

Terms of Engagement

1. Definitions

Unless the context requires otherwise:

- a) "Appointor" means the Solicitor instructing the Expert;
- b) "Expert" means the person appointed to provide advice and services, which may include the giving of expert evidence;
- c) "Client" means the person(s), firm, company, or public body on whose behalf the Expert is being instructed;
- d) "Assignment" means the matter(s) referred to the Expert for advice to which these Terms of Engagement apply;
- e) "Fees" mean (in the absence of written agreement to the contrary) the reasonable charges of the Expert, based on his or her normal hourly/daily rate for work of the type instructed and including VAT, where applicable;
- f) "Disbursements" means all reasonable and appropriate costs and out-of-pocket expenses incurred by the Expert, in carrying out the Assignment, including travel, refreshments and should an overnight stay become necessary, hotel accommodation. VAT will be charged where applicable.

2. The Instructions

The Appointer will:

- a) Provide the Expert with full and timely written instructions which clearly state:
 - i. Whether the Expert is being instructed on the Appointer's own behalf or that of one of the parties to the dispute, or as a single joint Expert pursuant to Civil Procedure Rule 35.7.
 - ii. The purpose for which the Expert's advice and services are needed, including a description of the matter in which they are being sought.
 - iii. Which factual aspects of the matter may be in dispute.
 - iv. Whether the advice and services are to be provided in accordance solely with information supplied or will require independent investigation by the Expert.
 - v. The precise kind of expertise called for.
 - vi. The particular questions that are to be addressed.
 - vii. Whether the Expert will be expected to confer with Experts instructed on behalf of other parties, with a view to reaching agreement on the issues or narrowing those in dispute.
 - viii. Whether the Expert is to prepare a report for the advice of the Appointer and/or his Client, or for the use in Court and if the latter, whether a draft version needs to be submitted first of all.
 - ix. Any time constraints for provision of the advice, the production of a report, etc.
- b) Provide the Expert with such basic additional information as names, addresses, telephone numbers and dates of incidents;
- c) Supply the Expert with good quality copies of all relevant documents;
- d) In the case of medical records, specify their location and identifying numbers and state whether consents, for the disclosure, have been given or are being obtained.

3. Obligations of the Appointor

The Appointor will:

- a) Inform the Expert by whom his or her Fees are to be paid and whether the Appointor needs to obtain authority to incur the estimated Fees and Disbursements before confirming the Expert's instructions;
- b) In Legal Aid cases:
 - i. Notify the Expert that a Funding Certificate or Legal Aid Order has been applied for, granted or amended.
 - ii. Apply to the Area Office of the Legal Aid Agency for prior authority to incur the Expert's anticipated Fees and Disbursements and immediately advise the Expert should this authority be refused.
 - iii. Apply to the Area Office for interim payments on account to settle the Expert's invoices within the agreed timescale.
- c) In privately funded cases, ensure that the Expert's Fees and Disbursements are paid within the agreed timescale, whether or not the Appointor has been placed in funds by the Client;
- d) Respond promptly to any reasonable request for the Expert for:
 - i. Clarification of instructions already given.
 - ii. Further information or documents.
 - iii. Permission to incur expense additional to that initially estimated.
 - iv. Authority to engage others to undertake part of the Assignment.
- e) Not alert or allow others to alter the text of the Expert's report in any way without the Expert's permission;
- f) Give prompt, written warning of every meeting or hearing that the Expert is, or may be, required to attend and immediate notification should they be cancelled;
- g) Keep the Expert informed as to the progress of the case and its outcome;
- h) Not use, or allow others to use, the Expert's report for any purpose other than litigation in the matter on which the Appointor has sought the Expert's advice and services.

The Appointor's Instructions are accepted by the Expert only upon the basis that, the Appointor gives to the Expert, full, timely and proper instructions, authority and information, which will enable the Expert to lawfully and properly carry out the Assignment and comply with the Expert's duty to the Court and that the Appointor will indemnify the Expert accordingly.

4. Obligations of the Expert

If the Expert is required to provide expert evidence, he or she becomes subject to the provisions of the Civil Procedure Rules/Criminal Procedure Rules/Family Procedure Rules that relate to Experts. In such circumstances, the Expert's primary duty would be to the Court and his or her evidence must be seen to be independent, objective and having no bias towards the party responsible for paying his or her Fees. Subject to these overriding considerations, the Expert will:

- a) At all times, both during and after completion of the Assignment, adhere to professional boundaries of confidentiality and raise with the Appointor, any conflict between professional boundaries and Appointor instructions, if it becomes apparent;
- b) Perform only those tasks for which he or she has the requisite qualifications and experience to undertake and the resources needed to adequately fulfil them within the allotted timespan;
- c) Promptly notify the Appointor of:
 - i. Any conflict of interest that would disqualify the Expert or render it undesirable for the Expert to have continued involvement with the case.
 - ii. Any requirement the Expert receives for the Appointor to employ additional expertise.
- d) Endeavour to make him or herself available for all hearings, meetings or other necessary arrangements for which he or she has received adequate notice;
- e) Not negotiate with the opposing party or their advisors, unless specifically authorised to do so by the Appointor or instructed to do so by order of the Court;
- f) If requested by the Appointor, provide before the hearing, full and complete details of his or her costs to trial;
- g) Not without good cause, discharge himself or herself from the appointment as Expert;
- h) At all times, both during and after completion of the Assignment, treat all aspects of it as confidential unless authorised by the Appointor to the contrary.

5. Fees and Disbursements

In the absence of any written agreement to the contrary:

- a) The Appointor who instructs the Expert does so as principal and shall be personally responsible for payment of the Expert's Fees and Disbursements, whether or not the Appointor has been placed in funds by the Client (or, in Legal Aid cases, by the Legal Aid Agency) and the Appointor shall pay them in full, notwithstanding any provisions of the Civil Procedure Rules/Criminal Procedure Rules/Family Procedure Rules, with regards to the amount, recoverability or otherwise and whether or not the full amount has been allowed in assessment of the costs of the case;
- b) Fees will be charged on a time-costed basis at the Expert's hourly rate ie £250/ hr plus vat applicable at the time, unless a fixed fee or some other basis of charging is agreed, in advance, between the Expert and the Appointor;
- c) The Expert may present interim invoices, at such intervals as he or she considers fit and payment of each invoice will be due within ninety (90) days of its presentation, subject to any written waiver granted by the Expert in Legal Aid cases;
- d) The Expert reserves the right to charge, to the Appointor, the cost and expenses (including legal costs) of recovering late payments and to charge interest at the rate, then in force, pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;
- e) If the Appointor does not make payment, when due, the Expert may, in addition, modify the payment terms so as to make all Fees and Disbursements payable in advance, or require the Appointor to give such assurance, guarantee or undertaking, as the Expert may reasonably require, to secure the Appointor's payment obligations;
- f) Until payment in full has been made by the Appointor, the Expert shall be entitled to retain all books, papers, reports, documents and other materials, whether or not these are the property of the Appointor and whether or not they relate to the Assignment in respect of which the Expert has been instructed.
- g) Non-attendance of client to a consultation appointment without 24 hours notice is invoiced at £150.

6. Disputed Fees

In the event of a dispute over the amount of the Expert's Fees or Disbursements, such sums that are not disputed shall be payable when due, irrespective of any counter claim that may be alleged. That part which is in dispute can then be referred for resolution to a mediator acceptable to both parties or if agreement cannot be reached, by using the services of the Centre for Effective Dispute Resolution (or similar organisation). In the event that the dispute is not resolved by means of negotiation or mediation, the Courts of England and Wales will have an exclusive jurisdiction in relation to the dispute and its resolution.