



Terms of Engagement and Client Care Information

Introduction

This summarises the standard terms on which we accept instructions as barristers, the basis on which our professional fees are charged, and other relevant information. Unless we agree otherwise in writing, these terms of engagement will govern our relationship. By instructing us to act for you, you will be deemed to have agreed to them. If you have any questions about these terms, please do not hesitate to contact our office.

Client Care and Service Information

The obligations lawyers owe to clients are described in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ("Rules") and set out below.

Whatever legal services your lawyer is providing, he or she must;

- Act competently, in a timely way, and in accordance with instructions received and arrangements made.
- Protect and promote your interests and act for you free from compromising influences or loyalties.
- Discuss with you your objectives and how they should best be achieved.

- Provide you with information about the work to be done, who will do it and the way the services will be provided.
- Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
- Give you clear information and advice.
- Protect your privacy and ensure appropriate confidentiality.
- Treat you fairly, respectfully, and without discrimination.
- Keep you informed about the work being done and advise you when it is completed.
- Let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the Rules. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system. If you have any questions, please visit www.lawsociety.org.nz or call 0800 261 801.

Acceptance of Instructions

We will accept instructions to act in compliance with the Rules when they are in an area of law in which we have the necessary current knowledge and expertise, there is no conflict, our office has the capacity to undertake the work required and the client commits to pay our fees and makes acceptable arrangements in that regard.

Professional Staff

Melissa Sandom is the Principal Barrister operating under MJS Legal Ltd and has general oversight of all services. Work will be delegated to employed barristers and law clerks as appropriate depending on their level of experience and specific expertise. Your letter of engagement will give you the details of the person managing your case.

Limits of our Service

Our services will not include investment, financial or tax advice. Any other limitations on my services will be as set out from time to time in correspondence to you.

Professional Indemnity Insurance and Lawyers Fidelity Fund

We hold professional indemnity insurance that meets the minimum standards prescribed by the New Zealand Law Society. The Lawyers' Fidelity Fund does not provide any cover in relation to a barrister sole as barristers do not hold client funds.

Direct Instructions

It used to be that a barrister was asked to act for a client by being instructed by a solicitor (lawyer in a law firm). This is generally known as an “instructing solicitor”. These requirements changed in 2015 and since then barristers have been able to receive direct instructions from a client in a number of areas i.e. without the involvement of an instructing solicitor.

Since the New Zealand Law Society has granted barristers approval to take direct instructions from clients, in most cases in our line of practice we will not require an instructing lawyer. There are some cases where it is required and there will be some cases where we consider it would be in the client’s best interests or in the interests of justice for an instructing lawyer to be retained. If we consider that an instructing lawyer is required, then we can arrange this for you. Before receiving any instructions directly, we are required by the Rules to advise you of our capacity in the area you have asked us to work in, our general advocacy experience, and whether there is any disadvantage to you in not using an instructing solicitor. The purpose of providing you with this information is because there is no instructing solicitor to discuss your choice of barrister with. Our letter of engagement will advise you as to whether we believe there is any disadvantage or not.

Payment of Fees

We charge for all work that we do, regardless of the outcome. This is because you will always receive valuable advice, even if the advice is that your case is not strong one.

Private rates

If your matter is **not** funded by Legal Aid private rates will apply.
The basis of my fees will be as follows:

- Unless otherwise agreed in writing, on a time and attendance basis. However, in calculating fees a range of other factors may also be applied in accordance with NZ Law Society guidelines, including expertise, importance, urgency, and the results achieved.
- Our standard hourly rates will be detailed on your letter of engagement. Rates are plus GST and disbursements. They are varied depending on the matter type. These hourly rates may be subject to change, usually on an annual basis. You will be advised of any change. Travelling time is charged at half of the applicable hourly rate.
- Disbursements, (e.g. third-party printing costs, court filing fees, couriers, process server fees, experts) will be in addition to our fees and itemised separately in our monthly invoices. We do not add any margin to these disbursements. Most disbursements will need to be paid for in advance or by you directly to the third party.
- We charge a fee for office expenses incurred in the ordinary course of providing legal services to you. These include general office expenses such as the cost of opening and maintaining a file, telephone costs and in-house printing. Generally, this is a one-off fee of \$40.00 (plus GST) on your first invoice. However, if your matter becomes protracted, additional office expense charges may be required. We will let you know in advance if this is necessary.

- All invoices are payable within 7 days of the date of the invoice unless you have made alternative arrangements with us in writing. We reserve the right to charge interest on any amount which is overdue. Interest will be calculated at the rate of 24% per annum, calculated at a daily rate, on any overdue invoices from the date payment was due. You will be liable for all costs associated with the collection and recovery of your overdue and unpaid account (including lawyers and debt collector's fees). This clause is intended to be for the benefit of, and enforceable by, any
- debt collection agency that we utilise under the Contracts (Privity) Act 1982.
- If our account to you or any part of it is overdue, we may stop work on your matter, or terminate our representation in a manner which is consistent with our obligations.
- Before any work begins, a deposit will often be required and paid to the trust account of a solicitor (either your instructing lawyer or our escrow agent), to be held in trust. The amount of this deposit will depend on the scope of your matter. We will ask clients to sign a separate escrow agreement which outlines the terms of the escrow agent, and which is based on a template provided by the New Zealand Law Society. Any funds held will be subject to the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the escrow agent will carry out due diligence and invoice you for any additional cost which will be deducted from amounts held in the escrow account on your behalf.
- We may also require you to provide security for fees and disbursements.
- We will invoice you on an interim basis throughout the course of your file, usually monthly and on completion of the matter, or termination of our engagement. We can deduct from funds held on your behalf with our escrow agent any fees, disbursements, or expenses for which we have provided an invoice.
- Although you may expect to be reimbursed by a third party for fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to us, if the third party fails to pay us.

Legal Aid

If your matter is funded by Legal Aid, important things to note are:

- Legal Aid is governed by the Legal Services Act 2011 and the associated regulations and administered through the Ministry of Justice.
- You must let the Legal Services Commissioner know if there is any change in your and your partner's contact details, employment status, family circumstances or financial details. If you do not do so, we are under an obligation to advise them of the change.
- We will send our invoices to the Legal Services Commissioner. We are not allowed to accept any other payments from you for the legally aided matter.
- Legal aid is not always free. You may be required to repay your legal aid grant. The Legal Services Commissioner will write to you about any conditions or repayment obligations that you may have in relation to the grant of legal aid and your rights as an applicant or recipient of legal aid.

- If you are in financial difficulty, have unexpected budget variations or prefer to pay at the end of your matter, there may be options to assist you. Our firm has partnered with JustFund to provide funding options. JustFund can provide financial assistance in the form of a loan to pay legal fees and repayment is only required once a property matter reaches settlement.

Further information can be obtained from our office or from the JustFund website at www.justfund.co.nz

Communication

As a matter of course, our office communicates with you by way of email. We will send documents, including letters, to your email. It is your responsibility to regularly check your email address. If this is not your preference, please discuss this with the person managing your case.

Our office represents many clients on a range of different matters. We can often be in court or attending with clients and cannot answer the phone. Other times we may be working on complicated matters and cannot be disturbed. Each client is a priority to us, and we need to give them our undivided attention while we are working on their matter. Please either leave a phone message or send an email and it will be replied to as soon as possible. If your matter is urgent, phone our office on 03-365-1899 and one of the other barristers or staff members may be able to assist.

Although we will report to you about any court events, including the date, time, place, and type, it is ultimately your responsibility to ensure you are at court when you are required. The consequence of not appearing at court can be that a Judge makes orders in your absence, especially if we are unable to get instructions from you.

Our obligation is to you and not your family and friends. We also cannot speak with any family members or friends about your case without your written approval.

If you are legally aided, please note this is a limited grant, which means it is not a never-ending resource. This means that we only obtain (generally) fixed funding to deal with each case. Simply put, excessive contact or requests for work to be done beyond the limits of the grant schedule can mean that you run out of funding.

Privacy and Confidentiality

We will hold in confidence all information related to your affairs which we acquire in the course of acting for you. We will not disclose any of this information except to the extent necessary or desirable to enable us to carry out your instructions, as expressly or impliedly agreed by you, or to the extent required by law or by the Rules including as necessary to protect our interests in respect of any complaint or dispute.

Sometimes the best results come from working with other specialists, if required, such as doctors, psychologists, and private investigators, to name some examples. You acknowledge that if such

experts are engaged with your agreement, and we provide information and documentation about your case to them, this will not amount to a breach of your privacy.

Conflicts of Interest

We are obliged to protect and promote your interests to the exclusion of the interests of third parties or ourselves as set out in the Rules. This may result in a situation arising where we have a conflict of interest.

We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Rules.

Termination of Retainer

You may terminate my retainer at any time and instruct a new lawyer. We may terminate your retainer in any of the circumstances set out in the Rules.

Files and Documents

Our records will be held electronically, and physical files used only for easy reference of certain documents and storage of original documents from time to time. Should you want to uplift your file at any stage, you are entitled to do so under principle 6 of the Privacy Act 2020. Reasonable notice will be required before collecting your file. This is to give us time to collate the information. There will be a reasonable charge for making this information available to you (copying/collating/sending) in compliance with your request. You will need to make this payment before the file is provided. Throughout the course of your matter, you will receive copies of relevant documentation and correspondence from our office. This can amount to a significant amount of email and attachments. I recommend you set up an electronic file so you can easily access this information in the future, rather than needing to request a copy of your file. We do not retain original documents once the engagement is ended. These will be sent to you unless you request them to be destroyed. You authorise us to destroy all files and records for this matter 7 years after our engagement ends if we choose to do so. We own copyright in all documents or work we create for your matter but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

Protection of Electronically Stored Data

Security of your personal data is taken seriously, and we recognise our professional and legal obligations to protect your confidential and personal information and maintain your privacy interests. Our staff use cloud-based online electronic storage, including Microsoft Office 365, OneDrive and Leap Practice Management System. Online cloud storage can never be completely secure. If any of your information is especially sensitive or confidential, please let me know and we can discuss security protocols.

Complaints

Client satisfaction is one of our primary objectives and feedback from clients on our performance is welcomed.

We are committed to resolving any issues of concern as soon as possible. Our procedure for handling any complaints by clients is designed to ensure that the issue is dealt with promptly and fairly.

If you have a complaint about our services or charges, we encourage you to discuss this with the person who has overall responsibility for your work. If you are dissatisfied after speaking with your primary contact, then please ensure that you contact Melissa Sandom, as Principal Barrister directly so she can address the matter. If you would prefer to contact her at the outset, then please feel free to do so. This step should occur before a formal complaint is made to the Law Society. In most cases any issues are usually the result of a miscommunication which can be resolved easily to both parties' satisfaction.

If you wish to make a formal complaint at any stage this should be addressed to the New Zealand Law Society Lawyers Complaints Service. They can be contacted on 0800 261 801 and they can provide information and advice about making a complaint.

If you are legally aided, then you can also raise concerns with the Grants Officer that wrote to you confirming your grant of legal aid.