

Terms and Conditions of Business

April 2022



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1. Preliminary

- 1.1** In this document “you” shall mean the person or persons, company, partnership or other body to whom the accompanying client engagement letter is addressed.
- 1.2** The provisions of this document set out our terms of business (“the Terms”), which apply in all cases unless otherwise agreed in writing between us. The terms of engagement letter sent to you by us, together with the Terms, constitute the Contract between Birketts LLP (“us”) and you (“the Contract”), and shall apply retrospectively where the provision of our services has commenced before this contract is made. In the event of any conflict between the Terms and the terms of engagement letter, the Terms shall prevail unless specifically amended in the engagement letter. Any such amendments to the Terms must be in writing and signed by a partner of Birketts LLP.
- 1.3** Your continuing instructions will amount to your acceptance of the Terms, including acceptance of our electronic verification procedures, as referred to in paragraph eight below.
- 1.4** The Contract is made with Birketts LLP. Birketts LLP provides legal services in England and Wales and is authorised and regulated by the Solicitors Regulation Authority, registration number 441849. The work we do is undertaken in accordance with the requirements of the Solicitors Regulation Authority (“SRA”) Standards and Regulations. Further information can be found on our website birketts.co.uk/about-us or the SRA website sra.org.uk/solicitors/standards-regulations. Information concerning our Professional Indemnity Insurance can be accessed on our website at birketts.co.uk/about-us under the Compliance tab.

2. What you can expect from us

- 2.1** We are independent and will, subject to regulatory requirements, act only in your interests. We will not act for you where there is any conflict of interest and we have procedures in place to identify any possible conflicts with the interests of other clients or ourselves. To assist us you should let us know immediately if at any time you become aware of an actual or potential conflict. Where a conflict arises we will seek to resolve this in the best interests of the clients involved.
- 2.2** Your work will be done by a partner, a solicitor or another lawyer, or a combination of any of these. We try to ensure that the same person deals with your work throughout, but if a change becomes necessary we will inform you promptly of who will be taking over responsibility for your file.
- 2.3** We will give clear advice and deal with your questions promptly.
- 2.4** We will give a frank appraisal of your prospects, encourage realistic expectations, and will if necessary explain the risks involved in following your instructions.
- 2.5** We aim to return your telephone calls and emails the same day, and to answer your letters within two working days.
- 2.6** We will keep you informed at all times about the progress of your work.

3. What we expect from you and how you can help us

3.1 We shall be entitled to assume that whoever gives us instructions has actual authority to do so, and we shall be entitled to rely upon any information provided by that person.

3.2 Where instructions are given on behalf of a company, partnership or other organisation we shall be entitled to assume that the Terms have been brought to the attention of, and approved by the directors of the company, the partners or members of the partnership or, in the case of any other organisation, by the appropriate officers.

3.3 Where two or more persons jointly instruct us we are only able to accept instructions on the following basis:

3.3.1 We have each party's authority to discuss relevant confidential information with all of the joint clients.

3.3.2 We will share any advice given or work undertaken with all or any of the joint clients.

3.3.3 We may accept, and rely upon, instructions given by any one of the clients unless a client informs us in writing to the contrary.

If one or more of any joint clients advises us that they are not willing to proceed on this basis, or if a conflict of interest arises between joint clients, we may suspend or terminate our retainer in relation to any client or clients.

3.4 You can help us by telling us what we need to know, and in particular please:-

3.4.1 Provide documents when we ask for them and respond promptly to requests for instructions or information.

3.4.2 Tell us at the outset what you expect of us so that we can agree with you what it is possible to achieve.

3.4.3 Tell us if you have personal time limits or objectives which would not be obvious to us.

3.4.4 Tell us immediately if your expectations change or if you are not sure you understand what we have discussed or advised.

3.4.5 Tell us if your contact details change and notify us of any other changes that may affect the way we deal with the matter.

3.5 By entering into the Contract you are agreeing that the scope of our services as set out in the terms of engagement letter is appropriate for your needs. We will perform our services with reasonable skill and care, but our duties and responsibilities shall be limited to the matters set out in the terms of engagement letter.

4. Communicating with you

- 4.1** Unless you tell us not to do so, email will be our default means of communicating with you. We cannot guarantee absolutely the security of information communicated by email. We attempt to encrypt all email communication but when the receiving side cannot accept it, we revert to using non-encryption. We take all reasonable steps to safeguard emails and to ensure they remain secure, but if you would rather we do not correspond with you in this way then please inform us in writing. If there are any specific email addresses you would prefer we do not use then please inform us.
- 4.2** In circumstances where we will be communicating with you by email we strongly recommend that you install and maintain appropriate anti-virus and anti-malware software.
- 4.3** You should take particular care over any email or communication which purports to come from us and which gives you details of where to send money, e.g. bank account details. If you have any doubts about such information you should seek verification from us by telephone or personal contact.
- 4.4** We monitor emails to investigate or detect any unauthorised use of our email system, or for any purpose permitted by law.
- 4.5** While some of our partners and solicitors have social media accounts with LinkedIn, WhatsApp, and the like, and communication by those means, or by text message, may be expedient in some circumstances, correspondence between us by those methods will not usually form part of our filed record. All instructions or critical communications should be confirmed by email, by letter or during a telephone conversation to ensure they are properly recorded.

5. Confidentiality

- 5.1** Solicitors are under a professional and legal obligation to keep the affairs of clients confidential. Save as set out in this section we will not disclose any information about your affairs, or the advice we have given to you, unless required to do so by an order of the court.
- 5.2** In the event that work is undertaken for you in conjunction with your other advisers, we shall be entitled to assume we have your authority to discuss relevant confidential information with them, and to provide them with personal data and relevant documentation unless you tell us otherwise.
- 5.3** We may be obliged by law or by other regulatory authority to which we are subject, to disclose confidential information in relation to you, and any advice or opinions given by us to you, or to any third party in connection with your affairs.
- 5.4** In some circumstances, and only where appropriate steps have been taken to secure confidentiality, we may disclose to third parties privileged and confidential information and advice. Such circumstances may include, but are not limited to:-
- 5.4.1** The periodic review of our files, on a random basis, by an independent assessor, to ensure they comply with the Law Society's Practice Management Standards and those of other external organisations.

- 5.4.2** The review of our business by our auditors or other advisers.
- 5.4.3** The renewal of our professional indemnity insurance or in compliance with the provisions of our professional indemnity cover.
- 5.5** Wherever possible, and subject to the terms of paragraphs 8.8 and 8.9 below, we will disclose to you all information relevant to your affairs. We will not disclose to you any confidential information held by us on behalf of any other existing or former client.
- 5.6** Where our professional rules allow, you agree that after the termination of our retainer we may act or continue to act for another client in circumstances where we hold information which is confidential to you and material to our involvement with the other client. Although you agree to our acting in such circumstances we will not in any circumstances disclose your confidential information to the other client.

6. Financial matters

Our fees

- 6.1** Our fees are based on a number of variable factors including our hourly rates. Any time we spend in connection with your work (including time spent reviewing letters and emails) is recorded and, unless agreed otherwise, charged using such rates. In appropriate cases we may in addition take into account other factors which might justify a higher or lower overall fee, including the complexity of the work; its value and importance to you; any exceptional degree of urgency; the degree of specialist knowledge required and anything else which makes our responsibility unusual. Our hourly rates are reviewed from time to time. We will notify you of any changes.
- 6.2** We reserve the right to ask you to make payments on account from time to time and to submit interim bills.
- 6.3** Unless otherwise agreed our bills are payable on presentation. If we send a bill to you and we are at that time holding on your behalf (in our client account) money which is not held for any other designated purpose, we shall be entitled to pay (or partially pay) our bill from the money we hold. We also reserve the right to appropriate such money for the payment of a bill rendered on a separate active matter that we are handling for you.
- 6.4** We reserve the right to charge interest on any unpaid bills, at the rate recoverable under a court judgment, from one month after the delivery of the bill. You will be responsible for our time costs and expenses incurred in recovering the sums due from you.
- 6.5** If we agree that an invoice may be paid by a third party on your behalf and the third party does not pay the invoice within 30 days, you will be liable immediately to discharge the invoice. You will be directly liable for VAT in all cases. All invoices, which we send to you, must be paid in pounds sterling, unless otherwise agreed by us in writing. If invoices are not paid in pounds sterling and we incur currency conversion charges or other bank charges, or we suffer exchange-rate losses, we reserve the right to charge additional sums to cover such items.

- 6.6** Our invoices must be paid without any deduction or withholding on account of taxes or other charges. If you are required by law to make a deduction or withholding you must notify us in writing of the amount to be deducted or withheld and the legal justification for such deduction. If required by us you must pay such additional amount as may be necessary to ensure that we receive payment of the full amount of our invoice. If we subsequently receive any value for the amount withheld or deducted (for example, by way of a credit for tax treated as withheld or deducted), we will account for such value to you provided our overall net of tax position is not thereby affected.
- 6.7** In litigation cases, you are directly liable to us for the payment of all charges in full, whether or not it proves possible to obtain an order for costs against, or payment from the other party to the litigation. You are likely to become legally responsible for the costs of your opponents if litigation is unsuccessful.
- 6.8** Where we accept instructions from a corporate entity we reserve the right to request personal guarantees in relation to our fees and disbursements from an appropriate person at any stage in the transaction or proceedings.
- 6.9** Where a client consists of two or more persons, each of those persons shall be jointly and severally liable to us for the obligations of the client imposed by the Contract.
- 6.10** Expenses incurred on your behalf (disbursements) include VAT if appropriate. Generally we will only pay a disbursement without you having put us in funds first if it does not exceed £150; we will then raise a bill or ask you to reimburse the cost. In the case of larger disbursements we will usually ask you to put us in funds before we incur them.
- 6.11** Where we transfer funds on your behalf and incur bank charges we will charge an administration fee to cover both the bank transfer charges and the time and costs incurred by us. Currently our fee for this service is £30 plus VAT, reviewed annually.
- 6.12** Audit letters are charged at £100 plus VAT per hour with a minimum fee of £100 plus VAT.
- 6.13** Routine copying of papers is included in our overall charging structure, however we reserve the right to charge for photocopying where appropriate, which will be between 10p and £9.00 per copy depending upon size and colour. We also reserve the right to charge for the cost of scanning, reprographics, copying, printing, USB / memory sticks, data rooms and courier charges.
- 6.14** We will never tell you of changes to important business information, such as bank account details, by email. Please notify us immediately if you receive any email or other communication purporting to be from us stating that we have changed our bank details for payment.

Client funds

- 6.15** Money held by us on your behalf is deposited in a designated client account with one or more banks. We do not accept any liability to you or anyone else if such a bank holding client account monies defaults in making a required payment when due, including refunding the money to you or to us. However, if there is such a default, you may be entitled to compensation under such financial services compensation schemes as may be operated by the Financial Conduct Authority at the relevant time.
- 6.16** We pay gross interest on money held in a client account in accordance with our policy and in line with SRA Account Rules 2019. The rate of interest applied is that considered fair and reasonable for the amount of money held. This will usually be based on an instant access account, enabling us to facilitate the necessary transactions. You are unlikely to receive as much interest as might have been obtained had you held and invested the money yourself. Interest will be calculated on a quarterly basis and accrued sums under £50 will be disregarded, but all other interest will be paid in accordance with our policy, unless some other arrangement has been agreed with you. Where a designated deposit account is held, interest due to you will be paid net of basic rate income tax unless evidence to the contrary is received.

7. Files and documents

- 7.1** After completing work for you, we will keep, free of charge, any physical file of papers for a minimum of seven years and any electronic filed papers for a minimum of twenty years (except for any that you ask to be returned to you) and on the understanding that at any time thereafter, we may destroy the file without notice to you. For full details of our document destruction policy please request a copy of our Retention and Destruction Policy.
- 7.2** We will not destroy documents such as Wills or title deeds, which you ask us to deposit, free of charge, in safe custody. We will bring closed files out of storage or reopen closed files to assist with answering your queries but may make a charge for this. If you require them to be returned to you, please let us know and we can arrange it. Where we only hold a closed file or document electronically, we can supply paper copies on request, for which we will charge our printing costs.

8. Data Protection and Anti-money Laundering

- 8.1** We adhere to all applicable data protection legislation when processing personal data. Please refer to our Privacy Policy birketts.co.uk/privacy-policy for further information on how we process personal data and for details of our Data Protection Officer.
- 8.2** Where you provide us with any personal data it is your sole responsibility to ensure its accuracy and legality.
- 8.3** We will use the personal information we receive about you for the management of our relationship with you and for our marketing purposes.
- 8.4** If you have any questions regarding the content of our Privacy Policy, or if you wish to make a request to exercise your rights as a data subject (including your right to access copies of the personal data we hold about you, or to stop receiving marketing communications from us), please email data@birketts.co.uk
- 8.5** In common with all professional practices and financial institutions we are required to hold verification of your identity and address to comply with anti-money laundering legislation. You will be required to provide this information before we are able to proceed with your work.
- 8.6** When verifying your identity we may use electronic reference agencies to search sources of information relating to you. An electronic note is left on your credit record to say that a check has taken place, but it does not affect your credit rating, is not used as part of the credit vetting process, and the information is not sold to third parties. Only you and any financially associated parties will be able to view this note. If this process is unsuccessful, then we may need to ask for documentary evidence from you, such as a utility bill.
- 8.7** On occasion, information and evidence will be required as to the source of any funding you provide, and in connection with any transaction we are advising you on. We reserve the right to refuse cash deposits and cash payments. The anti-money laundering procedures we operate are for the protection of our clients.
- 8.8** In certain circumstances we are required by law to report to the appropriate authorities (without informing you) any suspicions we have of money laundering or other illegal activities. These obligations override our duty of confidentiality to you.

8.9 There may be circumstances where we reasonably conclude that we are obliged to make a report or delay carrying out your instructions in accordance with the preceding paragraph, but where it later transpires that the report or delay was not required by law. By instructing us you accept that such reports and delays can be made. We do not accept responsibility or liability for any loss, damage or expense whether resulting directly or indirectly from the making of such report.

9. Intellectual property rights

9.1 We own the copyright and all other rights in all documents and other work, whether in writing or not, provided to you. You are granted a non-exclusive licence to use such documents for the purpose for which they are provided but not otherwise. We may from time to time adapt, develop or use such documents or work for other clients and in other engagements. Unless you instruct us otherwise, you agree we may use for internal training purposes, any counsel's or expert opinions obtained for the purpose of carrying out your instructions.

9.2 It is important that any advice we give to you is used only by you and only in the context for which it was intended. It is therefore a term of our engagement by you that any letters, documents, information or advice given by us to you, will only be used by you in connection with the matter on which we are advising you, and that you will not disclose or make available any details of our advice to any third parties without our prior written consent.

10. Complaints handling

10.1 We are committed to providing high quality legal advice and care. If you are unhappy about any aspect of the service you have received, or about the charges we have made, please contact our Client Care Partner, currently James Austin, in writing by email or post to our Ipswich office. We have a written procedure in place detailing how we handle complaints which is available upon request, or can be found on our website.

10.2 If you are not satisfied with our handling of your complaint you can ask the Legal Ombudsman at:
PO Box 6806
Wolverhampton, WV1 9WJ
or enquiries@legalombudsman.org.uk
to consider your complaint. Normally you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint. Information concerning the role of the Legal Ombudsman can be found at www.legalombudsman.org.uk.

10.3 You have the right to object to our bill and apply for an assessment under Part III of the Solicitor's Act 1974.

11. Outsourcing

11.1 We may outsource certain business support functions including, but not limited to, document production, IT, archiving and deeds storage and certain legal processes to third party organisations.

11.2 Where such services are outsourced we will take all reasonable steps to ensure your information is kept confidential and only processed in accordance with our instructions.

11.3 By accepting these Terms, you consent to such outsourcing arrangements including the transfer of any personal data to such organisations.

12. Anti-corruption and bribery

12.1 It is our policy to conduct all our business in an honest and ethical manner. We take a zero-tolerance approach to bribery and corruption and are committed to acting professionally and with integrity in all our business dealings and relationships wherever we operate.

We, and any person acting on our behalf, shall not participate in any form of corrupt behaviour and shall comply with the Bribery Act 2010 and all other laws relevant to countering bribery and corruption in all countries in which we operate.

13. Criminal Finances Act 2017

13.1 We are committed to promoting compliance with the requirements of the Criminal Finances Act 2017 within our practices as well as in those areas where it has influence.

13.2 We do not tolerate tax evasion, or the facilitation thereof in any circumstances, whether committed or facilitated by a client, our, or your personnel or associated persons / companies.

14. Equality and diversity

14.1 We are committed to promoting equality and diversity in all our dealings with clients, third parties and employees.

Please contact us if you would like a copy of our Equality and Diversity Policy.

15. Dispute resolution

15.1 The Contract is governed by and construed in all respects in accordance with the Laws of England and Wales and is subject to the exclusive jurisdiction of the courts of England and Wales.

16. Non-waiver and severability

16.1 Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any or our rights under the Contract.

16.2 Any waiver by us of any breach or of any default under any provision of the Contract by you shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or in part, the Contract shall continue to be valid as to the other provisions thereof and as to the remainder of the affected provision together with whatever modifications as shall be necessary to render the same enforceable.

17. Exclusion and limitation of liability

17.1 Our liability to you is limited in the following ways:

17.1.1 We shall not be liable for any loss or damage arising as a direct or indirect result of the provision of services being prevented, hindered, delayed or rendered uneconomic by reason of circumstances beyond our control, including, but not

limited to Act of God, government action, war, riot, acts of terrorism, strike, lock out, trade dispute or labour disturbance, accident, breakdown of machinery, fire, flood, storm or difficulty or increased expense in obtaining information or services of any description.

- 17.1.2** Save as stated in paragraph 17.1.4 below, and subject to paragraphs 17.2 and 17.3 below, and unless otherwise agreed in writing by a partner with specific reference to this paragraph 17, our total liability to you in respect of our engagement for any loss, liability or damage howsoever caused, whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, restitution or otherwise (in each case whether caused by negligence or not) and whether related to any act, omission, services provided to you or failure to act or delay in acting by us, will be limited to £3m (three million pounds sterling) in aggregate.
- 17.1.3** Where we are instructed by more than one client on a matter, the maximum amount of liability referred to in paragraph 17.1.2 above (or such other amount agreed by us in writing in substitution) shall be the maximum aggregate liability that we shall incur for all clients that have instructed us on such matter. The extent of our liability up to such maximum shall be allocated between relevant clients in proportion to the amount of the liabilities to such clients without such maximum.
- 17.1.4** The extent to which any loss or damage will be recoverable by you from us will be limited so as to be in proportion to our contribution to the overall fault for such loss or damage, taking into account any contributory negligence by you, your other advisers and/or any other third party responsible to you and/or liable to you for any indirect or consequential loss or damage whatsoever. Any such liability shall not be increased by reason of any limitation of liability by your other advisers and/or third parties responsible to you, or by your inability to recover any loss or damage from them.
- 17.1.5** Our duty of care is owed to you alone and not, for example, where you are a company, to the shareholders or directors.
- 17.2** You agree not to bring any claim in respect of loss or damage suffered by you arising out of or in connection with our engagement (including but not limited to delay or non-performance of our engagement) against any of our partners, employees or agents even where our partners, employees or agents have been negligent. This restriction will not operate to exclude any liability that cannot be excluded at law or to exclude our liability for acts or omissions of any of our partners, employees or agents. It is agreed that our partners, employees and agents will have the right to enforce this paragraph pursuant to the Contracts (Rights of Third Parties) Act 1999. We reserve any right we may have to rescind or vary the Terms without having to seek the consent of our partners, employees or agents.
- 17.3** Nothing in the Terms shall affect any liability we may have to you in respect of any personal injury or death resulting from our negligence or any other situation where the law prohibits us from excluding or limiting our liability to you. The provisions of this paragraph 17 shall continue to apply notwithstanding the termination of our engagement for any reason.

18. Consumer Contracts (information, Cancellation and Additional Charges) Regulations 2013

This paragraph 18 applies to certain individual clients only.

- 18.1** If these Regulations apply to you, you have the right to withdraw, without charge, your instructions to us on any new matter within 14 days unless they have been given or confirmed to us at a meeting, or unless you have in the meantime agreed that we should begin work on such matter.
- 18.2** The cancellation period will expire 14 days from the date of the terms of engagement letter sent with the Terms. To exercise the right to cancel, you must inform us of your decision to cancel the Contract by a clear statement (e.g. a letter sent by post, email or fax).
- 18.3** To meet the cancellation deadline, it is sufficient for you to send your communication exercising your right to cancel before the cancellation period has expired. If you cancel the Contract, we will reimburse you any payments we have received from you.

- 18.4** If you request that we begin the performance of our work during the cancellation period and then subsequently exercise your right of cancellation, you shall pay us an amount in respect of the work provided until you have communicated to us your cancellation of the Contract, which such amount shall be proportionate to the fees payable for the full contracted service.

19. Termination

- 19.1** You may terminate your instructions to us at any time, but please do so in writing. We will be entitled to retain all your papers and documents while there is money owing to us for our fees and any disbursements we have paid on your behalf, even in a case where a third party would have been responsible for payment had the matter proceeded to completion.
- 19.2** We may decide to stop acting for you. However we are only permitted to do so for good reason, such as your failure to pay an interim bill or to comply with our request for a payment on account, or where a conflict of interest arises. We must give you reasonable notice that we intend to stop acting for you.
- 19.3** If you or we decide that we should stop acting for you, you may be asked to pay our charges up to that point. These are calculated on either a time spent basis or as a proportion of any agreed fee or estimated fee for our services.

20. Statutory Information

- 20.** Birketts LLP is constituted as a limited liability partnership in accordance with the Limited Liability Partnership Act 2000 and is registered in England under no. OC317545. Where we refer to a 'partner' of Birketts LLP, whether in the Terms or in any other correspondence or communication with you, the term 'partner' means a member of Birketts LLP, and shall not be construed as indicating that the members of Birketts LLP are carrying on business in partnership within the meaning of the Partnership Act 1890. A list of members is open for inspection at any of our offices.
- 21.** Birketts LLP is not authorised by the Financial Conduct Authority. However if while we are acting for you, you need to take advice on investments, we may have to refer you to someone who is authorised to provide the necessary advice. In certain circumstances we may provide certain limited investment advice services where these are closely linked to the legal work we are doing for you. This is because we are members of The Law Society of England and Wales.
- 22.** Birketts LLP is not authorised by the Financial Conduct Authority. However we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/firms/financial-services-register.
- 23.** The Law Society of England and Wales is a designated professional body for the purposes of the Financial Services and Markets Act 2000. The Solicitors Regulation Authority is the independent regulatory arm of the Law Society. If you are unhappy with any investment or insurance advice you receive from us, you should raise your concerns with either of these bodies.
- 24.** Our VAT Number is 102 0243 51
- 25.** Our registered office is:-
Providence House
141 – 145 Princes Street
Ipswich, Suffolk
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+44 (0)808 169 4320

birketts.co.uk

Birketts LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority and registered in England & Wales with registered number OC317545.

A list of members may be inspected at any of our offices. The term 'Partner' is used to refer to a member of Birketts LLP.

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