 We will not be liable under this Agreement or laws of negligence for any deficiencies in the work we have undertaken if and to the extent that deficiencies are due to any false, misleading or incomplete information or documentation which has been provided to us (whether by you or any third party) or due to the acts or omissions of you or any third party. However, where any failure by us to identify any such false, misleading or incomplete information (or any failure by us to inform you that we have identified such information or any failure to act on your resulting instructions) constitutes negligence then we shall, subject to the other provisions of this Agreement, remain liable for such failure.

32.5 Despite anything else contained in this Agreement, we are not under any obligation to act for you (or to continue to act for you) if to do so would breach any laws or professional rules. Therefore, we will not be responsible or liable to you for any loss which you or any other party may suffer as a result of our refusal to proceed with your matter where we would be in breach (or we reasonably believe that we would breach) of our legal obligations or our professional rules.

32.6 Except as stated in 11.3 and 11.12, the total aggregate liability of Macks Solicitors to you under or in connection with this Agreement (including any addition or variation to it), whether for breach of contract, negligence, breach of statutory duty, or otherwise, shall not exceed £2,000,000 (two million pounds).

32.7 Where we are instructed jointly by more than one party, the limit on our liability applies, in total, to all of you collectively (including anyone claiming through you or on your behalf).

32.8 You agree that you will not bring any claims or proceedings in connection with this Agreement against our consultants or employees personally, unless (and to the extent that) you are otherwise permitted to do so by law or our professional rules. Our employees may enforce this clause even though they are not parties to this Agreement (but despite having such rights, this Agreement may be varied or ended without their consent).

32.9 Proceedings in respect of any claim against us must be commenced within 3 years after you first had (or ought reasonably to have had) both the knowledge for bringing an action for damages and the knowledge that you had the right to bring such an action and in any event no later than 6 years after any alleged breach of contract, negligence or other cause of action. This provision expressly overrides any statutory provision which would otherwise apply; it will not increase the time within which proceedings may be commenced and may reduce it.

32.10 If we and any other party or parties are liable to you together in respect of the same claim, then we shall only be liable to pay you the portion which is found to be fair and reasonable having regard to the level of our default. Therefore, we shall not be liable to pay you the portion which is due to the fault of such party, even if you do not recover all or any money from such other party for any reason.

32.11 If we are liable to you and any other party or parties would have been found liable to you together with us in respect of the same claim if either:

- (a) You had also brought proceedings or made a claim against them; or
  - (b) We had brought proceedings or made a claim against them for a contribution towards our liability,
- then any sum due from us to you shall be reduced by the proportion for which such other party or parties would have been found liable had those proceedings been brought or those claims been made.

32.12 Nothing in this Agreement excludes or limits the liability of Macks Solicitors for:

- (a) Death or personal injury caused by negligence;
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any liability if and to the extent that it is not permissible in law for such liability to be limited or excluded.

### **33. Client Money**

33.1 Subject to certain conditions set out in Rule 22 to 25 of the SRA Accounts Rules, a sum in lieu of interest must be accounted to clients when it is fair and reasonable to do so in all the circumstances. Our policy seeks to provide for a fair and reasonable outcome for both our clients and this practice.

33.2 Our policy on interest shall be kept under review. The policy may change if the Bank of England base rate increases or decreases. At the date of the preparation of this policy, the interest rates payable on client accounts was extremely low – around 0.1% and the Bank of England base rate is 0.5%. This means that the sums of money involved are negligible. The rate of interest available on client accounts is significantly lower than the rate of interest which can be obtained on other bank or building society accounts. This reflects the fact that immediate access is required to client accounts in order to comply with the accounts rules and to facilitate the smooth completion of transactions. It is therefore unlikely that the funds will attract as much interest as if you had invested those funds yourself.

33.3 All interest arising from cleared funds held on behalf of a trust will be credited to the trust whether those funds are held in a general client

account or a separate designated client account (formerly known as a Designated Deposit Account).

33.4 For cleared funds paid into general client accounts, the practice shall account for interest unless one of the following circumstances applies:

- c. The amount of interest calculated on the balance held is £20.00 or less; or
- d. The client money was held in cleared funds in client account for a period of five working days or less.

33.5 All other clients shall be paid interest at the rate payable upon the practice's client account from time to time, unless there are specific circumstances which lead the client to contract out of the right to receive interest payments (for example where the client agrees the practice may keep interest payments to remunerate the practice for acting as stakeholder in the transaction or where the client's religious beliefs prohibit the receipt of interest).

33.6 In certain circumstances a separate designated client account will be opened on behalf of clients. All interest arising from funds held in separate designated client accounts will be credited to the client.

33.7 Where sums of money are held in relation to separate matters for the same client, the money relating to the different matters shall be treated separately unless it is fair and reasonable in the circumstances to consider the sums together.

33.8 Interest will not accrue on any advances from the practice under rule 14(2)(b) of the accounts rules to fund a payment on behalf of a client or trust in excess of funds held for that client or trust.

33.9 Where a client fails to present a cheque to his or her bank for payment we will not recalculate any amount due to the client unless it is fair and reasonable to do so, for example if the cheque has been sent to an incorrect address.

33.10 We will usually account to you for interest arising under our policy at the conclusion of your matter, but might, in some cases, consider it appropriate to account to you at intervals throughout.

33.11 We shall not be liable for any loss which you or any third party may suffer in connection with an Insolvency Event occurring in relation to any deposit provider with whom we have deposited funds or through whom transfers are made, save if and to the extent that any such loss was caused by or contributed to by any breach by us of clause.

33.12 In clauses 12.11 and 12.13 an "Insolvency Event" means:

- (a) Any deposit provider is unable or admits inability to pay its debts as they fall due (or is deemed to be or declared to be unable to pay its debts under applicable law), suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) The value of the assets of any deposit provider is less than its liabilities (taking into account contingent or prospective liabilities);
- (c) A moratorium is declared in respect of any indebtedness of any deposit provider;
- (d) Any corporate or government action, legal proceedings or other procedure or steps taken in relation to:
  - (i) The suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any deposit provider;

- (ii) A composition, compromise, assignment or arrangement with any creditor of any deposit provider;

- (iii) The appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any deposit provider or any of its assets;

- (iv) Enforcement of any security interest (however so described) over any assets of any deposit provider; or

- (v) The prevention or restriction (whether by way of freezing order or otherwise) of a deposit provider's ability to dispose of, deal with or diminish the value of its assets or any of them;

- (e) Any event analogous to those set out in clause 12.12(d) occurs in any jurisdiction in respect of any deposit provider.

33.13 If an Insolvency Event occurs in relation to any deposit provider which holds money that we have deposited on your behalf, you agree that we may where applicable disclose to the Financial Services Compensation Scheme ("FSCS") all relevant details in our possession about you and the money that we hold on your behalf with such a deposit provider. However, if you do not wish us to make any such disclosure, please notify us in writing addressed to 'The Data Protection Compliance Officer'. Please note that by withholding consent to our disclosure of your details to the FSCS in such circumstances, you may forfeit any right you may have to receive compensation from the FSCS where an Insolvency Event occurs in relation to a deposit provider holding money which we have deposited on your behalf. Compensation for deposits is limited to £85,000 for any individual's total deposit with that service provider, including any personal finances. Further information regarding the FSCS can be found at [www.fscs.org.uk](http://www.fscs.org.uk) telephone number 020 7892 7300.

#### **34. Confidentiality, Privacy & Data Protection**

34.1 We keep information passed to us confidential and will not disclose it to third parties except as authorised by you or required by law. In certain circumstances the law requires us to disclose information relating to you (for example, payments of interest earned on a client's account may have to be disclosed under the EU Savings Directive). If on your authority we are working with other professional advisers or lawyers, we will assume that we may disclose any relevant aspect of your affairs to them.

34.2 We may in some cases consult credit reference agencies in order to assess your creditworthiness so that we can decide whether or not to ask you to pay our fees in advance. This is known as 'payment on account' and is explained in more detail below. If you are an individual, we require your consent before we do this. Your continuing instructions to us will constitute your consent to us carrying out such a search. Details of the credit agency we use are available on request. We have procedures designed to ensure that personal data is used only by appropriately authorised and trained personnel and to safeguard such information against accidental loss or unauthorised disclosure. We will keep that information strictly confidential unless otherwise required by law or court order.

34.3 Where we act for you and your lender we have a duty to fully reveal to your lender or HM Revenue and Customs all relevant facts about your purchase, your mortgage and what makes up the purchase price. Your continuing instructions amount to your consent to us to disclose all relevant information to your lender and to HM Revenue and Customs. This includes any difference between information given in your mortgage application and information you or we receive during the transaction including any cashback payments or discount schemes or other incentives that the seller is providing or allowing or giving to you.

- 34.4 You must disclose all information which may affect your liability for stamp duty land tax or other stamp duty (duty) as we can then ensure you pay the correct duty. If you fail to disclose all information (and if in doubt please disclose it as it can be disregarded if it is not relevant) or delay in giving us information or authorisation to give information you must accept full liability for any penalties or action or other proceedings that any authority may take against you for failing to disclose or delaying in disclosing information which resulted in a penalty, a duty or greater liability to pay such duty.
- 34.5 During the course of our work it may be necessary to discuss your case with cost specialists, experts or counsel. Your acceptance of these Terms of Business amounts to your consent to us to disclose information which we consider necessary to progress your case.
- 34.6 In addition, Macks Solicitors may, from time to time, utilise external service providers who, through providing those services, may have access to information relating to your file, (locum solicitors, work experience individuals, cleaners etc). These service providers are all required to provide a confidentiality agreement. Your acceptance of these Terms of Business amounts to your consent to such disclosure.
- 34.7 Where you provide us with fax numbers or computer network addresses for sending material to you or some other person at your direction or on your behalf, we will assume, unless you tell us otherwise, that your arrangements are sufficiently secure and confidential to protect your interests.
- 34.8 The internet is not secure and there are risks if you send sensitive information in this manner or you ask us to do so. Data we send by email is not routinely encrypted, so please tell us if you do not want us to use email as a form of communication with you or if you require data to be encrypted.
- 34.9 We will take reasonable steps to protect the integrity of our computer systems by screening for viruses on email sent or received. We expect you to do the same for your computer systems.
- 34.10 We promise to respect the data we hold on you. Your acceptance of these Terms of Business authorises us to keep your details on our database so that we can provide you with legal services and for administration and accounting purposes, so that we can make credit searches and send you relevant information on our services and on events that may interest you. All information that we hold concerning you as an individual will be held and processed by us strictly in accordance with the provisions of the Data Protection Act 1998.
- 34.11 We will not, without your consent, supply your name and address to any third party except where:
- It is necessary as part of the legal services that we undertake: or
  - We are required to do so by law or our professional rules.
- 34.12 The firm may become subject to periodic checks by Law Society approved Consultants and/or Assessors. This could mean that your file is selected for checking, in which case we would need your consent for the checking to occur. All such checks are conducted by individuals who have provided the firm with a confidentiality agreement. Your acceptance of these Terms of Business amounts to your consent to make your file available for checking. If you do not want us to make your file available for checking you must notify us immediately and we will mark your file accordingly. If you refuse to give us consent to checks, your refusal will not affect the way your case is handled in any way.
- 34.13 If you are an individual, you have a right under the [Data Protection Act 1998](#) to obtain information from us, including a description of the data that we hold on you. Should you have any queries concerning this right, please contact our Data Protection Compliance Officer. We may charge you £10 for providing you with any such information. VAT will not be added to the charge.
- 34.14 We may correspond with you by email unless you advise us in writing that you do not wish us to do so. You acknowledge that email may not be secure. Email will be treated as written correspondence and we are entitled to assume that the purported sender of an email is the actual sender and that any express or implied approval or authority referred to in an email has been validly given. You consent to us monitoring and reading any email correspondence travelling between you and any mail recipient at Macks Solicitors.
- 34.15 We will aim to communicate with you by such method as you request. More often than not this will be in writing, but may be by telephone if it is appropriate. We may need to virus check disks or emails, but unless you withdraw consent we may communicate with others when appropriate by email or fax but we cannot be responsible for the security of correspondence and documents sent by email or fax.
- 34.16 You may be aware that cyber-crime is on the increase and that like other business sectors, law firms and their clients are being targeted. We take our responsibilities to look after your information extremely seriously, which is why we employ the latest security measures to try and avoid you and our firm from becoming victims. One way criminals try and steal money is to hack into legitimate emails passing between law firms and their clients, they then try and convince the client that their law firm has changed its bank account details and get them to transfer money into a fraudulent account. We will not be changing our bank account details, so if you ever receive correspondence saying we have, then please contact us before transferring any money into the 'new' account to ensure that we have not fallen victim to a scam.
- 35. Referrals to Third Parties**
- 35.1 If we recommend that you use a particular firm, agency or business, we shall do so in good faith and because we believe it to be in your best interests. If we recommend that you use a particular firm, agency or business that can only offer products from one source, we shall notify you in writing of this limitation. We will pay to you any commission that we receive from any particular firm, agency or business that we recommend you use.
- 35.2 If we recommend that you use a particular firm, agency or business, we shall not be liable to you for any advice you may be given by that firm, agency or business and you are advised that if that firm, agency or business is not another firm of solicitors you will not be afforded the regulatory protection of the Solicitors Regulation Authority or of the SRA Code of Conduct and SRA Indemnity Insurance Rules, nor shall you be entitled to the benefit of the SRA Compensation Fund.
- 36. Hours of Business**
- 36.1 Our office is open between 08.45am and 5.15pm, Monday to Friday, excepting bank holidays. We do not provide an out of office or emergency service to clients. The person responsible for your matter may, at his or her absolute discretion, provide you with a mobile telephone number, and may endeavour to take your telephone calls outside of office hours, but nothing he or she says should be interpreted as an agreement to routinely deal with your matter or to take your telephone calls outside of office hours.
- 37. Other Parties' Charges & Expenses: Litigation/Contested Matters Only**
- 37.1 We will discuss with you whether your charges and expenses might be paid by another person. Even if you are successful, the other party is very unlikely to be ordered to pay all your costs and expenses, usually it will be only a proportion and you will have to pay the balance of our charges and expenses. In "small claims" cases you will not recover more

than a nominal amount and in any claim where your opponent has public funding, you may recover nothing at all.

37.2 In Employment Tribunal cases, the normal rule is that each side has to pay their own costs. It is only in exceptional circumstances that the Employment Tribunal awards costs to the winner.

37.3 If you are successful and the court orders the other party to pay some or all of our charges and expenses, interest may be claimed on them from the other party from the date of the court order. We will account to you for such interest to the extent that you have paid our charges or expenses account, but we are entitled to the rest of that interest.

37.4 You will also be responsible for payment of the charges and expenses of seeking to recover any charges and expenses the court orders the other party to pay.

37.5 In some circumstances, the court may order you to pay the other party's legal charges and expenses; for example if you lose the case or lose on certain issues. In addition, the court has the power to assess costs and make orders for immediate payment during the course of a case. Such summary assessment may take place following any hearing, and will usually be made against the losing party at that hearing.

37.6 Any money so ordered or assessed by the court to be paid will in these circumstances be a liability payable by you in addition to our charges and expenses and in the case of summary assessment costs, within 14 days of making of the order. We will discuss with you whether our charges and expenses and your liability for another party's charges and expenses may be covered by insurance, and, if not, whether it would be advisable for you to have insurance to meet the other party's charges and expenses.

37.7 You remain liable to pay our bills in full to the extent that they have not been paid by any third party.

## **38. Funding Options – Litigation/Contested Matters Only**

### **38.1 Our Policy**

(a) Macks Solicitors recognises the need for flexibility in funding litigation, and at the outset we will investigate with you the best way of paying for your legal representation. The purpose of this clause is to set out details of the various options, though not all may be available through this practice or for your particular type of case. Those that are will be discussed with you.

38.2 You can explore the following ways to fund your case:

- (a) Paying privately;
- (b) Legal expenses insurance;
- (c) After-the-event insurance;
- (d) Conditional fee agreement;
- (e) Damages Based Agreements;
- (f) Community Legal Funding ('Legal Aid')

### **38.3 Paying privately**

(a) If you pay privately you are responsible for paying our fees, including expenses. A consequence of you funding litigation is that you may also be responsible for paying the costs of your opponent. That liability can arise in the following situations:

(i) during the course of the case there may be 'interim' hearings and matters which you could win or lose. If you lose one of these, then you can be ordered to pay the costs associated with that interim/matter hearing (regardless of the outcome of the case as a whole), in which case the costs will be payable within 14 days of the date of the order; and

(ii) at the end of the case, if you lose at trial or agree to pay your opponent's costs as part of the settlement.

### **38.4 Legal Expenses Insurance (LEI)**

(a) You may find that you already have an insurance policy to cover your legal costs. This can be part of your buildings and contents insurance (for example). We would recommend that you check those policies (and any other relevant policies of your own or your spouse or partner) to see if such cover is provided. If it is, you need to get in touch with your insurer straight away to see if they will cover your claim. Some insurers have their own panel of solicitors, so you will need to check that your insurers will cover us for acting for you.

(b) Similarly, you may be a member of a trades union or other affinity group, which may entitle you to have some or all of your legal expenses funded by a third party. We recommend that you check the terms of any such membership to see if you are so entitled.

(c) Even if you have this type of cover or entitlement, any work which we do on your behalf prior to confirmation of cover from your insurer will be at your expense, regardless of whether cover is subsequently granted or not.

(d) Often LEI covers not only the costs we incur acting for you, but also all or part of any costs that you are ordered to pay to the other side.

### **38.5 After the Event Insurance (ATE)**

(a) As your case progresses, and depending upon the response from your opponent you may wish (and we may require you) to take out an ATE insurance policy. This will be subject to an insurer accepting your application and the payment of a premium. The cost of the ATE premium is not recoverable from your opponent and will be deducted from any compensation recovered, in addition to any deduction for legal fees and expenses.

(b) ATE may cover you against just your opponent's costs or it may cover your opponent's costs and our costs. If you opt for insurance that covers your opponent's costs only, you will still be liable to pay our costs on an ongoing basis, whether you win or lose.

(c) Should the circumstances of your case change (for example if something comes out as the case progresses which was not disclosed at the outset) you may find that the insurer withdraws cover.

(d) If you lose, or settle on terms that both sides pay their own costs (or the insurer withdraws cover) then you will be liable for our costs (including all expenses and VAT) unless you have a valid insurance policy in place that covers those costs. You should note that if you win and obtain a costs order against your opponent, unless you can and do recover those costs from the opponent you will still be liable to pay us in full because the insurance policy is unlikely to cover you in those circumstances. This is the case even if you have cover for your own costs under your insurance policy.

### **38.6 Conditional Fee Agreement (CFA)**

(a) A CFA is an agreement between us under which we agree that you will not have to pay our costs if your claim is unsuccessful. You may know this as a 'no win, no fee' arrangement. If you win, whilst you are liable to pay all of our basic charges, expenses and a success fee, you will normally be entitled to recover part of the basic charges and expenses from your opponent. The success fee is not recoverable. The shortfall and success fee will be deducted from any compensation recovered. Any deduction will however be limited to a maximum of 25%. If you take out the recommended ATE insurance policy you will also have to pay for the cost of the policy premium which will be deducted from any compensation awarded to you. If you lose, you do not have to pay any of our charges but you will have to pay expenses and you may have to

pay some or all of your opponent's legal charges and expenses. If we are prepared to enter into a CFA with you in this case, we will set out the detail of this separately.

- (b) At the outset we will need to investigate your claim to get to a stage where we are able to make proper assessment of its strengths and weaknesses.
- (c) You may wish, and we may require you, to take out an insurance policy to cover your opponent's costs and your own expenses. This will be subject to an insurer accepting your application and the payment of a premium.
- (d) A CFA only works where you are likely to recover damages and/or costs from your opponent. It is therefore not appropriate for all types of cases, for example where there are any doubts about the ability actually to recover costs from the opponent in the event that they are ordered to pay them.
- (e) As with ATE, if the circumstances of the case change, particularly if matters which were not disclosed at the outset, we (and any insurer) will reserve the right to withdraw from the CFA, in which case you may become liable to pay our past and future fees on a privately paying basis.
- (f) Separate CFAs will be needed with any third party whose services are used in the case (such as a barrister), or you will be liable for their charges as and when they fall due. Expert witnesses are not able to enter into a CFA, because of their overriding duty to the court.

#### 38.7 Damages Based Agreements

- (c) A Damages Based Agreement is a form of No Win No Fee Agreement whereby the costs payable if the claim is successful are limited to a maximum charge of 25% of the damages awarded.
- (d) Macks Solicitors does not conduct work funded on this basis and if you do wish to pursue a claim on the basis of a Damages Based Agreement you will need to consult another Firm.

#### 38.8 Public Funding

- (a) In some circumstances you may be entitled to Community Legal Funding, formerly known as 'Legal Aid'.
- (b) Macks Solicitors does not conduct work funded on this basis. We will however discuss with you whether you are likely to qualify for such funding and may refer you to another local firm that could assist.
- (c) Should you not be entitled to Community Legal Funding or not wish to use such a funding method then we will be glad to conduct your matter on the most suitable funding arrangement for your case.

#### 38.9 Summary

- (a) The options available for funding litigation are numerous. If you have any questions about funding which we have not already discussed with you, please contact us.

### 39. Anti- Money Laundering

#### 39.1 Identity Checks

- (a) We shall inform you in our engagement letter whether the Anti-Money Laundering Legislation applies to you.
- (b) All solicitors are obliged to carry out customer due diligence ("CDD") in accordance with the UK anti-money laundering and counter-terrorist financing regime. This includes us obtaining and keeping documentary evidence of the identity of clients and gaining an understanding of their financial status and normal business affairs.
- (c) In the case of individuals (including directors, secretaries and shareholders of a company or members of a limited liability partnership),

we require to see and keep a photocopy of a passport, photo driving licence, or national identity card (or similar document) as evidence of your identity and a recent utility or council tax bill (or similar type of document) as additional evidence of your address. We need to see original documents and will discuss with you acceptable documents and methods of certification if the original is not available. We may also utilise external agencies to assist with these checks and may charge you any expenses associated with such checks.

- (d) For all companies we will carry out a search of Companies House (or similar registry in foreign jurisdictions) and may ask for further information.
- (e) For non-listed companies and other organisations, we will also require the evidence for individuals for one or more directors, company secretaries, shareholders, partners or other persons authorised to represent the organisation.
- (f) For other legal entities we will inform you of the evidence required to confirm identity.

#### 39.2 Disclosure to the Authorities etc.

- (a) We are in certain circumstance obliged under Money Laundering Regulations 2007, Proceeds of Crime Act 2002 ('POCA') as amended by the Serious Organised Crime and Police Act 2005 ('SOCPA') to make a report to the National Crime Agency ('NCA') where we are suspicious that any matter or transaction in which we are instructed involves the proceeds of criminal conduct. We may be prohibited by law from informing you or anyone else when such a report has been made, and it is possible that we may not be allowed to proceed with the transaction or matter concerned until NCA gives us permission to do so. We may not be permitted to tell you anything about any of these circumstances should they occur.
- (b) If any term or provision of these Terms of Business or our engagement letter is inconsistent with complying with our legal obligations under Anti-Money Laundering Legislation, our legal obligations will override the inconsistent term which shall be deemed modified accordingly.

- (c) We will not accept any liability for any loss caused to you or any other party as a result of our refusal to proceed with a matter or transaction or otherwise complying with our legal obligations.

#### 39.3 Cash Payments

- (a) We will not accept payments from you in cash of over £500 regardless of whether the payment is to settle our bill, to pay money on account, or in respect of transactions we may be acting upon (such as sales and purchases of businesses or property).
- (b) For the avoidance of doubt the £500 cash limit applies to each matter in which we are acting for you and not just to each transaction relating to that matter.
- (c) We shall not be liable to you for any losses you may suffer as a result of any refusal by us to accept cash payments of over £500.

### 40. Equality & Diversity

- 40.1 We are committed to encouraging equality of opportunity and respect for diversity in all of our dealings with clients, third parties and employees. Please contact us if you would like a copy of our Equality and Diversity Policy.
- 40.2 If you consider yourself to have a disability, or if you have any special requirements in relation to the way in which you would like us to handle your work, please let us know.

### 41. Rights of Third Parties



41.1 Except as stated otherwise in clause 11.8, a person who is not a party to this Agreement shall not be entitled to enforce any of its terms.

**42. Applicable Law, etc.**

42.1 These Terms of Business and our engagement letter shall be governed by, and interpreted in accordance with English law. Any disputes or claims concerning this Agreement and any matters arising from it shall be dealt with only by the courts of England & Wales.

42.2 If we or you do not enforce our respective rights under this Agreement at any time it will not prevent either us or you from doing so later.

42.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.