

# **Davidson-Smith & Co**

## Terms and Conditions of Business

DS & Co is regulated by the Solicitors Regulation Authority (SRA). The firm's SRA number is 554447. The firm's VAT registration number is 660 6380 38.

### **1. Our aim**

1.1 We aim to offer our clients quality legal advice with a personal service at a fair cost. As a start, we hope it is helpful to you to set out in this document the basis on which we will provide our professional services.

### **2. Our commitment to you.**

#### 2.1 We will

**Represent** your interests and keep your business confidential in the best tradition of solicitor and client relationships with appropriate legal privilege but subject to the relevant money laundering obligations.

**Explain** to you the legal work which may be required and the prospects of a successful outcome.

**Make sure** that you understand the likely degree of financial risk which you will be taking on.

**Keep you** informed of the costs position of your matter on at least a 6 monthly basis.

**Keep you** regularly informed of progress or, if there is none when you are likely to hear from us.

**Communicate** with you in plain language.

**Deal** with your queries promptly, for example we will always try to return your telephone calls on the same day.

### **3. Responsibilities**

3.1 To achieve the best possible outcome in your case we need to work together as a team.

We will

**Review** your matter regularly

**Advise** you on the law

**Follow** your instructions

Update you on whether the likely outcomes will justify the likely costs and risks associated with your matter whenever there is a material change in circumstances

3.2 You need to

**Provide** clear and timely instructions

**Provide** any information and documents required to assist in your matter.

**Safeguard** any documents likely to be required in the case

### **4. Case Progression**

4.1 We shall

Endeavour to keep you fully advised of all developments as they happen

Discuss with you the steps that need to be taken in order to progress your case.

Please however remember we are dependent on the views and approaches being taken by others.

### **5. Hours of Business**

5.1 The normal hours of opening are between 9.00am and 5.00pm Monday to Friday. Messages can be left on the answerphone outside these hours and appointments can be arranged at other times when required.

### **6. Identity**

6.1 The law now requires solicitors to obtain satisfactory evidence of the identity of their clients. In order to comply with the law on money laundering we need to obtain evidence of your identity as soon as practicable. We should therefore be grateful if you would provide us with 2 forms of identification namely photo identity and evidence verifying your address. This can include passport ID, utility bills, photo card driving licence, bank statements etc.

## **7. People responsible for your work.**

7.1 You will be allocated a member of staff who will be responsible for dealing with your work. Their assistant or secretary may be able to deal with any query and will be pleased to take any message for you. We will try to avoid changing the people who handle your work but if this cannot be avoided we will tell you promptly of any change and why this may be necessary.

7.2 The final responsibility for any work done lies with the Principal of the firm Michelle Davidson-Smith.

## **8. Charges and Expenses**

8.1 Our charges will be calculated mainly by reference to the time spent by the solicitors and other staff in respect of any work which we do on your behalf. This will include meeting with you and others, reading and working on papers, correspondence including emails, preparation of any detailed costs calculations and time spent travelling (and waiting) away from the office when this is necessary. From time to time we may arrange for some of this work to be carried out by persons not directly employed by us. Such work will be charged to you at hourly rates not exceeding those set out below.

8.2 Routine letters and emails are charged as 6 minute units of time and we charge for the time spent on making and taking telephone calls in 6 minute units and considering incoming letters and emails at units of 6 minutes.

8.3 The current hourly rate is £175.00. We will add VAT to this at the rate that applies when the work is done. The VAT rate payable is the rate in force at the time of our invoice.

8.4 For clients who have a net monthly disposable income of between £500.00 and £1000.00 after assessment and after providing documentary evidence in support, the hourly rate may be reduced to £100.00 plus VAT

8.5 For clients who have a net monthly disposable income of £500.00 or below after assessment and after providing documentary evidence in support, the hourly rate may be reduced to £69.50 plus VAT.

8.6 We will review your financial circumstances and eligibility for the reduced hourly rates at least every 6 months.

8.7 If there is any change to your financial circumstances after a reduced hourly rate has been agreed then you must inform us immediately so a reassessment can be undertaken. If you do not we reserve the right to stop working for you or we will continue working for you at the hourly rate of £175.00 plus VAT.

8.8 We will monitor your ability to pay the firm's fees. Some insurance policies cover certain legal expenses and you may wish to explore this option further.

8.9 You may wish to set an upper limit on the costs the firm may incur without obtaining further authority from you. We will contact you in writing when this limit is being approached to discuss the issue of costs further.

8.10 Solicitors have to pay out various other expenses on behalf of clients such as court fees, barrister's fees and so on. We have no obligation to make such payments unless you have provided us with the funds for that purpose. VAT is payable on certain expenses. We refer to such payments generally as 'disbursements'. We will require payment from you in respect of relevant disbursements but we will give you advanced warning of any expenses that may need to be incurred.

8.11 We will also consider the costs implications of pursuing any order for costs that you may obtain against your opponent. It may not be cost effective to seek to recover these costs taking into account the money spent on recovery.

8.12 On Conveyancing transactions, our estimate is based on information supplied by you at the time of your enquiry and may increase if it becomes obvious that the value or nature of the work we undertake differs from that originally advised, or if the amount of time, skill or work required for the conduct of the matter is more than initially expected or if you require it to be expedited. We will advise you in writing of any increase at the appropriate time, or as soon as possible thereafter.

8.13 If the property that you are purchasing is a new build property and we have exchanged contracts with completion on notice, we reserve the right to forward to you on exchange of contracts an interim bill to cover the work carried out up to the date of exchange. The balance of the work will be billed on completion.

8.14 The estimate will refer to expenses which are based on figures supplied by you. Third parties may alter their fees at regular intervals and we will notify you in writing of any changes. Sometimes we will need to make further searches or payments for documentation, which we will not know about until we receive documentation. The expenses are incurred on your behalf during the course of the matter. It is rarely possible for us to know at the outset all expenses that may arise but the financial statement will show the items separately from any fees. Where the expense is fixed, for example the local search fee then the actual cost will be charged. In respect of faxes telephone calls or postages a fixed charge may be made. Your acceptance of these terms shall constitute your agreement for us to incur the expenses (including repeat expenses) which, in our judgement, are necessary to protect you or your lender's interest.

8.15 We make a charge of £40 plus VAT for transferring money by way of telegraphic transfer

8.16 We make a charge of £10 plus VAT per person for carrying out an electronic identification check on all of our clients in order to comply with Money Laundering Regulations.

8.17 We make a charge of £50 plus VAT for completing the SDLT form. This form needs to be completed even if stamp duty is not payable in accordance with the requirements of HM Revenue & Customs.

8.18 If the property you are selling is leasehold, we will charge a leasehold supplement fee of £50 plus VAT to cover the additional work we need to carry out.

8.19 If the property you are purchasing is leasehold, we will charge a leasehold supplement fee of £200 plus VAT to cover the additional work we need to carry out.

8.20 If the property you are selling has a mortgage secured against it, we will make a charge of £50 plus VAT for our mortgage to cover the additional work we need to carry out.

8.21 If you require a mortgage to purchase your new property, we will make a charge of £150 plus VAT to cover the additional work we need to carry out.

## **9. Payment Arrangements for our fees**

9.1 We will send to you Interim bills usually on a monthly basis or at an appropriate stage of your case.

9.2 On conveyancing transactions, we will normally send you our bill following exchange of contracts and payment is required at completion on a sale; and before completion on other transactions. If sufficient funds are available on completion of the sale and we have sent you a bill, we will deduct our charges and expense from the funds.

9.3 It is normal practice to ask clients to pay sums of money at the outset and from time to time on account of the charges and expenses which are expected in the following weeks or months. We find that this helps clients in budgeting for costs as well as keeping them informed of the legal expenses which are being incurred. If such requests are not met with prompt payment delay in the progress of the case may result. In the unlikely event of any bill or request for payment not being met, this firm reserves the right to stop acting for you further.

9.4 Payment is due to the firm within 14 days of our sending a bill. Interest will be charged on a daily basis at 8% from the date of payment of the bill.

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

9.6 You have the right to object to any bill rendered and apply for assessment of the bill under Part III Solicitors Act 1974.

## **10. Confidentiality**

10.1 Solicitors are under a professional and legal obligation to keep the affairs of clients confidential. This obligation, however, is subject to a statutory exception; recent legislation on money laundering and terrorist financing has placed solicitors under a legal duty in certain circumstances to disclose information to the Serious and Organised Crime Agency (SOCA). Where a solicitor knows or suspects that a transaction on behalf of a client involves money laundering, the solicitor may be required to make a money laundering disclosure.

10.2 If, while we are acting for you, it becomes necessary to make a money laundering disclosure, we may not be able to inform you that a disclosure has been made or of the reasons for it. Where the law permits us to do, we will tell you about any potential money laundering problem and explain what action we may need to take. SOCA potentially will retain financial information that ultimately may be posted on to HM Revenue and Customs. Please see the attached note concerning the Proceeds of Crime Act 2002.

10.3 As a result of the money laundering regulations we

**Will** only accept up to £500.00 in cash for any transaction- if you try and avoid this policy by depositing cash directly with our bank we may decide to charge you for any additional checks we decide are necessary to prove the source of the funds .Sums over that limit will not be accepted.

**Will** insist on proof of ID of the source of third party cheques or payments

**May** ask for background information/seek a better understanding of your background/transaction

**May** insist that all financial matters and receipts of funds are effected well in advance of the date of expected use or requirement of those funds

**Will** pay any monies due to you by cheque or bank transfer. It will not be paid in cash to a third party.

## **11. Other parties charges and expenses**

11.1 In some cases and transactions a client may be entitled to payment of costs by some other person. It is important that you understand that in such circumstances the other person may not be required to pay all the charges and expenses which you incur with us. You have to pay our charges and expenses in the first place and any amounts which can be recovered will be a contribution towards them. If the other party is in receipt of legal aid, no costs are likely to be recovered.

11.2 The other person will not be liable to pay the VAT element of your costs if you are able to recover the VAT yourself.

11.3 If you are successful and a court orders another party to pay some or all of your charges and expenses, interest can 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 on account but we are entitled to the rest of that interest.

11.4 You will also be responsible for paying our charges and expenses of seeking to recover any costs that the court orders the other party to pay to you.

11.5 A client who is unsuccessful in a court case may be ordered to pay the other party's legal charges and expenses. That money would be payable in addition to our charges and expenses. Arrangements can be made to take out insurance to cover liability for such legal expenses.

## **12. Interest Payment**

12.1 Any money received on your behalf will be held in our Client account. Subject to certain minimum amounts and periods of time set out in the Solicitors' Accounts Rules 1998, interest will be calculated and paid to you at the rate from time to time payable on HSBC Designated Client Accounts. The period for which interest will be paid will normally run from the date(s) on which funds are received by us until the date(s) of issue of any cheque(s) from our Client Account.

12.2 Where a client obtains borrowing from a lender in a property transaction, we will ask the lender to arrange that the loan cheque is received by us a minimum of 4 working days prior to the completion date. If the money can be telegraphed, we will request that we receive it the day before completion. This will enable us to ensure that the necessary funds are available in time for completion. Such clients need to be aware that the lender may charge interest from the date of issue of their loan cheque or the telegraphing of the payment.

## **13. Professional Indemnity Insurance**

13.1 Under the Professional Indemnity Rules, firms are required to take out and maintain qualifying insurance. Details of this firm's practice insurance can be found at this office or you can contact us for further information.

## **14. Wills and Deeds**

14.1 In relation to Wills, our retainer or instructions are to prepare your Will in accordance with your instructions and the relevant law at the time they are made and dated and therefore it is your responsibility to change or amend your Will as your circumstances or Inheritance Tax limits or legislation change and therefore you should contact us and give us fresh instructions to review or prepare a new Will for you periodically or when your circumstances do change.

## **15. Storage of papers and documents**

15.1 After completing the work we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. In addition, we will keep your file of papers for you in storage for up to 6 years. We keep files on the understanding we can destroy them 6 years after the date of the final bill. We will not of course destroy any documents such as Wills etc which you ask us to hold safely. No charge will be made to you for such storage unless prior notice in writing is given to you of a charge to be made from a future date which may be specified in the notice.

15.2 If we retrieve papers or documents from storage and you instruct us to act for you we will not normally charge for such retrieval. However, we will make a charge based on time spent for producing stored papers or documents to you or another at your request. We will also charge for reading, correspondence or other work necessary to comply with your instructions. There is a minimum fee for producing stored papers or documents including our time spent searching, of £30 plus vat which is payable when you request the papers or documents, and covers time spent searching and production of 1 file of papers if sound.

## **16. Investment Business**

16.1 This firm is not authorised by the Financial Services Authority (FSA). However, we are included on the register maintained by the FSA 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 the SRA. The register can be accessed via the FSA website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).

16.2 The SRA is the regulatory arm of the Law Society. The Legal Ombudsman deals with complaints against lawyers. If you are unhappy with any insurance advice you receive from us you should raise your concerns with either of those bodies.

## **17. Termination**

17.1 You may terminate your instructions to us in writing at any time but we will be entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. If at any time you do not wish us to continue work and/or incurring charges and expenses on your behalf, you must tell us clearly in writing.

17.2 We may decide to stop acting for you for example if you do not pay an interim bill or comply with the request for a payment on account or where we in our sole discretion consider there is a conflict of interest we will notify you formally in writing but we will not go into any detail as to why we will no longer act for you.

17.3 We will not be liable for any loss, damage or delay arising out of this firm's compliance with any statutory or regulatory requirements.

## **18. Data Protection**

18.1 The firm uses the information you provide primarily for the provision of legal services to you and for related purposes including updating and enhancing client records, analysis for management purposes and statutory returns and legal and regulatory compliance. Our use of that information is subject to your instructions, the Data Protection Act 1998 and our duty of confidentiality. We may have to disclose your information to third parties such as expert witnesses and other professionals. You have a right of access under data protection legislation to the personal data we hold about you.

## **19. Communication between you and us**

19.1 Our aim is to offer all our clients an efficient and effective service at all times. We hope that you will be pleased with the work we carry out for you. However should there be any aspect of our service with which you are unhappy please raise your concern in the first place with the person you have been dealing. If you still have queries or concerns please contact the Principal Michelle Davidson-Smith.

19.2 We will aim to communicate with you by such method as you may request. We may need to virus check discs or emails. Unless you withdraw consent, we will communicate with others when appropriate by fax or email as we find this is fast and efficient. However, we cannot be responsible for the security of correspondence and documents sent by fax or email.

19.3 The Data Protection Act requires us to advise you that your particulars are held on our database. We may, from time to time, use these details to send you information which we think might be of interest to you. If you do not wish to receive that information please notify us in writing.

## **20. Equality and Diversity**

20.1 The firm is committed to promoting equality and diversity in all dealings with clients, third parties or employees. Please contact us if you wish to have a copy of our equality and diversity policy.

## **21. Excluded Tax Advice**

21.1 Any work that we do for you may involve tax implications or necessitate the consideration of tax planning strategies. We may not be qualified to advise you on the tax implications of a transaction that you instruct us to carry out, or the likelihood of them arising. If you have any concerns in this respect, please raise them with us immediately. If we can undertake the research necessary to resolve the issue, we will do so and advise you accordingly. If we cannot, we may be able to identify a source of assistance for you. We otherwise do not consider it our function to give you specific tax advice on any transaction we carry out for you.

21.2 For land transactions where you acquire an interest in land it is necessary to have prepared for you for each transaction a "Land Transaction Return" to HM Revenue and Customs in respect of Stamp Duty Land Tax (SDLT) which we can complete from the details you give us. As for all tax returns it is your responsibility to ensure that the details are true and correct and you must report to HM Revenue & Customs any linked transactions if they form part of a single scheme arrangement or series of transactions between the same seller and purchaser or with persons connected to them including your spouse (civil partner) a relative being a brother sister or lineal descendant or spouse thereof. Whilst we will assist you in completing the necessary return and indicate on the same that we are your agents for this purpose we are not your general agents and are only assisting the completion of necessary forms from the information and details you have supplied to us. We have no ongoing responsibility to prepare complete or advise on any further or additional returns or subsequent returns that maybe required on your matter after the initial return has been sent to HM Revenue & Customs and shall not be your agent therefore.

21.3 For land transactions involving leases SDLT is usually calculated on the amount of rent payable and is often aggregated to arrive at the tax payable. There may be instances for example where there are rent reviews where further or additional Land Transaction Returns and tax payments are required during the life or term of the lease. It is your responsibility to ensure that such returns or payments are made at the appropriate time and unless we have been specifically asked or instructed in writing to assist further we shall be unable to do so and therefore we shall have no further liability or responsibility after the initial advice given to you and return made.

21.4 We will not advise you on the planning implications of your proposed purchase unless specifically requested to do so by you, otherwise than by reporting to you on any relevant information provided by the results of the "local search". This deals strictly with the property you are buying and not any other land or property in the general area, village or town.

## **22. Property Transactions**

22.1 Where we are acting for clients who are husband and wife or living partners or who are joint owners of property where joint authority is normally required in cases of need for urgency or otherwise you agree and accept that confirmation from one such party only shall be sufficient authority to proceed and advance that transaction.

22.2 It is not our responsibility to carry out a physical inspection of any property you may be buying or selling, but if you wish us to do this for any reason please make a specific request. We shall not advise on the valuation of the property nor the suitability of your mortgage nor any other financial arrangements. We shall not advise generally on environmental

liabilities where we shall assume, unless you tell us to the contrary, that you are making your own arrangements for any appropriate environmental survey or investigations. We may, however, need to obtain on behalf of your lender at your expense an environmental search.

**23. The Mortgage**

23.1 If you need a mortgage it is your responsibility to comply with the lender's terms and conditions as set out in the offer. It is your decision to accept the financial effect of any deduction, retention, redemption penalty or early redemption penalty interest imposed by the offer.

23.2 If your lender appoints their lawyer to act, you will be responsible for their legal fees in addition to our own. We will advise you in writing of the fees at the appropriate time but will continue to represent you.

23.3 Most offers expire after a period of time. It is your responsibility to ensure that the offer is valid at the time of exchange of Contracts. You must re-apply to your lender if your offer has or is about to expire. It is also your responsibility to advise your lender and use of any change in the purchase price or any financial adjustment between you and the other party such as an allowance or cashback.

**24. Commission**

If we pay or receive commission or other benefit as a result of receiving your instructions or introducing you to a third party, for example arranging a mortgage or taking out a life policy, then we will inform you of this in writing. Your acceptance of these terms constitutes your agreement and consent for us to pay or receive such benefit or commission if such an arrangement exists.

**25. Terms and Conditions of Business**

25.1 Please return one copy of these terms and conditions of business as soon as possible as without this we cannot start work on your case.

25.2 Unless otherwise agreed and subject to the application of the current hourly rate, these Terms and Conditions of Business shall apply to any future instructions given by you to this firm.

**I confirm I have read and understood, and I accept these Terms and Conditions of Business.**

**Name:**

**Signed**.....

**Dated**.....

**Ref:**