



WILSON  
WARD

SOLICITORS • ESTATE AGENTS • NOTARIES

## TERMS OF ENGAGEMENT

### Introduction

At Wilson Ward LLP we believe it is important to establish a clear understanding of the basis upon which we provide our services. These terms of business set out the terms and conditions which apply when you instruct Wilson Ward to act on your behalf. If work has already commenced on your matter then, unless you notify us immediately in writing to the contrary, you agree that these terms of business will apply retrospectively from the start of the work on the matter.

These terms of business are subject to the terms of any letter of engagement issued with them. They will be deemed to apply to this and all subsequent transactions unless otherwise notified in writing. If we have failed to communicate any point clearly please contact us and we shall be happy to give an explanation.

### Standard Terms of Engagement applying to all transactions

As your agents, we can only act on the information and instructions you give to us. You can instruct us either verbally or in writing, although we may ask you to confirm your instructions in writing (which when required should be done by return of post) or we may write to you confirming our understanding of your instructions. You should not assume that we have knowledge of your personal circumstances. If there is any change to your instructions, you must notify us immediately. Unless you notify us in writing, we shall assume that were we act for more than one person but only one of them tells us what to do, that person has the authority of the other(s) to do so. Where we do act for more than one person, each person for whom we do work is jointly and severally responsible for the instructions given to us and for payment of our fees and outlays in connection with the matter. You must let us have full details of each matter so that we can advise on the issues raised and how they may be dealt with. We rely on the information provided by you

If, at any stage in the transaction there is anything concerning you about what has happened, what has not happened or what may happen, please contact us. The chances are we will have the answer, if not we will formulate a solution and come back to you.

## **Indemnity Insurance and Scottish Solicitors' Guarantee Fund**

Wilson Ward has Professional Indemnity Insurance under the Law Society of Scotland's Master Policy. The current level of indemnity on the Master Policy is £2 million per claim. By continuing to instruct us you accept that any claim you may make against us is limited to this amount. The firm of Wilson Ward is also covered by the Scottish Solicitors' Guarantee Fund which is a fund established by Section 43 of the Solicitors (Scotland) Act 1980 for the purpose of making grants in order to compensate persons who, in the opinion of the Council of the Law Society of Scotland, suffer pecuniary loss by reason of dishonesty on the part of a Scottish solicitor in connection with the practice of the solicitor.

## **Policy on Fees and Expenses.**

It is the Firm's normal practice to agree a fee basis, including timing and method of payment, for the particular transaction. Disbursements to third parties will be charged in addition. We are generally prepared to provide estimates of our charges. If a Fee Estimate is given the fees shown are based on our best estimate of the work involved in completing the current transaction. It should be treated as a guide only and should not be regarded as an agreement to provide a service for a fixed fee or within a fixed time period unless otherwise agreed. If the work turns out to be more complicated or takes longer than anticipated we may require to review our estimate or quotation to take account of this. We shall inform you as soon as possible about this. Estimates or fixed fee quotations will always be subject to review. Where possible we will provide you with a written updated estimate of costs as soon as it appears to us that an estimate or fixed fee quotation needs revision. Unforeseen complications and developments may have cost implications and you should notify us of these as soon as you are aware of them.

Our fees and outlays are arrived at by totalling the amount of time we spend dealing with your transaction plus (our letter of engagement will in such circumstances detail the hourly rate), where appropriate, a Risk and Responsibility factor.

If a transaction does not proceed to completion, you will be charged for the work which we carry out on your behalf subject to a minimum fee of £400 plus vat and outlays.

In certain types of work there is frequently considerable uncertainty as to the likely fee as this will be entirely dependent on what happens during the course of the transaction. Consideration also needs to be given as to whether it makes economic sense from a cost point of view to pursue a particular matter.

All fees are subject to VAT at the current rate.

You are liable for expenses normally and properly incurred in a transaction of this type. By instructing us you give your consent for us to incur and settle these expenses.

If due to the length, complexity or nature of the work you instruct us to undertake it is appropriate to have the level of our fees set by an independent Auditor or Law Accountant their fee will be added to your account and you will be liable for this.

## **Estate Agency**

You agree that Wilson Ward shall be the sole and exclusive selling agents in the sale of the Property.

You will be liable to pay Wilson Ward for all advertising charges and other expenses incurred by us on your instructions in connection with the marketing of the Property.

The marketing fee and other upfront marketing costs will be detailed in the fee estimate provided and will be paid upfront to Wilson Ward.

Wilson Ward will advertise the Property as instructed by you provided payment of all such advertising is paid up front.

You will pay our selling fee at the date of entry for the Property along with the balance of any outlays. You agree that this Agreement shall form an irrevocable Mandate for payment of the said selling fee and outlays to Wilson Ward at the date of entry from the net sale proceeds of the Property, by the Solicitor acting on your behalf whether or not this is Wilson Ward. The Fee becomes payable to us when a Contract for the sale of the Property is concluded or settled whichever is the first to occur

You confirm that you will notify us immediately of any faults or problems that develop with the Property or any of the fixtures and fittings that are to be included in the sale.

The Solicitors Property Centres throughout Scotland collate house sale prices in order to produce statistics relating to the local housing market and you authorise us to disclose the price to the Property Centre through which your Property is advertised for sale.

If Wilson Ward are organising accompanied viewings of the Property these will be charged at £20 per hour or viewing if less than an hour. You will be required to re-imburse Wilson Ward from time to time when the total cost of such viewings exceeds £100.

In relation to any estate agency instructions ; if for any reason you decide to withdraw a property from the market or transfer agency there will be a cancellation /withdrawal fee of £400 plus vat (at the then applicable rate) payable to us immediately. In addition to this fee any outstanding E.S.P.C fees, viewing charges, or advertising charges will also become payable on demand. Any instructions from you to withdraw a property from the market or to transfer agency shall require to be given in writing and provide 14 days' notice of the property withdrawal or transfer of agency. In the event of an acceptable offer being received for the property during the notice period then the full estate agency fee will become due.

We also reserve the right to charge the whole or at our discretion a reduced part of the estimated fee should an offer be received but the transaction does not proceed for whatever reason.

### **Third Party Payments**

We use an Information Management System to produce, record and retrieve all information relating to every transaction we undertake. In common with all of the other legal firms using the system we remit a transactional charge to the software company who developed the system. For administrative convenience we include this in our fee and pay it centrally

## **Administering Powers of Attorney and Trusts**

Our fees for dealing with the administration of a Power of Attorney or a Trust are based on the time taken, charged at our current hourly rate of £250 per hour plus a Risk and Responsibility factor of up to a maximum of 1.5% of the value of capital realised, re-invested or transferred and 5% of any income collected.

A fee, based on the time spent and the Risk and Responsibility factor, will be charged every three months. A final fee and any outstanding outlays will be settled immediately before the conclusion of all work in connection with the Power of Attorney or Trust administration.

You agree that we can settle such fees from any funds we hold.

If there is a property to be sold or transferred any Estate Agency or conveyancing work undertaken by this firm will be charged separately and in addition to the fee charged for administering the Power of Attorney or Trust estate.

## **Incidental Financial Business**

We may, in the course of carrying out work on your behalf, transact incidental financial business under the Financial Services and Markets Act 2000, for example, the arranging of a bond of caution in an executry matter or the sale or purchase of shares in an executry or trust matter. Given the limited scope of activities we are allowed to carry out under the incidental financial business regime, work of this nature will be limited to our instructing other regulated professionals on your behalf and following their recommendations. We will not tender any advice to you in relation to the suitability of any financial product, insurance contract, the sale or retention of shares or in relation to any other matter falling within the definition of incidental financial business.

The firm of Wilson Ward is licensed by the Law Society of Scotland to carry on incidental financial business under the Solicitors (Scotland) (Incidental Financial Business) Practice Rules 2004.

The firm of Wilson Ward is not authorised by the Financial Services Authority under the Financial Services and Markets Act 2000.

We do not give tax advice or lifetime estate planning advice and assume that where appropriate you have obtained the necessary advice from a relevant professional. If asked we would be happy to recommend a suitable professional.

## **Payment of fees**

Except as otherwise detailed in this agreement, all fees payable to Wilson Ward and any expenses due in connection with a transaction will be settled 7 days prior to the completion of the transaction. If the transaction is a property sale and there will be surplus funds, we will deduct all such fees and expenses from the proceeds of the sale before remitting the free proceeds to you. For ongoing matters or transactions that are likely to last for more than 3 months we will render interim fees as and when appropriate. We reserve the right to withdraw from acting for clients where the terms of this agreement are not adhered to.

## **Arbitration**

If any dispute arises between the parties in relation to the level of fee charged, the same shall be referred to the amicable decision of a suitably qualified Scottish Law Accountant, acting as an Arbiter, to be appointed by the parties, or failing agreement to be appointed by the Chairman for the time being of the Remuneration Committee or its successor within the Law Society of Scotland on the application of either party, the decision of such Arbiter to be final and binding on the parties notwithstanding the terms of the Administration of Justice (Scotland) Act 1972.

The Arbiter can fix a fee higher or lower than the fee charged. If it is lower, then we will pay the expenses of the Arbitration and reduce our fee accordingly. If the Arbiter fixes a higher fee or confirms the fee as charged, then you will be responsible for any increase in the fee and the expenses of the Arbitration.

## **Cleared funds**

The Law Society of Scotland have issued guidelines to all solicitors in relation to cleared funds. It can take up to 5 banking days, not counting the day the cheque is banked, for the promised money to be deposited in our bank account. If the firm were to send out a cheque on the strength of an un-cleared cheque and, for whatever reason, the un-cleared cheque does not clear; this could lead to the firm being closed down by the Law Society.

In light of this guideline, we have had to implement stringent standard procedures for all transactions that cannot be departed from. These are:-

- If we receive funds by cheque, whether from you or from the mortgage lender, we will need that cheque no later than 9 banking days prior to the completion date.
- It is standard practice that the sale price in conveyancing transactions is paid to us by cheque. Before we send out any free proceeds of sale, the cheque received from the purchaser's solicitors must have cleared in our account. This can take up to 6 banking days.
- As soon as funds are cleared in our account, clients can request that the free proceeds be electronically transferred via the banking CHAPS system to their nominated account under deduction of our bank charges and administration fee, currently £30 inclusive of VAT (in total).

The implication for house buyers is that their mortgage will start 9 banking days before they get the keys. For house sellers, their mortgage will be redeemed and their share of the proceeds of sale will be paid 6 banking days after they have parted with the keys.

## **Banking & Interest on cleared funds**

The Law Society Accounts rules require that all cleared funds held by the firm for clients should earn interest for clients at the rate that can reasonably be achieved taking into account the amount of the funds involved and the length of time the firm is expected to hold the funds.

At an interest rate of 5% (which is well in excess of current rates), £1,000 invested for 3 months would earn about £10 net. To cover the cost of opening a new bank account, depositing funds, uplifting funds and closing the account we charge our standard administration fee, currently £50 +

VAT. This would leave you a £40 loss and involve us spending a good deal of time unproductively. This obviously makes no sense for either of us.

The balance we have struck, to ensure that where reasonable amounts of interest are earned, you benefit without the firm having to spend disproportionate amounts of resources opening and closing separate investment accounts, is as follows:-

- The Firm will pay interest on cleared funds, excluding any sums due in fees or outlays, where (a) the amount of interest earned would have exceeded the standard administrative fee and (b) there are more than three days between the funds being cleared and a cheque being paid out.
- Funds in excess of this amount will earn interest at the rate we receive on our standard deposit accounts. This will be paid net of tax, which is deducted at source by our bank. In the absence of a written instruction to the contrary, the firm will not be required to open separate investment accounts for client's money, irrespective of the amount.
- Where the amount of money and the length of time we are to hold it makes it prudent to invest the funds in a separate account in the name of the client our standard administration fee, currently £25 + VAT, will be charged when the account is closed.

We may pay in to a client bank account any cheque made payable to you.

Wilson Ward do not offer any guarantees in respect of any funds paid to us to deposit in a bank. Your funds will be deposited with the Royal Bank of Scotland plc. If you would like your funds deposited in any other bank or institution, please let us know immediately.

## **Credit Balances**

Any credit balance, not exceeding £10.00, remaining on your ledger at the end of a transaction will be kept by Wilson Ward.

## **Confidentiality**

Neither the firm nor any of its employees will disclose to any person any information relating to the business you have entrusted us with, except, of course, as required in the proper conduct of that business.

## **Money Laundering**

Wilson Ward is obliged by law, along with all other solicitors, to comply with all civil and criminal legislation currently in force. This includes the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007. These require us to undertake identity checks on all clients and, notwithstanding any confidentiality issues (subject to "privileged" circumstances), to report to the authorities any transaction or activities we regard as "suspicious".

This "duty to report" does not sit easily with a Scottish solicitor's duty of confidentiality and is not something we are comfortable with, but the regulations are clear and we have to comply with them. In light of this, our view is that we should make all clients and potential clients aware, before they instruct us, that we have this duty and will carry it out.

In terms of the Money Laundering Regulations we need to verify your identity, your date of birth and your address by checking official documents. Even though we may know you personally we still have to comply with these regulations.

As part of our identity checks we may make searches about you with a credit reference or Fraud Prevention Agency; this will include information from the Electoral Roll. This is not a credit check and will not affect your credit rating. The agencies will record the details of the search whether or not this transaction proceeds. Any documents provided to us will be recorded and copied for audit purposes as part of our Anti Money Laundering requirements. There is a charge for these searches which is included in the transactional charge.

The regulations allow us to start work on your behalf but we must have the necessary documents within a reasonable time scale. If we do not receive them from you within a reasonable time, we have to stop all work on your transaction until the documents are produced.

We cannot accept or make payments in cash of more than £500

We are unable to accept or make payments in cash of more than £500. If we do receive a cash payment of more than £500 from you or should you ask that we make payments totalling more than £500 in cash, you should be aware that it may take a minimum of 8 working days and a maximum of 40 days for us to obtain the necessary clearance from the authorities before we can use any cash you give us or make the payment in cash you requested.

The only exceptions to the £500 rule are: (a) where we collect rent on behalf of a Landlord and the tenant proffers the deposit and 1<sup>st</sup> month's rent in cash and (b) where we collect a debt on your behalf and the payment is proffered in cash. In either of the above cases the limit is £2,000 in cash.

### **We can only accept funds from or make payment to a Bank account in your name with a UK Bank**

You agree that any cheque/CHAPS/BACS payment you make to us will be from a UK bank account in your name. Also you agree that we will only make a payment to a UK bank account in your own name and to no other account.

If the funds come from any other source or are to go to any other destination it may take a minimum of 8 working days and a maximum of 40 days for us to obtain the necessary clearance from the authorities before we can use that money. This will result in additional cost to you and it might result in you not getting the keys to your new house on the day you had expected.

The best solution is for you to avoid this possible complication by gathering the funds in an account in your name and then writing a cheque or arranging a CHAPS transfer to us from your own account. (Your Bank will charge you up to £30 for a CHAPS transfer). Please do NOT be persuaded by your Bank in accepting a Bank's Draft instead of CHAPS. A Banker's draft is not cleared funds and will trigger additional Money Laundering checks which will delay things).

### **Termination of appointment**

Either of us may terminate our professional relationship at any time by giving written notice to the other. We hope that this will not happen but if it does, you will pay us all fees and outlays and expenses incurred prior to such termination and due to us in accordance with these Terms of

Engagement, together with any further fees and outlays and expenses reasonably incurred by us in connection with the transfer of our files to another solicitor instructed by you. Where Wilson Ward markets your property for sale we are entitled to be paid the Estate Agency fee if the eventual purchaser's interest in your property originated prior to our agency being terminated. Upon payment, we will deliver the originals or copies of all deeds and documents belonging to you.

## **Acceptance of terms of engagement**

Continuing to instruct us will be deemed to be acceptance of these terms. These foregoing standard terms, as amended by any separate agreement, will govern the current transaction and any subsequent transaction.

## **Distance Selling Regulations**

You should be aware that, if your transaction is one which is deemed to fall within the Distance Selling regulations, you may have a right to withdraw your instructions should you decide not to proceed, without any charge, by writing or emailing your instructions to us within seven working days from the date you receive this. However, unless you instruct us to wait for the seven day period to elapse before we start working for you, this will not apply and you will be taken to have consented to our starting to work for you immediately.

## **Formative Feedback – how was it for you?**

We always aim to deliver. But, everyone has an off day and does things which, with hindsight and given the chance, we would have handled differently. Our policy if we do fall short of our standards is to remedy the situation at our expense.

Sometimes an apology, an acknowledgement that we messed up and have taken steps to prevent the same situation arising in future will be enough but not always. If you have suffered loss through our negligence we would rather discuss and resolve the matter with you so that we can both move on.

If you have any reservation or complaint about the service you received please contact John Ward or Peter Wilson to discuss to attempt to reach a speedy resolution that both parties are willing to accept as fair and reasonable.

If the matter cannot be resolved between us then you are always entitled to refer the matter to The Scottish Legal Complaints Commission (SLCC). Their service is free and their Gateway Team will advise you on what you need to do.

The contact details for the SLCC are:

Tel: 0131 528 5111  
Fax: 0131 528 5110  
Email: [enquiries@scottishlegalcomplaints.org.uk](mailto:enquiries@scottishlegalcomplaints.org.uk)  
Web site: <http://www.scottishlegalcomplaints.com>

## **Ownership of the intellectual property rights in work produced while we act on your behalf**

It is very rare that a complete transaction is unique and original. Usually large parts of the letters, contracts, other documents and advice are produced from documentation or knowledge we have accumulated over many years. We retain any intellectual property rights in respect of any documents sent or copied to you.

## **Shredding of your paper file on the completion of the transaction**

We are working on holding all incoming and outgoing correspondence and other documents electronically. We are aiming to no longer print out file copies of letters, phone calls, meetings or other documents to store and retrieve everything via computer. This helps us respond to your queries quickly and reduces our carbon footprint.

All paper files are therefore surplus and will be shredded and re-cycled on the completion of the transaction. However we need your authority to do this for the current transaction and any future or closed files we hold for you. Unless you contact us to the contrary we will presume you are in agreement to the paper files being shredded

**In all cases we will retain an electronic version of your paper file for future reference. When you sell or otherwise dispose of your property you agree that we should delete the original purchase file from our systems.**