

Portia[®]

Ebborn Law
Limited

CLIENT CARE STATEMENT



Portia's Commitment to
Gender Equality and
Equitable Access to Justice

WOMEN'S
EMPOWERMENT
PRINCIPLES
Established by UN Women and the
UN Global Compact Office



NOTE

This is an important document. It's also very long and full of legal jargon. We apologise for that.

It outlines both your rights and ours, and forms part of your contract with us.

These terms apply to any current and future work we do for you,
whether or not we give you another copy of them.

We are entitled to change these terms from time to time, in which
case we will send you an updated copy.

Our relationship with you is governed by New Zealand law and New
Zealand courts have exclusive jurisdiction.

Please take the time to read this document carefully and keep it safe for future reference.

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1. Services

- 1.1. The Terms of Engagement we have also provided you details the services we will provide for you are outlined in our letter of engagement along with any further instructions that you provide to us in writing (or that we record in writing).
- 1.2. In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other professionals in our firm.
- 1.3. There is a minimum standard that we must achieve when dealing with you. It is the law. As your lawyer we must:
 - 1.3.1. Act competently, in a timely way and in accordance with your instructions and any arrangements made
 - 1.3.2. Protect and promote your interests and act for you without any compromising influences or loyalties
 - 1.3.3. Discuss your objectives with you and how they may best be achieved
 - 1.3.4. Provide you with written information about the work to be done, who will do it and the way the services will be provided
 - 1.3.5. Charge you a fee that is fair and reasonable, tell you the basis on which fees will be charged, and tell you how and when you will be billed
 - 1.3.6. Give you clear information and advice
 - 1.3.7. Protect your privacy and ensure appropriate confidentiality
 - 1.3.8. Treat you fairly, respectfully and without discrimination
 - 1.3.9. Keep you informed about the work being done and advise you when it is completed
 - 1.3.10. Let you know how to make a complaint and deal with any complaint promptly and fairly.

2. Communications

- 2.1. We will obtain from you contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 2.2. We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.
- 2.3. You agree that we may provide you from time to time with a customer survey, which will be kept strictly confidential. At any time you may request that this not be sent to you.

3. Fees

- 3.1. The basis upon which we will charge our fees is set out in our Terms of Engagement letter. We will charge a fee that is fair and reasonable for the services provided, having regard to both your and our interests.
- 3.2. In determining the fee, the following things may be taken into account:
 - the skill, specialised knowledge and responsibility required to perform the service properly;
 - the importance of the matter to you and the results achieved;
 - the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
 - the degree of risk assumed by us in undertaking the services including the amount/value of property involved;
 - the complexity of the matter and the difficulty or novelty of the questions involved;
 - the experience, reputation and ability of the members of our firm working on your matter;
 - the possibility that acceptance of the particular instructions will prevent us from acting for other potential clients;

- whether our fee is fixed or conditional;
 - any quote or estimate of fees given by us;
 - any fee agreement entered into by you and us;
 - the reasonable costs of running our firm;
 - the fee customarily charged in the market and locality for work similar to yours.
- 3.3. If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs. Any fixed-fees are guaranteed, however the service provided will always be within a limited scope including a time limit of 12 months for the fixed fee, after which we reserve the right to charge a further fee.
- 3.4. Where our fees are calculated on an hourly basis, the hourly rates of the people we expect to undertake the work are set out in our engagement letter. Any differences in those rates reflect the different levels of experience and specialisation of our professional staff. Time spent is recorded in one-minute units.
- 3.5. Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).
- 3.6. In providing the Services we may incur disbursements and payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items such as search fees, court filing fees, registration fees, printing, postage, travel and courier charges) which are reasonably necessary to provide the Services. You also authorise us to make payments to third parties on your behalf which are reasonably required to undertake the Services (which may include items such as experts' costs or counsel's fees). These will be included in our invoice to you, shown as "disbursements" when the expenses are incurred (or in advance when we know we will be incurring them on your behalf).
- 3.7. Our advertised fees and hourly rates will always include Goods and Services Tax (GST).
- 3.8. You may request an estimate of our fee for undertaking the Services at any time. If possible we will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless specified, an estimate includes GST but will exclude disbursements and expenses.
- 3.9. Please note that our fees are reviewed from time-to-time and may change.

3.10. Legal Aid (where applicable)

- 3.10.1. The fees charged for Legal Aid are paid to us directly by the Ministry of Justice.
- 3.10.2. Where it is applicable you may apply for legal aid. If legal aid is granted, this will be referred to in our Terms of Engagement. In the event that legal aid is not granted you will be liable for our account charged at the private rate referred to in our Terms of Engagement.
- 3.10.3. In the case of Legal Aid and FLAS matters the fees charged and the services provided are dictated by law and we have no discretion to alter these. These fees and services are listed on the Scope of Work, which you will be provided with.
- 3.10.4. You must let the Ministry of Justice/Legal Services Commissioner know if there is any change in your and/or your partner's contact details, employment status, family circumstances or financial details.

3.11. FLAS – the Family Legal Advice Service (where applicable)

- 3.11.1. The fees charged for FLAS are paid to us directly by the Ministry of Justice. You will not be issued with an invoice.

- 3.11.2. This funding is available once in a 12-month period for each discrete matter (e.g. a Care of Children Act matter that involves yourself, the child or children stated in the RMS¹ record, and the respondent stated in the RMS record).

4. Payments

- 4.1. In most instances our fees must be paid in full in advance of the work being performed, or a sum (called "Security Against Costs") must be paid. In either case this money is deposited into the firm's trust account, which is lodged in the ASB Bank and is subject to strict New Zealand Law Society regulations.
- 4.2. We will send interim invoices to you as and when work is completed, and on completion of the matter, or termination of our engagement. Out-of-pocket expenses (disbursements) are to be paid by you immediately upon request but substantial out-of-pocket expenses will be asked for in advance.
- 4.3. Payment of invoices, where monies are lodged in our trust account, will be made automatically and you authorise us to make those deductions so long as they are made in accordance with the law and the requirements of the New Zealand Law Society outlined below.
- 4.4. Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of the account details by provision of (for example) a copy of a deposit slip, cheque or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details
- 4.5. A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided to you periodically and at any time upon your request.
- 4.6. Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time we will place them on call deposit with a bank registered under s.69 of the Reserve Bank of New Zealand Act 1989, subject to your having completed to the bank's satisfaction any request for information relating to the deposit or certification required by the bank. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 5% of the interest, will be credited to you.
- 4.7. Although you may expect to be reimbursed by a third party for our 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 in accordance with these Terms if the third party fails to pay us by the due date.
- 4.8. Due to our internal risk requirements under the Anti Money Laundering and Countering Financing of Terrorism Act 2009 we have adopted the policies outlined below.
- 4.8.1. We cannot accept cash for any form of payment. You should be aware that additional due diligence may be required for any movement or transfer of money to take place outside of our normal fees.
- 4.8.2. Monies received into our trust account must be paid via a registered trading bank or financial institution based in New Zealand.
- 4.8.3. Funds transferred out of our trust account will only be paid into a registered trading bank or financial institution based in New Zealand.
- 4.9. If a matter is subject to a legal aid grant, that grant must be approved as per the Terms of Engagement prior to work being undertaken.
- 4.10. Interest will accrue on accounts more than 14 days overdue at the rate of 25% per annum as from the due date until full payment has been received. **Please consider other forms of finance before relying on our firm to offer you a line of credit.** Other action to recover unpaid fees may also be taken and the cost of such recovery may be added to the account due by you. If payment is overdue we may also:
- stop work on any matters in respect of which we are providing services to you;
 - require an additional payment of fees in advance or other security before recommencing work;

¹ RMS is the computer system used by lawyers, Family Dispute Resolution mediators, Parenting Through Separation course providers and the Ministry of Justice to manage clients of the out-of-Court parts of the Family Justice System.

- recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

NOTE: We will charge you for any appointment no-show unless you have told us in advance that you cannot attend. This is absolutely non-negotiable, and is explained to everybody when they join the firm as a client.

5. Confidentiality and Personal Information

- 5.1. You have rights to privacy and confidentiality under the Privacy Act 2020, the Lawyers and Conveyancers Act 2006 and other legislation, and we commit to upholding those rights.
- 5.2. Confidence: We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:
 - to the extent necessary or desirable to enable us to carry out your instructions; or
 - as expressly or impliedly agreed by you; or
 - as necessary to protect our interests in respect of any complaint or dispute; or
 - to the extent required or permitted by law.
- 5.3. Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.
- 5.4. Personal information and Privacy: In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services. (Note: if you have a privacy statement on your website include reference to this)
- 5.5. Subject to clause 5.1, you authorise us to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.
- 5.6. We may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so.
- 5.7. The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact our Privacy Officer through support@portia.law or calling 0800 339 223.
- 5.8. The Financial Transactions Reporting Act 1996 requires us to collect and to retain information required to verify the identity of clients paying us privately. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as we consider to be required by law.
- 5.9. Please refer to the 'Compliance' section regarding information that may be required to be provided to third parties.
- 5.10. We take data sovereignty issues seriously and actively attempt to protect your information from foreign agencies. No personal data is stored in the Cloud, or is able to be lawfully intercepted by foreign governments.
- 5.11. You can view our privacy policy at www.portia.law/ethical.html.

6. Documents, Records and Information

- 6.1. Our firm maintains an electronic filing system and does not hold paper files as standard practice We will keep a record of all important documents which we receive or create on your behalf on the following basis:
 - 6.1.1. we keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills and deeds);
 - 6.1.2. at any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us;

- 6.1.3. we are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so or it is required under law.
- 6.2. We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under Privacy Act 2020 and any other law, subject to the Family Court Rules. Your documents will be provided to you on a USB stick or as printed originals (at our option). Please give us reasonable notice should you wish to do this. We may charge you our reasonable costs for doing this.
- 6.3. Note that documents relating to matters in the Family Court are confidential and must not be distributed or published without the express permission of the Court. Doing so could attract penalties, sanctions or charges and will be deemed a breach of the relationship of trust and confidence between you and our firm.
- 6.4. Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.
- 6.5. Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services seven (7) years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain files relating to will instructions and enduring powers of attorney, relationship property, long term leases and creating of trusts or matters where evidence may be required after the standard limitation period has expired unless this is no longer deemed necessary.
- 6.6. We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.
- 6.7. We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

7. Compliance

- 7.1. We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):
- Anti-money laundering (AML) and countering financing of terrorism (CFT) laws; and
 - Laws relating to tax and client reporting and withholdings.
- 7.2. We may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed.
- 7.3. To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf or other relevant persons to third parties (such as government agencies). There may be circumstances where we are not able to tell you or such persons if we do provide information.
- 7.4. Please ensure that you and/or any of the persons described previously are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

8. Conflicts of Interest

- 8.1. We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where we have a conflict of interest.
- 8.2. We have procedures in place to identify and respond to conflicts of interest or potential 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. This may mean we cannot act for you further in a particular matter and we may terminate our engagement. Please note that, depending on what has caused the conflict, we may not be allowed to explain it in detail.

9. Duty of Care

- 9.1. Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.
- 9.2. Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 9.3. Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.
- 9.4. Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.
- 9.5. Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

10. Professional Indemnity Insurance

- 10.1. Ebborn Law Limited (t/a Portia) is insured in a way that meets or exceeds any minimum standards as specified by the Law Society.

11. Limitation of Liability

- 11.1. To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm.
- 11.2. We do not accept liability for any loss arising from non-receipt of any communication, including email and other electronic communications. Email, voice messages, texts and other electronic communication sometimes might not work. We won't accept responsibility for this. If you have sent us something electronically but don't hear back from us, then it is your responsibility to check with us.
- 11.3. Even though you have an individual lawyer assigned to your matter, you need to understand that the whole firm is your 'lawyer' and everyone here is capable of helping you to some degree.
- 11.4. To be able to offer Legal Aid, FLAS and other fixed-fee work we need to have a clear understanding with you about what work that includes. We focus solely on the legal work needed to complete the tasks set out in the schedule/scope of work provided to you. This means **we retain the right** to decline appointments, phone calls, emails or other enquiries that are not relevant to completing that legal work if this is fair and reasonable having regard to the nature of the legal services to be provided and the surrounding circumstances.
- 11.5. A legal issue is one that requires advice about the law or that the Court might deal with. A parenting issue or a problem that arises because of poor communication is likely to be outside our scope of work. We encourage you to take advantage of counselling, mediation and the Parenting Through Separation course to help you deal with non-legal issues about parenting or communication.



**PLEASE
READ
THIS**

12. Termination of Retainer

- 12.1. You have no obligations (aside from paying any outstanding bill) to continue the contract you have with us. In other words you may terminate our retainer at any time.
- 12.2. We may terminate our retainer in any of the circumstances set out in the Rules including – but not limited – to:
 - 12.2.1. you not providing us with instructions in a sufficiently timely way;

- 12.2.2. failure to notify us in advance if you cannot attend a scheduled meeting or court appearances where you are required to be present;
 - 12.2.3. your inability or failure to pay our fee on an agreed basis
 - 12.2.4. you adopting a course of action against our advice (except in litigation matters), which we believe is highly imprudent;
 - 12.2.5. you not being honest with us, or not fully disclosing important facts. If relevant information is held back from us then we may terminate the contract on the basis that the solicitor-client relationship is no longer one of trust and confidence;
 - 12.2.6. you directing threatening or displaying abusive behaviour toward our staff or other people in our place of work.
- 12.3. If we terminate your retainer we will give you reasonable notice so you can arrange alternative representation and we will try to assist you to find another lawyer.

12.4. Retainer Terminated on Completion of the Family Legal Advice Service (FLAS)

- 12.4.1. There are two parts to FLAS. Once we have completed a part (either one or two) then the contract between you and the firm ceases.
- 12.4.2. You are permitted by law to seek the advice and assistance of a lawyer outside of the limited scope of work paid for by the Ministry of Justice for FLAS advice. However, if you wish us to act for you in a private capacity then we will charge an hourly rate.
- 12.4.3. You are absolutely entitled to appoint a different law firm or lawyer to assist you privately. After the initial session ends you are not required to continue using the firm's services in a private, legal aid or FLAS capacity.

13. Feedback and Complaints

- 13.1. Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact any of our staff, or email complaints@portia.law.
- 13.2. If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the Chief Executive or Principal Lawyer. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.
- 13.3. If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:

Lawyers Complaints Service

PO Box 5041
Wellington 6140
New Zealand

Phone: 0800 261 801 Email: complaints@lawsociety.org.nz

To lodge a concern: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form

To make a formal complaint: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint

14. Safe Workplace

- 14.1. Our policy is to protect our staff and clients from all foreseeable hazards.
- 14.2. Where there is a government health order in place regarding infectious diseases we will place our duties under the Health and Safety at Work Act over all else. This might mean additional safety requirements resulting in clients being restricted from accessing our physical offices.

- 14.3. It is very important to the firm that you have access to justice and our staff will work to ensure this happens when any restrictions are in place.
- 14.4. No activity that threatens the health, safety or wellbeing of our staff or clients will be tolerated.

15. Suspension of Service

- 15.1. If payments fall behind (or if legal aid is cancelled for some reason) then we'll stop working on your file and check with you how (or if) you want us to proceed.
- 15.2. We reserve the right to stop work on your retainer if interim accounts are not paid on time, the fixed fee for the next step of the matter is not paid, or a request for information or action remains unsatisfied.

16. Lawyers' Fidelity Fund

- 16.1. If any of our staff steal funds from you in the process of us performing legal services on your behalf then there is a fund set up by the New Zealand Law Society to provide compensation, up to a limited amount.
- 16.2. The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against loss arising from theft by lawyers.
- 16.3. The maximum amount to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

17. Legal Aid

- 17.1. You might have to pay your legal aid grant back, sometimes you might have to secure the grant against your property, and legal aid repayments are charged interest.
- 17.2. Also, there are some things we don't do for people on a grant of legal aid. For example, the firm limits the number of cases of legal aid funded matters it accepts at any one time under the Property (Relationships) Act 1976.
- 17.3. Legal aid is governed by the Legal Services Act 2011 and the associated regulations. Legal aid is administered through the Ministry of Justice by the Legal Services Commissioner. The firm will submit invoices in relation to your grant of aid to the Legal Services Commissioner. The Legal Services Commissioner will write to you about any conditions or repayment obligations that you might have in relation to the grant of legal aid, and your rights as an applicant or recipient of legal aid. You should be aware at this time that legal aid is not always free. In addition you might be required to pay interest on your grant of aid. You should read these letters carefully and keep them for later reference. You must let the Legal Aid Commissioner know if there is any change in you and/or your partner's contact details, employment status, family circumstances or financial details.
- 17.4. In most cases we do not actively undertake private work whilst a grant of legal aid is in place as this can be in contravention of Ministry of Justice (legal aid) requirements.

18. Any questions?

- 18.1. This is a complicated document that is the basis of any contract between us, so we will understand if you need any further explanation. If you have any questions about this client care statement please call the Branch Support Officer on (03) 339 2233 or speak with your lawyer.