

# QualitySolicitors Gould & Swayne

## TERMS OF BUSINESS

The purpose of this document is to confirm the arrangements between us. Your continuing instructions will amount to your acceptance of these Terms of Business

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### 1. About QualitySolicitors Gould & Swayne

- a) QualitySolicitors Gould & Swayne is the trading name of Gould & Swayne Limited (Co. Registration No 5065354), the registered office of which is 76 High Street, Street, Somerset BA16 0EN.
- b) We are authorised and regulated by the Solicitors Regulation Authority ("the SRA"), SRA no.00401654. We are governed by the SRA Code of Conduct 2011, to which you can gain access via the SRA website at [www.sra.org.uk](http://www.sra.org.uk) or by calling 0370 606 2555
- c) Our offices are at 31 High Street, Glastonbury, Somerset BA6 9HA; 76 High Street, Street, Somerset BA16 0EN, 21 Broad Street, Wells, Somerset BA5 2DJ, Room 1a, Paulton House, Paulton, BS39 7SX and 76 High Street, Street, Somerset, BA16 0EN, tel: 01458 442433.
- d) A list of our Directors is available from any of our offices and on our website
- e) Our VAT registration number is 826 6270 21.

### 2. Confidentiality

- a) We will keep information which you provide to us confidential and will not disclose it nor permit it to be made available to any third party without your prior instruction or consent, save that:
  - i) much of our work requires us to share such information as is appropriate with third parties for the purpose of carrying out your instructions to us. This may include, for example, other parties involved in the matter and their legal advisers, estate agents, courts, expert witnesses, barristers, and other professional advisers. ii) if we are also acting for your proposed lender in relation to a property purchase, we have a duty to reveal to that lender all relevant facts about the purchase and mortgage. This includes, but not exclusively:
    - any differences between your mortgage application and information we receive during the transaction
    - any cash-back payments or discount schemes that a seller is giving you.
  - ii) sometimes we may outsource to external companies, organisations or individuals secretarial or administrative work on our files in order to maintain our service levels, audit or quality checks on our practice involving file reviews, or the storage of closed files. These external organisations or individuals will be required to maintain confidentiality in relation to your files.
  - iii) some information may be required by our auditors or other professional advisers or by reason of legal requirements or regulations.
  - v) we reserve the right to say that you are a client of this firm and to refer in the media to the fact and conclusion of your legal matter.
  - vi) there may be situations in which we are required to disclose information to the SRA; in such an event, the SRA's regulatory powers override our duty of confidentiality to you.
  - vii) if you make a complaint about us to the Legal Ombudsman or a claim against us to our professional indemnity insurers, we shall be obliged to disclose such information to them as they request and to address any issues raised.

viii) solicitors may be required by statute to make a disclosure to the National Crime Agency (“NCA”) where they know or suspect that a transaction may involve money laundering or terrorist financing. If we make a disclosure in relation to your matter, we may not be able to tell you that a disclosure has been made. We may have to stop working on your matter for a period of time and may not be able to tell you why. We will not be liable for any losses arising as a result of our taking such action as we consider appropriate to comply with these obligations. If, as a result of NCA involvement in your matter, we incur any additional costs, we reserve the right to claim those from you.

If you object to disclosure in any of the above circumstances it is important that you tell us immediately. Objection may in some cases impact on our ability to act for you.

- b) Where any issue arises over disclosure for reasons beyond our control, we may charge for any additional work involved.
- c) Although speedy and convenient, e-mails and faxes are inherently insecure methods of communication. We do not use encrypted e-mail. Although we will do our best to preserve confidentiality at all times and we will not do anything knowingly to put it at risk, we cannot guarantee the security of correspondence and documents sent by e-mail or fax. If you provide us with your e-mail address or communicate with us by e-mail we will treat this as evidence that you understand and accept this risk and that you agree to us communicating with you in this way.
- d) We use the information you provide primarily for the provision of legal services to you and for related purposes including:
  - i) updating and enhancing client records
  - ii) analysis to help us manage our practice
  - iii) statutory returns
  - iv) legal and regulatory compliance

Our use of that information is subject to your instructions, the Data Protection Acts and Regulation and our duty of confidentiality. You have a right of access under data protection legislation to the personal data that we hold about you.

We may from time to time send you information that we think might be of interest to you. If you do not wish to receive that information please notify us in writing.

Our more detailed Privacy Notice outlines all information that we must provide to you under the General Data Protection Regulations. We can provide a copy upon request or it is available on our website under “Client Documents” tab

### **3. Instructing us**

- a) If you are instructing us on behalf of someone else, or if you are acting jointly for others, we must be satisfied that you have the authority to provide instructions on behalf of all the clients. In that event, you must provide us with the full name and address of all the clients and we reserve the right to take whatever action we consider necessary to verify their identities and their instructions, and to charge for that additional work.
- b) When accepting instructions to act for a limited company or LLP or such like, we may require a director and/or controlling shareholder to enter into a guarantee in respect of our costs by signing these Terms of Business. We shall be under no obligation to continue acting if this requirement is not met.

### **4. Scope of our retainer**

We will agree with you at the outset the scope of the work required. We are not responsible for matters that are outside the scope of the work agreed, or that would not normally be considered part of a solicitor's duty in relation to that work. Unless we have agreed in writing to do so, we do not:

- a) advise on tax
- b) advise on the commercial wisdom of a matter beyond providing a cost-benefit and risk analysis
- c) notify you of any change in law or practice that might affect the matter on which we have been assisting you, after we have closed the file
- d) advise on matters of foreign law.

### **5. Ending our instructions**

- a) If at any stage you decide that you do not wish us to continue acting for you, you must tell us clearly in writing, and we will act on those instructions as soon as we receive them.
- b) We will only stop acting for you if there is good reason, for example if you do not pay us money that we have properly asked for to pay expenses, a payment on account, or to cover an interim bill, or if you refuse or fail to give us proper instructions, attempt to mislead us, or give us instructions that we cannot follow without breaking the law or breaching our professional obligations. In that event, we will give you reasonable notice of our intention to stop acting.
- c) If either you or we decide that we should stop acting for you, the following provisions will apply:
  - i) We will bill you for all unbilled work done up to the time of termination. If it is your decision to withdraw your instructions, we will also bill you for any consequential work required as a result, for example notifying other parties involved in the matter, returning contract paperwork, and making an application to come off the court record as your

legal representative. These charges will be calculated on the basis set out in the costs estimate or quotation provided to you on receipt of your original instructions and will be payable in accordance with our standard payment terms.

- ii) We will keep all your papers and documents as security for money owed to us until such time as our fees, expenses and VAT, whether billed or not, are paid in full. This is known as exercising our right to a lien.

## 6. Payment terms

- a) We may at any stage ask you to pay us money in advance on account of our fees, expenses and VAT. Requests for money on account usually relate to the next stage of the work that we are doing for you and bear no relation to the likely overall costs of the matter, an estimate of which we will have given you separately. Money paid to us on account will be held in our client account in accordance with the SRA Accounts Rules.
- b) We may have to pay various expenses to third parties on your behalf, for example court fees, barristers' or experts' fees, Land Registry fees and taxes. We will normally ask you to let us have funds in advance to cover payments that we have to make to third parties. If you are paying us by cheque, we must have it at least 7 working days in advance as the SRA Accounts Rules do not permit us to pay out against uncleared funds. We have no obligation to make such payments unless you have provided us with cleared funds for that purpose, and we will not be liable to you for any penalties or other loss caused by your failure to make a requested payment in time. Occasionally we may agree to pay an expense from our own funds on your behalf, in which event we may ask you to reimburse us at any time.
- c) It is a condition of our accepting instructions that we have the right to send you regular interim bills as the matter progresses. Any Interim bill we send you is a self-contained invoice for the work done during the period it covers. We will send a final bill at the end of your matter which will cover work from the date of the last interim bill. Where this applies, we will discuss the frequency of billing with you before we start work.
- d) If you fail to meet a request for money to pay expenses and/or on account within a reasonable time, or to pay an interim bill within 14 days of delivery, we are entitled to stop work until payment is received or until you or we decide to end our instructions as provided for above.
- e) Our invoices are payable 14 days from the date of sending.
- f) In property transactions:
  - i) we will normally send you our bill, together with a completion statement, following exchange of contracts. Payment of our fees, expenses (including Stamp Duty Land Tax and Land Registry fees) and VAT is required for purchases before completion and for sales on completion.
  - ii) we must have cleared funds to complete the transaction and, if the funds required to complete do not arrive into our client account in time to clear by close of business on the working day before completion, your completion may be at risk.
  - iii) if sufficient funds are available on completion and we have sent you a bill, we will deduct our charges and expenses from those funds.
  - iv) we can only accept money from legitimate sources that we have verified. If you arrange for us to receive money from people or sources that we have not verified, this may cause delay and/or additional expense and, if we are unable to verify them satisfactorily, we may not be able to use it; we will not be responsible for any delay, expense or losses arising as a result.
  - v) if you are using mortgage funds to purchase a property, we will ask the lender to arrange for us to receive cleared funds the day before completion. Depending on the lender, this may involve providing us with a cheque four working days before completion or an electronic transfer of funds the day before completion. You should be aware that the lender might start charging you interest from the date of issue of their loan cheque or the date of the electronic transfer.
- g) In all other matters, if we are holding money in our client account we may, in our discretion, transfer sufficient funds to cover any interim or final bill, expenses and VAT instead of or as well as asking you for payment. We will tell you if we intend to do this.
- h) You are primarily responsible for paying our bills irrespective of any right that you may have to claim them from a third party by way of an indemnity. If a court orders your opponent in litigation to pay or contribute towards your costs you will have to pay them to us first and then take steps to recover them from your opponent. In that event, you can claim interest from your opponent on those costs from the date of the court order; you will be entitled to the interest on such of our costs as you have already paid on account and we will be entitled to the interest on the rest of our costs that you have not paid.
- i) If a bill is not paid within one month of delivery we may, at our discretion, do all or any of the following:
  - i) cease work until such time as all our charges are fully paid and up-to-date
  - ii) raise a further invoice for any work done since the date of the last invoice
  - iii) terminate our contract with you with immediate effect
  - iv) retain by way of security for our unpaid costs any documentation or other assets in our possession (known as exercising our right to a lien)
  - v) claim contractual interest at the rate of 8% per month from date of invoice on outstanding invoiced amounts which are not paid on time.
  - vi) issue proceedings for the recovery of monies due to us.

If you wish to challenge a bill (interim or final), you should invoke our complaints procedure, a copy of which is available on request. You also have the right to apply to the County Court for our bill to be assessed under section 70 of the Solicitors Act 1974. Applications to the County Court should normally be made within one month of delivery of the bill be that interim or final. If you challenge a bill, we will charge interest on such of the unpaid costs as we are entitled to recover from one month after delivery of the bill as set out above.

- j) If you provide us with a cheque which is dishonoured when presented for payment, we will charge you an administrative fee of £10 plus VAT.
- k) If we need to telegraphically transfer monies on your behalf then we will charge an administration fee for doing so
- l) We accept payment by cheque, electronic transfer or debit/credit card (charges apply for the latter)
- m) We generally do not accept cash of more than £500. If you avoid this policy by depositing cash directly with our bank, we may charge you for any additional checks we consider necessary to verify the source of the funds.
- n) Where we have to pay money to you, it will be paid by cheque or electronic transfer. It will not be paid in cash or to a third party.

## 7. Client money

- a) Any money received from you, or on your behalf, will be held in our Client Account in accordance with The Solicitors Accounts Rules. Our bank is Lloyds Bank Plc. ("Lloyds")
- b) It is unlikely that we will be held liable for losses resulting from a banking failure.
- c) The £85,000 Financial Services Compensation Scheme (FSCS) limit applies to each individual client and therefore if you hold other personal monies yourself with Lloyds the limit remains £85,000 in total.
- d) Some deposit-taking institutions have several brands, where the same institution is trading under different names. You should check with your deposit-taking institution, the FSA or a financial adviser for more information.
- e) If a corporate body client is not considered a small company by the FSCS, then it will not be eligible for compensation under the FSCS scheme.
- f) If we make a claim under the FSCS scheme in respect of client money on your behalf, we will need to give certain client information to the FSCS to help them identify clients and any amounts to which they are entitled. We will need to obtain your consent to do this; if you do not consent, we will still tell the FSCS what our account balances are, but we will withhold your identity and you will not be entitled to any compensation from the FSCS.

## 8. Interest Policy

This policy sets out how we deal with interest on money held by Gould & Swayne Ltd (the firm) for a client. In accordance with the Solicitors Accounts Rules 2019, it is the firm's policy to account to its clients for interest on a fair and reasonable basis for both the client and the firm.

When monies are received on behalf of the client, it will be paid into general client account currently with Lloyds Bank who are the firm's bank. The general client account will hold pooled amounts for different matters for its clients. These are held on an instant access account to facilitate the transaction.

Clients are unlikely to receive as much interest as might have been obtained had they held the funds and invested the money by themselves.

If we hold money in a general client account on your behalf, then we will account to you for a sum in lieu of interest (gross).

We will not account to you for any interest in the following situations:

- a) if the amount calculated is £20 or less. Below that sum we consider that the administrative costs of dealing with the funds would exceed the interest due;
- b) on money held for the payment of a professional disbursement if the person to whom the money is owed has requested a delay in settlement;
- c) If there is an agreement to contract out of the provisions of this policy.

In calculating interest we will apply a rate that we believe reflects the market rate of interest paid on an instant access current account offered by a UK high street bank.

We will review the interest rates regularly and also whenever the Bank of England changes its Bank Rate.

In determining the period over which interest is to be calculated, we will look at the following: the period between the date when the relevant funds received by us clear our account and, if we send the funds electronically, the date when the funds are sent or, if we send the funds by cheque, five days after a cheque is raised.

### Interest Rates

Rate used on balances

From:

4th June 2020

0.01%

Interest is paid gross and it is the client's responsibility to declare gross interest received to HMRC.

Interest is paid by Lloyds Bank to the firm on the aggregate of all client money held in the general client account and, subject to any interest paid to the client, is for the benefit of the firm.

If the bank in which the firm holds funds should fail, the firm reserves the right to disclose to the FSCS the names and other details for clients whose money is held on the general client account in order for the client to claim compensation, the limit of which is currently £85,000.

This policy is reviewed on a regular basis by the COFA and Directors of the firm

Reviewed 2022 (August)

## 9. Financial Services

### a) **Investment advice services**

We are not authorised by the Financial Conduct Authority ("FCA"). If, while we are acting for you, you need advice on investments, we may refer you to someone who is authorised to provide the necessary advice. However, 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, which is a designated professional body for the purposes of the Financial Services and Markets Act 2000.

### b) **Consumer credit services**

We are not authorised by the FCA in relation to consumer credit services. We may, however, provide certain limited consumer credit services where these are incidental to the professional services we provide. This is because we are members of the Law Society of England and Wales, which is a designated professional body for the purposes of the Financial Services and Markets Act 2000.

### c) **Insurance mediation activity**

We are not authorised by the FCA. However, we are included on the register maintained by the FCA so that we may 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 authorised and regulated by the SRA. The register can be accessed via the FCA website at [www.fca.org.uk/register](http://www.fca.org.uk/register). The Law Society of England and Wales is a designated professional body for the purposes of the Financial Services and Markets Act 2000.

If you have any problems with the service we have provided to you then please let us know. We will try to resolve any problem quickly and we operate an internal complaints handling system to help us resolve any such problems. If for any reason we are unable to resolve the problem between us, then we are regulated by the SRA, the independent regulatory arm of the Law Society, and complaints and redress mechanisms are provided through the SRA and the Legal Ombudsman.

## 10. Secure storage and storage and destruction of closed files

- a) We are able, on request, to store original deeds and documents such as wills, enduring and lasting powers of attorney and trust deeds securely in our strong room indefinitely. We do not charge for secure storage but will make a production charge of £25 plus any delivery costs to be incurred plus VAT, payable in advance, for producing a stored document or set of deeds for any purpose other than to enable us to carry out work for you.
- b) After completing our work, we will store your file (excluding original deeds and documents that you ask us to store securely and any papers that you ask to be returned to you) for not less than six years, after which we destroy them. Storage may be in paper or electronic format. We need to obtain your consent to destroy any hard copies as soon as the electronic storage process has been completed, and to destroy both electronic and paper files without further notice to you once six years have elapsed. If you do not want us to destroy your file after six years, you must collect it on giving us reasonable notice at any time before the six years have elapsed.
- c) We will not normally charge for storing your file. However, if you require us to retrieve your file from storage we will pass on to you any costs or expenses involved, for example any access charge imposed by an external storage facility, postage and packing, or restoring a file from electronic to paper format. We will also charge if you ask us to do anything more than deliver the file to you, for example finding and copying any documents or providing you with information or advice. In that event we will tell you what we will charge before we retrieve the file or do the work.

### **11. Limit of liability**

- a) Our maximum aggregate liability to you in this matter will be £3million including interest and costs unless we expressly state a different figure in our letter confirming your instructions. If you wish to discuss a variation of this limit, please contact the person dealing with your matter. Agreeing a higher limit on our liability may result in us seeking an increase in our charges for handling your matter.
- b) We will not be liable for any consequential, special, indirect or exemplary damages, costs or losses, or any damages, costs or losses attributable to lost profit or opportunity.
- c) QualitySolicitors Gould & Swayne is the trading name of Gould & Swayne Limited, a limited company. This means that the firm's members and directors are not personally liable for any acts or omissions by the firm, unless the law requires otherwise. This does not limit or exclude liability of the firm for the acts or omissions of its members and directors.
- d) We can only limit our liability to the extent the law allows. In particular, we cannot limit liability for death or personal injury caused by negligence

### **12. Identity**

- a) We may refuse to act for you if you fail to supply appropriate proof of your identity or for any principal whom you represent.
- b) We may arrange to carry out an electronic verification of your identity if we consider that a saving of time and cost will be achieved by doing so or that it is otherwise appropriate to do so. You may be charged for this but if the amount is in excess of £10 including VAT per client, we will seek your prior agreement.

### **13. Applicable law and jurisdiction**

- a) The contract between us will exclusively be governed by English law and subject to the jurisdiction of the English courts.
- b) Unless otherwise agreed, and subject to the application of current hourly rates, these Terms of Business shall apply to any future instructions given by you to us

**We highlight specific matters to which you are giving consent by accepting our Terms of Business.**

- A. **In the event of a deposit-taking institution failure we may provide all necessary information to the FSCS (see paragraph 7 above)**
- B. **We may communicate by e-mail with you and with others in connection with your case (see paragraph 2 above)**
- C. **You have no objection to work on your file being outsourced or reviewed by external auditors, or to the file being stored externally once it is closed, on the basis explained in paragraph 2 above**
- D. **We may destroy your electronic and paper file after 6 years, and your paper file as soon as it is in electronic format (see paragraph 10)**