

TERMS OF BUSINESS

HUGHES SHAUGHNESSEY MCFARLANE LIMITED trading as CLEARWAY LEGAL ("Us", "We", "Our")



Hughes Shaughnessy McFarlane
Solicitors

Clearway.legal

Our aim is to establish a good long term relationship with our clients by providing a quality, friendly and efficient service representing value for money. To assist us in meeting this objective we believe it is important to establish at the outset the basis on which we shall undertake your business. The purpose of these Terms of Business are to establish our commitment to you by explaining how we operate and in exchange what is expected of you. We hope this will ensure that communications between us operate to our best advantage.

To enable us to act in your best interests we do ask that you provide us with all information and documentation which is relevant and requested of you as soon as possible. In providing us with this you should not assume that we have knowledge of any relevant factual matters or background and if in doubt you should explain matters to us.

Any instructions or changes to instructions should be confirmed to us in writing to avoid any misunderstanding.

In the absence of specific contrary instructions from you we shall be entitled to assume that those who represent themselves having authority to instruct us on your behalf have such authority. In particular, if there are joint clients, for example husband and wife or partners then we shall assume that we may take instructions from either of them. Similarly, if the client is a limited company we shall assume we may take instructions from any officer of that company and if the client is a partnership that we can take instructions from any one of the partners.

This Terms of Business shall

1. Personnel

The provision of a quality service requires team work from partner level to office junior and there will be a number of people involved in delivering our services to you except when you have instructed a Consultant working under Clearway Legal. The letter which accompanies our Terms of Business will detail the person who shall have overall responsibility for the work being undertaken on your behalf together with the solicitor specifically dealing with your work and the member of staff with day to day responsibility for the conduct of your work.

Your business will be handled by Mr Paul Hughes, Mr Ian McFarlane or Mr Mohammed Desai to whom your instructions should be addressed. They can be contacted during the office opening hours Monday-Friday 9:30am – 4:30pm (the "Standard Office Hours"). If you have any difficulty in making contact, then you should speak with Secretary Shauna Taylor (shauna@hmsolicitors.co.uk) or Libby Docherty (libby@hmsolicitors.co.uk) who may be able to assist with your specific query or who will direct your query to the solicitor acting for you for action. Consultations during or out-with the Standard Office hours are available by prior arrangement.

2. Relationship between Clearway Legal and Hughes Shaughnessy McFarlane Limited

Clearway Legal

On 1 May 2023, Hughes Shaughnessy McFarlane Limited adopted a new trading name; Clearway Legal. This is a bespoke service offered by some of our consultants at Hughes Shaughnessy McFarlane Limited in order to create an additional recognisable brand. You will be made aware of this from your initial contact with the firm. All work conducted via Clearway Legal will form part of the services provided by Hughes Shaughnessy McFarlane Limited who will be responsible for all legal liabilities and obligations. As Clearway Legal is simply a trading name, our client account and other relevant accounts/portals are still held in the name of Hughes Shaughnessy McFarlane Limited and you may also find references to Hughes Shaughnessy McFarlane Limited within certain documents that you receive from our consultants who provide legal services via Clearway Legal. If there is any aspect of the trading name that you are unsure of or require further assistance with then please do not hesitate to get in touch with us

3. Good communications and instructions

It is important to us that you are well informed about the work being undertaken on your behalf and its progress. We shall, by way of letters (if and when required), e-mail, telephone communication and sometimes explanatory leaflets, provide you with an explanation of what we are doing on your behalf and why. We will keep you informed of all developments which, in our professional opinion, we consider to be significant. We will also provide you with copies of any correspondence or documents which are of particular significance, for example a copy of the contract in the sale or purchase of a house. This does not mean that we will provide you with copies of all our correspondence and papers, nor that we will contact you regularly to advise you that no progress has been made. If you are uncertain about what is happening with your transaction or have not heard from us for more than a reasonable period of time, then please contact us for an update. As you will appreciate on many occasions we are dependent on other parties responding to our enquiries and what can be perceived as a delay is where a response is being sought from the party concerned. You can be assured that we equally keen to ensure that your transaction is completed effectively and efficiently so will communicate with the relevant parties to ensure this aim is met.

4. Standard Office hours

9:30 am – 4:30pm Monday – Friday

Email Addresses:

Hughes Shaughnessy McFarlane

ian@hmsolicitors.co.uk

nathan@hmsolicitors.co.uk

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adam@hmsolicitors.co.uk

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shauna@hmsolicitors.co.uk

margaret@hmsolicitors.co.uk

Clearway Legal

mohammed@clearway.legal

5. Money Laundering

The Terrorism Act 2000, The Proceeds of Crime Act 2002 and The Money Laundering Regulations 2017 (as amended by the Money Laundering (Amendment) Regulations 2019) require us to be satisfied as to the identity of our clients and to the source of any funds passing through our hands. 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”.

To ensure that we are compliant with Anti Money Laundering requirements, we will ask you to provide identification evidence. We use a digital **ID, Source of Funds and Source of Wealth** platform known as **AMIQUS**. The regulations do not allow us to start work on your behalf until you have provided the appropriate identification details through the **AMIQUS** platform **and** we have received a satisfactory **AMIQUS Report**. If we do not receive same from you it is likely that we cannot continue to act for you and will require to withdraw from providing you with our services.

We are unable to accept payments in cash at our offices or paid directly into our bank account. Payments can either be made by personal cheque or by bank transfer to our client account (details are which are below and should always be confirmed verbally). By signing this Terms of Business, you confirm that any payment made by you will be from you, via a UK bank account in your name. If the funds come from any other source it may take a minimum of eight working days and a maximum of forty days for us to obtain the necessary clearance from the authorities before we can use that money for your transaction. This will inevitably result in delay and additional costs to you. **It is essential that you complete our requests through the AMIQUS platform (via the link sent by us) immediately and that you provide all and additional evidence requested by us in relation to your Source of Funds and Wealth immediately.**

Please note you must not send funds to us until such time as we request that you do.

We would underline the fact that we are required to report any reasonable suspicion which we may have about the **Source of Funds and the Source of your Wealth** for any particular transaction to the National Crime Agency (the “NCA”).

Therefore, if you do not demonstrate, in terms of The Money Laundering Regulations, the **Source of the Funds** in relation to your transaction or if you cannot demonstrate the **Source of your Wealth**, in terms of the Regulations, a report will be made to the **National Crime Agency**. It is a requirement of the legislation and regulations that a report be made and in this regard, we have no discretion.

If we make such a report, known as a Suspicious Activity Report (SAR) we are obliged not to inform you that such a report has been made until authorised to do so by the National Crime Agency (NCA). We cannot proceed with your transaction until we are told otherwise by the NCA. NCA have 7 days to make a decision about whether or not we can proceed with your transaction and thereafter it can impose a further 30 day holding period.

It is vital that at the outset of your dealings with us you provide us with full, frank and clear instructions with regard to the **Source of your Funds** and, if required, the **Source of your Wealth IMMEDIATELY** upon request.

Please note that our **AMIQUS Report** will search independent third party records including your Bank and or Building Society Accounts, your Police Record, National Media, the Electoral Roll, Experian, Equifax and other credit agencies, Companies House, Registers of Scotland and UK Immigration and Passport Control Offices, other third parties may be searched. An Image Integrity test will be required by **AMIQUS**. These reports are confidential to us and, therefore, the results of the said report shall not be disclosed to you. The cost of these reports shall be reflected in your estimate.

6. Tax Advice and Taxation

We do not provide tax advice. In the event that we conduct business or work on your behalf which gives rise to a potential tax liability, other than Land and Buildings Transaction Tax and Additional Dwelling Supplement or Inheritance Tax, it will be your responsibility as an individual, partnership, company or trustee to obtain the appropriate tax advice from your tax adviser or accountant. By your acceptance hereto you acknowledge your obligation to seek tax advice from your tax adviser or accountant when appropriate.

We would direct your attention to the capital gains tax provisions. Where a gain is realised by you on the disposal of a property which has been your sole or main residence throughout your period of ownership then it is exempt from any Capital Gains Tax. If on the other hand you own more than one property and the house which is being sold is not your main residence then there is a possible liability for Capital Gains Tax and the details of the gain require to be reported to the Inland Revenue / Revenue Scotland.

Similarly, if you are purchasing property and it is not being purchased for your own personal occupation then any rental income you receive from the property falls to be treated as income for income tax purposes and requires to be reported to the Inland Revenue / Revenue Scotland. Please obtain your own tax advice in this regard.

7. Land and Buildings Transaction Tax and Additional Dwellings Supplement Return

In the event that we are instructed by you in the purchase of property/land you hereby authorise and instruct us to act as your Agents in the submission of the Land and Buildings Transaction Tax / Additional Dwelling Supplement return electronically online. Please note the information contained in the return will be information provided by you and therefore you should be aware that if you agree an apportionment of the purchase price of a property between heritage and moveable items i.e. carpets and white goods, you may be called upon by the Inland Revenue / Revenue Scotland to justify the information you have provided.

8. Additional Dwelling Supplement

Please note if you are buying a property additional to one you already own, you will be liable to pay a supplement of 6% of the purchase price (subject to change) in addition to any LBTT payable in respect of the purchase price. Please also note that Additional Dwelling Supplement applies equally to Limited Companies and Limited Liability Partnerships as to individuals. Please seek your own independent tax advice here.

9. Factors

If a property management factor is in place for the sale of your property then we confirm we do not have facilities to hold a retention and will therefore provide the factors with your forwarding address to allow the factors to contact you directly with regard to your final common charges account, for which you will remain liable.

10. Internet Fraud and Theft

We are fully aware of the significant increase in internet fraud and theft and in particular the interception of email correspondence by criminal organisations between solicitors, banks and clients. In order to protect you from this serious criminal activity please note the following:-

- If you send your bank account details to us by email we will make a security telephone call to you to confirm the details;
- Where we send an email providing our client bank account details we will never send a second or subsequent email requesting you send funds to a separate/different account from that already advised to you;
- Please be vigilant in relation to internet fraud and theft and in particular unusual email correspondence. If in doubt telephone our office to confirm the content of any email which raises suspicion.

11. Payment of Bills

Except as otherwise detailed in this agreement the firm reserves the right to require payment of fees and outlays due in connection with any property transaction seven days prior to the completion of that 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 sale before remitting the fee proceeds to you. Notwithstanding the foregoing the firm may render its fee at the end of a matter or may render payments to account if that is appropriate. Payments of fees, disbursements or expenses are due within 30 days of the date of invoice and we will be entitled to charge interest on the sum overdue from due date until payment at 2% above the base lending rate of The Royal Bank of Scotland plc.

You are responsible for payment of our charges whether or not the matter proceeds to completion unless otherwise agreed in writing.

If you do not pay our account on time we reserve the right to stop working on your behalf and to charge you for the full amount of work we have done for you.

Payment is due within 30 days of the date of the account. If not paid within this time, we reserve the right to charge interest on the whole sum overdue, at 4% over the Bank of Scotland Base Rate. Notice is given to you that our Client Bank Account is presently with Clydesdale Bank plc and, in addition, in the event that funds are invested on your behalf this may be with Clydesdale Bank plc. At our discretion, we can accept payment of expenses by credit card for which a 2% fee is payable, however, payment by Maestro/Switch is free.

Bank details:-
Account Name: Hughes Shaughnessy McFarlane Client No 1 Account
Sort Code: 82-20-00
Account No: ****7361
Clydesdale Bank plc, 30 St Vincent Street, Glasgow, G1 2HL

To avoid the risk of fraud, our full bank account details will be given to you prior to settlement to enable you to transfer the required funds to us.

12. Accounting to You

Where sums are due to you following on a transaction, we aim to account to you within 5 business days of the funds clearing our account, or the completion of the transaction, whichever is the latter.

Where we hold credit balances in your name, or in the name of a Limited Company/partnership with which you are involved, you hereby authorise us to transfer funds among your ledgers for the purposes of accounting to you properly. Additionally, we may ask for your confirmation by email as required.

13. Conflict of Interest

We undertake to carry out any matter in accordance with all appropriate professional standards and with due integrity. We will notify you immediately if we become aware of any conflict of interest with you and take steps to resolve that conflict of interest promptly.

14. Confidentiality

We will not disclose to any person any confidential information relating to you or to any matter handled by us on your behalf except (a) in the proper conduct of the matter or (b) if such information is in the public domain otherwise than by reason of improper disclosure by us or (c) where we require to do so by law or by the rules of any applicable body or regulatory authority. If on your authority we are working with other professional advisors we

will be entitled to assume that we may disclose any such confidential information to them. We may refer to you as our clients publicly and may refer to your transactions on business only in so far as the information is in the public domain or otherwise with your agreement.

15. Copyright and Third Parties

All work products whether or not in writing and all intellectual property rights and documentation (including working papers) developed by us or used by us during the course of the work carried out for you will be and will remain the sole and absolute property of the firm. Any advice given in documents prepared for you are for your use alone and may not be copied or used by any third party without our express written consent. We may adapt, develop or use such work products for other clients and on other engagements. We may destroy or retain them without reference to you. We will store title deeds and original signed documents for you by prior agreement but we may charge you for this service.

16. Mortgage Offers and Conditions

Please note that we do not provide financial advice in any shape or form other than incidental advice and executry work. Where you are purchasing a domestic property you will be provided with the terms and conditions of your mortgage by your mortgage provider and you should read these carefully and raise any questions you have with the bank, your mortgage broker or financial adviser. If you do not receive the terms and conditions of your chosen mortgage please advise us immediately whereupon we will obtain a copy for you and send it to you. Every mortgage in Scotland is subject to Schedule 3 to the Conveyancing & Feudal Reform (Scotland) Act 1970, as amended which places obligations on the Debtor. A copy of the Schedule contained in the obligations will be included in the terms and conditions sent to you by your mortgage provider. If you have any questions with regard to the obligations please raise them with the bank, your mortgage broker or financial adviser. Please note that the terms and conditions of the product you have chosen will be as a result of advice you have received either from your mortgage provider or an independent financial adviser. Any questions with regard to the product therefor should be directed to either the mortgage provider or your financial adviser. Please always be aware that if you do not make payment in respect of your mortgage arrangements to your mortgage provider or if you breach the terms and conditions of your mortgage your home may be repossessed and you may be evicted.

17. Client Funds

Cleared funds – the Law Society of Scotland, who are our governing body, have issued guidelines to all Solicitors on the vexed question of cleared funds. At the heart of the problem is that any cheque is not actually money, it is only a promise that the bank will pay money in exchange for the cheque. The way that the bank clearing system works means that it can take up to five banking days for the promised money to be deposited in our bank account. If the firm are to send out a cheque on the strength of any uncleared cheque and for whatever reason the uncleared cheque does not clear this could lead to the firm being closed down by the Law Society.

In the light of this guideline we have required to implement stringent standard procedures for all transactions that cannot be departed from. The procedures are as follows **(albeit that this procedure has now been substantially superseded by Online Banking Facilities)** :-

- If we receive funds by cheque whether from you or from a mortgage lender we will need the cheque no later than five banking days prior to the completion date.
- 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 five banking days.
- As soon as funds are cleared in our account clients can request that the free proceeds be electronically transferred via the banking system to their nominated account under deduction of our bank's charges for this service.
- In many instances where we deal with married couples, our clients have separate Bank Accounts from their spouses. Please note that it is our practice, when requested so to do, to make payment to our married couple clients jointly or to one or other of them where requested.

Through our Corporate Online Banking facility we process our own CHAPS and Faster Payments payments. Please note for each CHAPS or Faster Payment payment processed during the course of the work that we are carrying out for you there will be a fee of up to £35 plus VAT. (Please be aware that Banks may also charge CHAPS fees for monies sent to us on your behalf).

The implication for house buyers is that their mortgage will start five banking days before the keys are released and for house sellers that their mortgage will be redeemed five banking days after they have parted with the keys.

In certain circumstances with the consent of the purchaser/seller and their Solicitors certain transactions can be settled by a banking system known as Chaps transfer. This means the transaction can be settled using cleared funds. If you would wish us to seek agreement from all parties involved to effect the settlement using this banking system you must inform us immediately. Please note the bank make a charge for this service.

Any money belonging to you and received by the firm in the course of dealing with your matter which is not required for fees or disbursements shall be either (1) held by us in accordance with the provisions of the Solicitors (Scotland) Account rules (in which event any interest accruing thereon shall be accounted for to you in terms of these rules) or (2) if you so direct remitted to you immediately on receipt thereof or otherwise applied as you may direct.

18. Investing Your Money

The Law Society of Scotland accounts rules require that, having regard to the amount and the length of time for which we hold your money that it should, if reasonable, accrue interest. However your money is not required to be invested by us if it would earn less than the Law Society prescribed rate which is currently £100.

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 on fees or expenses where (a) the amount of interest earned would have exceeded the prescribed rate and (b) there is more than seven days between the funds being cleared and the cheque being paid out

As the Bank of England base rate, due to the downturn in the economy moves towards zero it plainly makes no financial sense to incur an administration cost to invest your funds. Accordingly until further notice and until such time as interest rates recover we will not invest your funds, where this would be to the detriment of your financial position.

In the absence of a written instruction to the contrary the firm will not be required to open separate investment accounts for clients 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 administrative fee of £25 plus VAT will be charged when the account is closed.

19. 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 require to pay us all fees and outlays and expenses incurred prior to such termination and due to us in accordance with this letter 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.

20. Client Satisfaction

Finally, our aim is to give complete satisfaction in the service we provide to all of our clients and to monitor the level of client satisfaction and if you have any comments or concerns about the manner in which the work is being or has been carried out on your behalf please contact either our Mr Paul Hughes or Mr Ian McFarlane who are our client relations partners who will be pleased to hear from you. Mr Hughes or Mr McFarlane will ensure that any such complaint is fully investigated and you will receive a response as soon as reasonably possible. If you remain unsatisfied you can of course contact The Scottish Legal Complaints Commission, 10-14 Waterloo Place, Edinburgh, EH1 3EG.

21. Closing and Destruction of Files

Please note that upon the conclusion of the work you have instructed us to carry out your file will be closed and stored by ourselves using our chosen storage scheme, for a period of time. Files will be destroyed after a period in storage and in conjunction with timescales laid down by The Law Society of Scotland. In general the period of storage will be 10 years under exception of property sale files (destroyed one year after completion) and general correspondence files (5 years after storage). By your acceptance hereof you consent to the storage and destruction of your files using the foregoing procedure.

22. Invalidity

If any provisions of this terms of business is or becomes invalid, illegal or unenforceable the validity or legality or unenforceability of the remaining provisions will not in any way be affected or impaired.

23. Law and Jurisdiction

This terms of business is governed by and shall be construed in accordance with Scots Law and are subject to the non-exclusive jurisdiction of the Scottish Courts.

24. Acceptance of terms of business

We would be grateful if you would email to confirm your acceptance via email. Unless otherwise agreed this terms of business apply to any future instructions you may give to us. In the event that we do not receive a signed copy from you your continuing instructions to us will confirm acceptance of these terms

HUGHES SHAUGHNESSY MCFARLANE LIMITED

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