

# PRETTYS SOLICITORS LLP BUSINESS TERMS

## AND SOME EXPLANATORY NOTES

This document is important. It should be read in conjunction with its covering letter. It sets out the terms of business under which Prettys Solicitors LLP (“we” or “the firm”) accepts instructions from you. If there is an inconsistency or conflict between these terms and its covering letter, the covering letter shall prevail. This document also includes other information. Unless you write to us indicating otherwise, your continuing instructions will amount to an acceptance of these terms.

January 2024

### 1. PRETTYS’ COSTS AND OTHER EXPENSES

Our aim is to provide as much budgetary certainty as we reasonably can.

We will provide you as quickly as we can with budget information. This will be one of our first tasks for each instruction, coupled with identifying and agreeing the scope of the work we will be undertaking.

This will involve:

- a fee estimate for the whole or parts of the scope of work; or
- in certain circumstances fixed costs; or
- in certain circumstances an upper limit to our costs.

Costs uncertainties can arise for a wide variety of reasons, including:

- the scope of the agreed scope of work changing;
- the emergence of facts or issues which were originally unknown;
- the prolixity of some clients;
- the attitude and approach of other parties involved in the instruction, or of their solicitors or other advisers.

Expenses or “disbursements” (such as court fees, barrister’s or expert’s fees and search and registration fees) together with VAT if applicable are charged in addition to our costs, and will form part of the pricing with which you will be supplied.

The firm also charges a banking administration fee for each telegraphic transfer (currently £35 plus VAT).

We reserve the right to require payment in advance for any professional fees or expenses and to charge for photocopying and printing (currently 10 pence per sheet and £1.50 per colour sheet) for bulk photocopying, facsimiles (currently £2 for the first sheet and £1 for each subsequent sheet), overseas telephone calls and all costs draftsman’s services.

You must let us know if the amount of costs and expenses is a significant factor in your decision to instruct us on a particular matter. We will do our very best to meet your concerns, balancing also the need to ensure that your instructions are fulfilled as best as possible. Budgetary constraints may impact on the scope of the work and restrict the amount of time and consideration we would otherwise undertake.

Our costs are charged primarily on the basis of the time that fee earners spend undertaking work in connection with your matter. This includes time spent:

- in meetings, hearings and calls with you or any other people connected with your matter (regardless of whether the meetings or hearings take place in person or virtually);
- making notes of such meetings, hearings and calls;
- writing, reading and responding to any type of correspondence (including letters, emails and texts) with you or people connected with your matter;
- instructing (by any means) appropriate third-parties, such as experts and barristers;
- reviewing and advising on documents;
- researching legal or factual issues;
- dealing with file opening, file closing and other regulatory and compliance matters;
- running any required identification or anti-money laundering checks and undertaking any compliance related work;
- in internal discussions and supervision of staff;
- travelling; and
- in relation to credit, tracing and other investigative matters.

Every hour of a fee earner’s time is split into 10 units, each of six minutes. Our time is recorded accordingly, with each item of work no less than one unit of time. Any short telephone call is normally charged at a minimum of one unit, as is each short incoming or outgoing item of correspondence.

With each individual instruction we will indicate the normal hourly rates of those involved. We will do our best to have your instructions carried out at an appropriate level of seniority. The aim of this will be to provide a service that is skilled, efficient and cost-effective.

The current hourly charges for our solicitors, legal executives, paralegals and specialists/executives range between £100 and £425 plus VAT; and for our trainee solicitors and credit controller between £70 and £175 plus VAT. Any work carried out by secretaries, which would otherwise be regarded as the work of a fee earner, may be charged, currently at £65 per hour. Our charging rates are reviewed periodically. We will advise you of any proposed changes.

Other factors relevant to our costs are the complexity, urgency or importance of the matter, the specialist knowledge or responsibility involved, the value of the

transaction or dispute, and the number and importance of the documents involved.

If you decide to instruct us, we may charge for time spent in connection with a matter both before and after you gave us instructions to proceed. In this situation, we will have taken into account the work undertaken prior to you instructing us in any fee estimate.

We will advise you of the costs and expenses position regularly. Our normal practice is to raise interim bills monthly.

## **2. PAYMENT OF INVOICES**

We must issue our invoices in accordance with tax law. This generally means that we are obliged to invoice the person to whom legal advice has been supplied. This is the case even if someone else is likely to pay our invoice, such as an insurer or third-party funder.

Unless otherwise agreed our invoices are payable immediately upon their issue. Payment must be without any deduction by way of set off, counterclaim or otherwise. We reserve the right to retain any money received by us on your behalf to any charges and expenses whether invoiced or not, before forwarding any remaining balance to you and apply that money towards such charges and expenses.

If any invoice becomes overdue, we reserve the right to:

- charge interest from the date upon which payment fell due on the total amount outstanding at (in the case of businesses) the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 (currently 8% above the Bank of England's official dealing rate) or (in all other cases) the judgment debt rate (currently 8%) prevailing when payment fell due;
- in the case of businesses, claim compensation under the Late Payment of Commercial Debts (Interest) Act 1998 (primarily calculated by reference to our Credit Controller's hourly rate);
- require immediate payment of any other outstanding invoices;
- immediately cease acting for you and to instruct our agents (eg barristers and experts) to cease acting;
- issue proceedings against you (including in respect of unpaid interim invoices); and
- retain all documents, working papers, title deeds and any other items in our possession relating to any matter until all outstanding invoices are paid in full.

Our invoices do not normally contain narratives, detailing the work carried out. If you should require such details, you should let us know.

Where our retainer is with more than one person or organisation, your costs and expenses liability to us will be joint and several. All our invoices are primarily payable by you even if you have an agreement or arrangement with a third party for their payment.

Where we act for a company or LLP, we will only do so on the basis that the director(s) of the company or member(s) of the LLP giving us our instructions agree(s) to indemnify us for our costs and expenses if the client company or LLP does not pay. By giving us instructions the director(s) or member(s) confirm(s) his / her / their agreement to so indemnify us.

Where we agree to delay or postpone raising invoices in respect of our fees or disbursements, we are entitled to charge interest on our unbilled fees and disbursements. In such cases, we will charge interest as if we were raising invoices on the last day of each month in respect of unbilled fees and disbursements incurred in that month.

## **3. ENGAGEMENT PARTNER SYSTEM**

We operate an engagement partner system. The aim of the system is to:

- provide you with a first point of contact;
- have someone here who has overall responsibility for your work;
- identify with you who is best equipped here to deal with particular instructions;
- ensure that your instructions are dealt with satisfactorily;
- have a nominated person undertake regular reviews with you.

## **4. QUALITY CONTROL**

We are accredited with Lexcel, the quality hallmark recommended by the Law Society. We have a regular internal file review process where files are checked by someone within the firm other than the person who has primary conduct of it. We are also checked periodically by outside assessors (who are obliged to maintain client confidentiality). We will assume that we have your consent for your file to be checked by assessors unless you notify us to the contrary in writing.

## **5. STANDARDS OF SERVICE AND COMPLAINTS PROCEDURES**

We welcome comments about the service we provide. If a client is pleased with a job well done, we like to ensure that that is recorded, and those responsible are informed and congratulated.

We aim to provide a very high standard of service to our clients. We are regulated by the Solicitors Regulation Authority (the SRA) – [www.sra.org.uk](http://www.sra.org.uk) – and take fulfilment of all of the requirements of the SRA very seriously. If you have any comments or queries about the service that you receive from the firm or the work we are doing, we will be happy to discuss them with you. If you wish to take any matter (including any concern about our fees) further, or feel that those involved in your matter have been unable to help you, then you should make a complaint. In the first instance you should contact by telephone or email your engagement partner or our Complaints Partner. Our

complaints procedure is available on request. You can expect an initial response within three days of your complaint, and you can expect our internal procedure to be concluded within about a month and a half, although we hope that it will take less time. If we fail to resolve your complaint to your satisfaction, you may be entitled to complain to the Legal Ombudsman, whose contact details are PO Box 6167, Slough, SL1 0EH; tel: 0300 555 0333; email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk).

Your instructions may involve us in seeking the assistance of counsel. The Bar Council now requires counsels' chambers to provide a complaints procedure of their own, including providing access for you directly if you have any concerns or complaints about the services provided by counsel or his or her chambers. If you require any more information about the Bar Council's complaints procedure, let us or counsel's chambers know.

## **6. YOUR INSTRUCTIONS**

It is preferable that your instructions to us are in writing. As matters progress, you should instruct us promptly when asked to do so. We shall be entitled to assume that whomever gives us instructions has actual authority to do so, and we shall be entitled to rely on any information provided to us by that person. Where instructions are given on behalf of a company, LLP or other organisation we shall be entitled to assume that these terms have been brought to the attention of and approved by the directors of the company, members of the LLP or, in the case of any other organisation, the appropriate officers of that organisation.

Where our client consists of more than one person, each joint client irrevocably permits us to disclose to any other of the joint clients at any time any information which we would otherwise be prohibited from disclosing by virtue of our duty of confidentiality.

## **7. PRIVILEGE AND CONFIDENTIALITY**

Communications between us and you will attract legal privilege, which will normally mean that they will not be accessible by others. You should keep all communications between us secure. If communications are released to a third party, then the privilege which attaches to them is likely to be lost.

Information about your instructions will be kept confidential and not disclosed without your permission in almost all cases. There are exceptions. One is our money laundering obligations (see 9 below), and another is our FATCA obligations (see 10 below). Sometimes an insolvency officeholder of an individual or a business can apply to have solicitors whose client dealt with that individual or business deliver information to him, even if it is confidential or privileged. Another instance is that if we are acting for both a purchaser and the purchaser's funder, we will normally be required to report fully to that funder, even on matters which might normally be confidential or privileged to the purchasing client.

We are also called upon on occasions to disclose confidential information to our auditors or other advisers or for the purposes of our professional indemnity insurance, or otherwise as required by law or our regulatory authorities.

In the course of our instructions it is often necessary for us to engage with other professional advisers, such as barristers or experts, and in such circumstances, unless you notify us otherwise, we shall disclose confidential information to those advisers.

In certain circumstances it may be necessary to erect an information barrier (or 'Chinese Wall') to protect the confidentiality of client information: if this is needed we will discuss it with you.

## **8. SECURITY OF COMMUNICATIONS**

We will aim to communicate with you by such method as you request. For the sake of convenience, we are prepared to communicate with you using normal, non-encrypted email. This form of email is not secure. If we communicate confidential information to you, we will aim to use Mimecast Secure Email, which includes a safe password. We will take reasonable steps to safeguard the security and confidentiality of the information transmitted, however you acknowledge that we cannot guarantee its security and confidentiality. We accept no liability for any loss, damage or claim caused by any viruses, malware, worms, Trojan horses, or other unauthorised code contained in e-mails and/or attachments emanating from or relayed by us.

There are certain steps which you can take to assist us in reducing the risk:

- Make sure that you use reliable and up to date antivirus protection on all electronic communications you use.
- If you are making payment to us, telephone to check that the client account details you have received from us are correct and do not differ from the initial information you received.

## **9. MONEY LAUNDERING REGULATIONS**

The law requires solicitors to obtain satisfactory evidence of the identity of clients, and this may include carrying out searches with search companies for identity verification purposes. Money laundering regulations also impose upon us a duty to report certain matters to the relevant authorities which overrides our client confidentiality obligations. We may not be allowed to inform you that a report has been made or of the reasons for it. The effects of these regulations are such that:

- we will not accept payment in cash for any amounts of more than £250;
- we reserve the right not to send any monies that we may hold to unknown third parties;
- we also reserve the right not to accept monies from a third party paid to us on your behalf;

- we may be prevented from proceeding as otherwise we would.

We shall not be liable for any losses of whatsoever description because we have had a duty to report to the relevant authorities, or in good faith believed we should do so, or through our not taking particular steps, or ceasing to act altogether where there is, or in good faith we believe there to be, a requirement to comply with money laundering and similar regulations.

## **10. FOREIGN ACCOUNT TAX COMPLIANCE ACT ('FATCA')**

FATCA (which is the implementation in the UK of US government efforts to prevent its citizens from evading tax) applies to certain trusts. We will advise you if we believe the trust falls under the requirements of FATCA, and if it does, the implications for all concerned.

In determining whether FATCA applies, we are likely to have to ask you various questions. It is important that prompt and accurate answers are provided, together with any documentation that we may seek. If FATCA applies, we may have certification, registration and reporting duties. Such duties would be mandatory. It is a criminal offence not to comply with them. These duties override our duties of confidentiality to you.

We shall not be liable for any losses of whatsoever description because we have had a duty to certify, register and / or report, or in good faith believed so as to comply with FATCA we should do so.

## **11. CONFLICT CHECKS**

Whenever we accept new instructions we check that there is no conflict of interest between you and any other client and that we do not have a relationship with any other party connected to the matter that would prevent us from acting for you. Occasionally, however, conflicts, actual or apparent, can subsequently arise. Such conflicts may mean that we are required to cease acting for you.

## **12. MONEY HELD BY US**

If we hold money on your behalf, we will pay you interest in accordance with the SRA Accounts Rules 2019, which state that the interest paid must be a fair and reasonable sum calculated over the whole period for which the money is held.

Our interest policy is that the period for which interest can be paid will normally run from the date on which cleared funds are received by us until the date the funds are paid out by us. We will inform you of the current interest rate on request. No interest will be payable if the amount calculated on the balance held is £30 or less. Your money is normally held as a necessary, but incidental, part of the retainer to facilitate carrying out your instructions. In accordance with SRA guidelines your money will be held in an instant access account to facilitate the transaction.

Client money is generally placed by us with a number of high street banks. If, unlikely though that may be, any of those banks became insolvent, you ought to be entitled to seek recourse under the £85,000 government guarantee scheme, albeit that your monies held with us may be aggregated with other monies held by us with the same bank or institution in your name. You may have additional protection if we hold a temporary high balance for you for a specified reason, such as if we are holding money in relation to the sale or purchase of your primary residence, compensation for personal injury or money from your divorce or dissolution of your civil partnership. Please contact us if you have any concerns on this issue.

## **13. DEEDS, FILES AND DOCUMENTS**

We normally store these without charge and return them to clients at no charge. If ancillary work arises out of any request you may make for their return or in relation otherwise to them, we may charge you for that work. Deeds will normally be retained until you request us for their return, or we notify you otherwise. Your files and your other documents will normally be destroyed after seven years, although there are exceptions for some types of matters and documents. Please contact us if you would like further information about our file destruction policy.

## **14. INSURANCE AND INVESTMENT SERVICES**

We are not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk/register](http://www.fca.org.uk/register).

We may advise you that you require independent financial advice, for example in relation to funds in an estate which we are helping you administer. Where we are not qualified to advise on such investments, we will be able to suggest a financial adviser who should be able to help.

If we do so, we will advise you if we have entered into any agreement with any such adviser, and whether we are to be paid commission (either as a fixed fee or as a percentage) for our introduction. In that event we will agree with you whether that commission should be forwarded to you or kept by us, but offset against fees which otherwise we might charge you.

We shall not be liable for any losses of whatsoever description which you or any third party may suffer as a result of advice received from any such financial adviser. We suggest you enter into formal engagement terms with such adviser. Those terms ought to prescribe the provision of that financial services advice to you.

## **15. INFORMATION TO AUDITORS**

Unless contrary arrangements are agreed with us, we will charge a standard fee of £250 plus VAT for providing such information. Whilst our advice to you is covered by legal privilege, arguably that privilege is lost if we convey our advice to your auditors when responding to a request for audit information. Our responses may therefore have to be necessarily circumspect.

## **16. DATA PROTECTION**

We hold data on all clients, whether they are private, commercial, institutional or individuals within commercial or institutional clients. The purposes of doing so relate to our fulfilling your instructions. They also relate to our management, accounting, credit control and quality control systems, regulatory requirements, conflict checks and marketing. Further information about how we process your personal information can be found in our client Privacy Notice, which has been provided to you with these Terms and Conditions.

## **17. INTELLECTUAL PROPERTY RIGHTS AND TRADE SECRETS**

We will own all copyright in any documents prepared by us during the course of your instructions. We grant you a non-exclusive, royalty-free licence to copy and make use of the documents for the purposes for which they were provided (but not for any other purposes).

In the course of fulfilling your instructions we will provide services which are confidential, both during and after our retainer. The product of such services constitutes our trade secrets and any disclosure of it to third parties would likely be a breach of confidence and / or prejudice your or our commercial interests.

You agree not to disclose any such confidential information or trade secrets to any person whether in response to any requests for information made under the Freedom of Information Act 2000 or otherwise, except as required by law or previously agreed by us in writing. If you are a public authority which receives a disclosure request under the Freedom of Information Act 2000, you agree before making any disclosure of any confidential information or trade secrets to notify us in writing promptly.

## **18. EXCLUSIONS AND LIMITS OF LIABILITY**

We do not provide valuation, condition of property, tax or accountancy advice, save that where appropriate we will advise in relation to certain tax issues to a limited extent. We will expect your valuer, surveyor, tax adviser and accountant respectively to deal with all issues relating to such matters arising in respect of the matter or matters upon which you have instructed us.

We have professional indemnity cover of £20 million on each and every claim. Subject to additional limitation or

exclusion of liability terms being agreed in writing between us, this is the limit of our liability in respect of any claim of whatsoever description or nature which you may bring against us.

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 profits or opportunities. We will not be liable to you for any claims, expenses, losses or damages as a result of your supplying us with incorrect information or your failing to supply us with all material information. We only seek to limit our liability to the extent the law allows. In particular, we cannot limit our liability for death or personal injury caused by our negligence.

## **19. THIRD PARTY RIGHTS**

The relationship between us and you is personal. Except for the purposes of the limit of our liability to you, no other party shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term. You must not pass on any advice we give you to others without first obtaining our written agreement to your doing so. Our advice is confidential and for your exclusive use and no third party rights are hereby created. You may not assign any or all of your rights or obligations under this agreement, whether in contract, tort or otherwise.

## **20. BRINGING OUR RELATIONSHIP TO AN END**

You may terminate your instructions to us at any time.

We have the right to stop acting for you if we have good reason to do so, for example because you fail to pay monies that we request on account of costs and expenses; you fail to pay us invoiced sums; we reasonably believe that you will be unable to pay our fees when they fall due; or a conflict of interest arises. Money laundering regulations or FATCA may also require or suggest that we ought to cease acting for you.

If either of us decide to bring the relationship to an end, you will be liable for all our expenses incurred, and a fair and proper charge for our costs up to the time that we stop work.

The rest of this section only applies if the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the 'Regulations') apply to you. We will let you know if we consider that the Regulations apply to you.

Under the Regulations you have the right to cancel your instructions within 14 days of our instructions having been agreed without giving any reason.

To exercise the right to cancel, you should inform us of your decision to cancel this instruction by a clear statement (eg a letter sent by post, fax or email). Alternatively you can use the cancellation form we attached to our engagement letter, but its usage is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired. If you cancel your instructions under the Regulations, we will reimburse you all and any payments received from you. We will make reimbursement without undue delay and no later than 14 days after the date on which we are informed about your decision to cancel our instructions.

We will make the reimbursement using the same means as payment as you used to pay us, unless you have expressly agreed otherwise. In any event, you will not incur any fees as a result of the reimbursement.

If you ask us to begin the performance of your instructions during the cancellation period but then change your mind during the cancellation period, you must pay us an amount which is in proportion to the work performed until you communicated to us your cancellation of your instructions, measured against the full amount of work that was envisaged in your instructions. In arriving at the amount that may be due from you we will take account of the sums mentioned in our engagement letter.

If you ask us to begin performing your instructions during the cancellation period and we complete them entirely before the end of the cancellation period, you will have lost your right to cancel.

## **21. GOVERNING LAW AND JURISDICTION**

The terms and manner under which we undertake instructions from you will be governed by and construed in accordance with English law. The English courts shall have exclusive jurisdiction to resolve any dispute which may arise out of or in connection with your instructions and how we have performed them.

## **22. FOREIGN JURISDICTIONS**

We are not in a position to and will not advise you in relation to aspects of your instructions relating to jurisdictions other than England and Wales. This includes circumstances where the matter relates to an overseas transaction or case but is subject to English law. In all such instances it is important that you instruct a local lawyer to advise you how your position might be affected in the local jurisdiction.

If your instructions require us to engage on your behalf the services of a lawyer or other professional or any other party in a jurisdiction other than England and Wales, we shall have no liability to you whatsoever for his or her acts or omissions or those of his or her organisation or those of any other party in turn appointed by him or her in relation to work undertaken on your behalf. Unless otherwise agreed in writing with us, responsibility for checking their qualifications, ability or suitability to undertake your work shall be solely with you and it shall be your sole responsibility to agree the scope and standard of the work they shall undertake.

## **23. EQUALITY AND DIVERSITY**

We are committed to promoting equality and diversity in all our dealings with clients, third parties and employees. We are also committed to ensuring that our clients and employees are not victim to any form of discrimination, including those related to disability (as defined by the Equality Act 2010) while in our offices. Please let us know if you have any disability, so that we can tailor our service as best we can.

## **24. LIMITED LIABILITY PARTNERSHIP ('LLP')**

On 1 May 2016 Prettys converted from being a partnership to an LLP. One feature of the conversion is that our partners are now members of the LLP. Nonetheless, for the sake of simplicity, in these terms and all other correspondence any reference to a partner means a member of Prettys Solicitors LLP or an employee or consultant with equivalent standing and qualifications. Our formal LLP name is Prettys Solicitors LLP, but we also sometimes use the name Prettys.

## **CONTENTIOUS MATTERS ONLY**

Below are set out points which are relevant to contentious court instructions, and which will be supplemented by further advice as appropriate. Aspects of the matters set out below may be relevant to non-court contentious matters such as employment tribunal and arbitration disputes.

## **25. PRETTYS' COSTS AND EXPENSES AND ASSISTANCE WITH THEM**

You will be responsible for settling our invoices in full regardless of any costs orders that may be made against your opponent and, unless agreed otherwise, regardless of any insurance or external funding that might cover our costs.

Individuals may be eligible for legal aid funding for a very limited category of claims. Legal aid funding is public money made available to individuals who satisfy the relevant authorities that they have a reasonable case, but insufficient means to pay lawyers. We do not undertake work of this type. You should take independent legal advice on whether you may be eligible.

You may have insurance to cover your or your opponent's legal costs or both. You should undertake a careful search for any such policies. If your search is successful, you should check the policy terms so that a claim can be made as soon as possible. Delay may prejudice your rights under any insurance policy. Insurers do not backdate legal expenses cover. Insurers may prefer panel solicitors of their own to deal with the matter. If you would prefer us rather than panel solicitors to act for you, you should inform your insurer, and contact us if they attempt to insist that you use their panel solicitors.

If you do not have insurance it may be appropriate to look into the availability and cost of “after the event” cover for your and / or your opponent’s legal costs. If you are interested please let us know and we can make enquiries on your behalf at an appropriate stage.

We may consider entering into a damages based agreement (sometimes referred to as a contingency fee arrangement) or a conditional fee arrangement with a client after we have investigated the matter and undertaken a risk assessment. It may also be possible, in appropriate cases, to obtain third party funding. There is a wide variety of potential ways in which disputes can be funded outside of normal fee-paying arrangements. Each has its own merits and drawbacks, and may or may not be suitable for any one particular case.

## **26. PRESERVATION OF ‘e’ AND OTHER DOCUMENTS**

It is vital that you retain all documentation – whether in hard copy, electronic or other form – which may touch upon that dispute. The courts have shown an increasing willingness to impose sanctions against parties who destroy, delete or lose relevant documents (electronic and others) or allow that to happen. It is therefore essential that you ensure that any documentation which touches on the dispute and which might normally be destroyed or deleted in the ordinary course of business is retained, and that as needs be your document retention policy is adjusted.

## **27. THE OPENING SHOTS OF A DISPUTE**

The courts expect many aspects of a dispute to be aired between the parties through correspondence before commencing court proceedings in accordance with any applicable practice directions and/or pre-action protocols. Failure to comply with such protocols can lead to adverse costs consequences, as can a more general failure of a party to act reasonably and sensibly.

## **28. COURT PROCEDURES**

The current keynotes for court procedures are as follows:

- the courts are to deal with each case justly, and to that end each case will be actively managed by the courts;
- each case should be dealt with in a fashion which is proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party;
- each case should be dealt with expeditiously and fairly;
- the courts are insistent that their directions about a case should proceed are followed by the parties;
- the rules encourage settlement of disputes, largely by exposing parties to the risk of enhanced interest and costs entitlements if a party’s claim (or defence) is upheld by the court on terms better than have been offered during settlement negotiations;
- the courts encourage settlement negotiations at all stages of a dispute, whether informally or more formally, such as through a meeting mediated by an independent third party.

Parties who do not comply with the rules are more likely to be sanctioned by way of adverse costs orders, which usually have to be paid immediately. Because the courts now require cases to move quickly, and because parties are expected to set out the basis of and amounts of their claims in detail at an early stage, costs tend to be front-end loaded.

We will make every effort to ensure that the court process is as efficient as possible, but there are significant aspects of it outside of our control.

## **29. COSTS ENTITLEMENTS AFTER COURT PROCEEDINGS START**

In low value cases (generally those involving a claim for less than £10,000), the amount of costs that a successful party is entitled to recover from the losing party is fixed by court rules. These fixed costs are usually very significantly lower than the costs that the successful party will incur in obtaining judgment in their favour.

Outside of these cases, the general rule of thumb is that a successful party is entitled to recover between 50% and 70% of their legal costs and expenses.

If costs entitlements are not agreed by the parties, the court will normally award costs by reference to any approved budget or a fixed hourly rate depending on the lawyer(s) involved. The rates allowed will normally depend on each lawyer’s individual qualifications or experience. It will also depend on the location of the parties’ solicitors; due primarily to overhead cost differences the rates allowed for us will be lower than the rates allowed, for example, for a London firm.

The following cautionary points should be noted:

- Some forms of litigation have different presumptions in relation to the recovery of costs. We will advise you if such a presumption applies to your case.
- Costs are in the discretion of the court, which can be exercised arbitrarily.
- Even if litigation is successful, occasionally the losing party may not be ordered to pay the successful party’s costs.
- Most cases settle on terms agreed with the other party. These agreed terms may fix the amount of recoverable costs or provide that no costs may be recovered.
- While a court order may oblige a losing party to pay money to the successful party, there is no guarantee that the losing party will be able to afford to make payment in accordance with that order.

**Prettys Solicitors LLP**

January 2024