



LONDON EYE CLINIC LTD

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**GENERAL TERMS AND CONDITIONS RELATING
TO THE PROVISION OF EXPERT SERVICES
BY DR. MATTHEW STARR MD MB BChir**

June 2018

My services:

I profess expertise in ophthalmology.

Appointment as an Expert by a single instructing party.

The Terms and Conditions as for appointment as a Single Joint Expert will apply, as below, where applicable, with the exception that the minimum report fee will normally be £515.

Reports on complex issues or requiring the review of a large volume of records will attract a higher fee that will reflect the additional work necessary.

My minimum fee for an initial or follow-up report with interview and examination of the Claimant, is normally £515.

My minimum fee for a first factual report derived from documentary evidence, without interview and examination of the Claimant, is normally £515.

My minimum fee for a follow-up report derived from documentary evidence, without interview and examination of the Claimant, is normally £100.

My minimum fee for a report based on a joint meeting with another expert is normally £515.

My minimum fee for a report based on another expert's evidence is normally £750.

My minimum fee for a report involving a negligence claim is normally £750.

My minimum fee for a report based on a joint meeting with another expert is normally £515.

My minimum fee for a report based on responses to Part 35 Questions is normally £515.

My fees, as agreed and as stated herein, will be payable in full, notwithstanding any order limiting reimbursement.

Appointment as a Single Joint Expert, either by order of Court, or as a mutually acceptable expert (Pre-action Protocol 3.14)

For the avoidance of doubt, you have instructed me as principal, and not as agent for your client.

I shall regard my appointment by the instructing parties exclusively in the context of my overriding duties to the Court, as defined in Civil Procedure Rules (CPR) 1998, Part 35.3.(as amended) and interpreted in Code of Guidance on Expert Evidence, Master of the Rolls, December 2001

Even if not as a result of an order from the Court, my appointment by the instructing parties shall be as if the Court has directed as in CPR 1998, Part 35.7. I shall assume that it is agreed that both parties will receive my report, unless instructed specifically to the contrary by the Claimant's representatives.

Fee

My fees, as agreed prior to confirmation of instructions, or as ordered by the Court (prior to receipt of instructions as per CPR 1998, Part 35.8), will be the responsibility of the instructing parties, jointly or severally, unless the Court direct otherwise. My fees are payable within 3 months of receipt of the report. Deferred payment agreements shall not be conditional on the outcome of the claim. Deferred payment agreements will attract a higher fee (110% normal fee), and in no case will deferred payment be agreed beyond 18 months from the date of issue of my report, or the conclusion of the case, whichever be the sooner, other than in exceptional circumstances.

I reserve the right to seek security of my fees by:

- Requesting their prior payment into Court (CPR 1998 Part 35.8 (4) (b)).
- By requesting payment of fees in advance before release of the report.
- By seeking prior approval from the relevant funding body, before undertaking the work.
- By other agreed measures.

My fees, as agreed, will be payable in full, notwithstanding any order limiting reimbursement (CPR 1998 Part 35.4(4)).

All instructions, my report and all related documentation, are to be copied to all instructing parties and to myself.

**Reference at
Section 2**

My **hourly rate** for the preparation of my evidence, attending conferences, including travelling time, is £250. **5.2**

The **minimum fee** (excluding disbursements) for the report prepared in response to joint instructions is normally £515. Should a claimant fail to keep an agreed appointment, without giving more than one working day's notice, a cancellation fee of £125 will be payable, except in the most exceptional circumstances. A second failure to attend will attract a fee of £250. **5.2**

My **daily rate** for attending Court is £2625. That is the equivalent of 10½ hours at my hourly rate and includes preparation, and time spent travelling and waiting. **5.4**
Other travel time, exclusively allocated to the fulfilment of my instructions, is chargeable at my normal hourly rate. **5.9**

Where I am instructed to prepare for, and to attend, a hearing and, for whatever reason, those instructions are revoked, I shall make a cancellation charge calculated on the following basis: **5.11**

If cancelled with 5 or less full working days' notice, the full fee for the whole period of instruction will be payable.
If cancelled with 5-14 full working days notice, half the fee for the whole period of instruction will be payable.
If cancelled with more than 14 full working days notice, no fee will be payable

I reserve the right to seek payments on account. **5.14**

I reserve the right to make an application to the Court under CPR 1998 Part 35.14(2) - as amended - for directions to assist me in carrying out my function as an expert, including matters related to any failure to pay my fees as agreed, or any failure to respond within 28 days to my request for agreement to a particular step, where such failure obstructs my overriding duties to the Court. Statutory notice of such an application applies. I reserve the right to instruct legal advisers in respect of CPR 1998 Part 35.14(2) applications, and to be reimbursed on an indemnity basis for any legal fees that I may so incur.

Before issuing any joint report, I shall normally await written confirmation, from each instructing party, that Terms and conditions are agreed .

SECTION 2.

Model Terms and Conditions of Engagement recommended by the Expert Witness Institute

Introduction:

1.1 The Appointor(s) has/have engaged the Expert to advise or report in accordance with these Terms and Conditions of Engagement.

1.2 The Civil Procedure Rules 1998 (the CPR) including any protocol approved thereunder and any subsequent amendments, shall prevail over any part of this document which is inconsistent with the CPR.

Definitions:

2.1 Appointor(s) means the party or parties instructing the expert, which may be a solicitor, an insurance company, a Government department, a local authority, a corporate body, partnership or other firm or organisation and any individual who seeks advice or the provision of an expert report from the expert.

2.2 Instructions means the written statement of services required by the appointor of the expert including sufficient details of the relevant issue to enable the expert to comply with the Civil Procedure Rules 1998 and any order of the Court.

2.3 Court means any Court of Law, Tribunal or body concerned with the process of arbitration or dispute resolution.

2.4 Advisor means any expert who is retained to give advice on an issue before it becomes a matter for litigation under the CPR.

2.5 Party's Expert means an expert who is instructed to provide advice or a report by one or other of the parties to a dispute (claimant or defendant).

2.6 Single Joint Expert (SJE) means an expert who is appointed under the CPR Part 35.7 to submit expert evidence on a particular issue on behalf of all litigating parties.

2.7 The Client(s) means the parties, person(s), Government department, local authority, firm or company on whose behalf the appointor(s) has instructed the expert to advise or prepare a report for the court.

2.8 Advice means the expert's opinion on an issue which lies within his field of competence or expertise to assist the instructing solicitor in deciding whether or not to initiate court proceedings on behalf of the client.

2.9 Report means the written report prepared by the expert for the assistance of the Court in accordance with the CPR Part 35.10.

2.10 Fees & Disbursements means the expert's professional charges for carrying out the appointor's instructions together with all reasonable expenses incurred in discharging these obligations such as relevant out of pocket expenses including car mileage, first class rail travel, business class air fares, reasonable refreshments and hotel accommodation where an overnight stay is necessary, together with the cost of photocopying, reproduction of diagrams and drawings and other similar expenses incurred in the production of the report, as set out in more detail in Clause 5.

2.11 Legal Aid (Public Funding) means cases where the Legal Services Commission or such other governmental authority as may be involved is funding a party in legal proceedings.

The Appointor's/Appointors' obligations:

3.1 To provide clear written instructions and copies of all relevant documents.

3.2 Where an SJE is appointed, all appointors shall either issue joint instructions or agree to a single set of instructions. The SJE shall not start work until such instructions have been received. Any appointor may issue separate additional instructions to the SJE, in which instance he must send a copy to every other appointor.

3.3 To keep the expert informed of and ascertain his availability for all relevant court dates. Where there is more than one appointor, the appointors should agree as to who is to accept that obligation.

3.4 In legal aid cases not to instruct the expert to start work until the Legal Services Commission has granted prior authority, or the appointor is a contracted supplier with devolved powers in the relevant category of work.

- 3.5 To deal promptly with the Expert's requests for information and/or further instructions.
- 3.6 To promptly inform the Expert of the making of any Court Order affecting the Expert and supply the Expert with a copy thereof.
- 3.7 Appointor(s) are responsible as joint data controllers for responding to data subjects requests about personal data that is part of the legal case.

The Expert's obligations:

- 4.1 The expert's over-riding duty is to the Court and he must act with objectivity and independence in carrying out his instructions.
- 4.2 Only to accept appointments where he has relevant qualifications and experience.
- 4.3 To advise the appointor(s) of any conflict of interest (actual or perceived).
- 4.4 To use skill and care when carrying out his instructions.
- 4.5 When instructed to report to the Court, to do so in compliance with the relevant requirements of the CPR (including Practice Directions and any approved protocols) and within any agreed time limit.
- 4.6 When ordered to meet with an expert for an opposing party, to conduct such meeting in accordance with the CPR as defined immediately above.
- 4.7 To deal with written questions from an opposing party on his report within any time limit set by the Court, such replies to form part of the expert's report.
- 4.8 To deal with all other matters promptly and where appropriate, within any time limits agreed by the appointor or set by the court.
- 4.9 Unless otherwise agreed, to prepare an advice and/or report at a cost proportionate to the sums in issue. If in doubt, the expert should seek advice from his appointor(s) as to what is proportionate. Where the expert becomes aware that his costs are likely to exceed any estimate or quotation given at an earlier date, he must inform the appointor(s) immediately.
- 4.10 To make himself available for court hearings, conferences and other meetings.
- 4.11 To preserve confidentiality.
- 4.12 To remain objective and impartial.
- 4.13 When acting as an SJE, to conduct himself consistent with the principles of fairness and transparency.

Fees and Disbursements:

- 5.1 For the avoidance of doubt, no instructions can be accepted where payment is contingent on the outcome of the case. Where deferred terms have been agreed, that fact, together with a statement of interest or enhanced rates applicable to the appointment will be specified in Section 1.
- 5.2 The basis of fees and estimated date for delivery of advice/report are specified in the expert's terms.
- 5.3 Wherever possible, the fee shall be agreed in advance, or an estimate provided to the appointor(s), in which case details will appear in the expert terms.
- 5.4 The charging basis for attendance at a hearing (e.g. fixed fee or hourly/daily (and half daily) rate) is specified in Section 1.
- 5.5 My accounts are subject to value added tax (VAT) at current rates.
- 5.6 The point(s) at which invoices will be presented, and any period of credit granted are specified in Section 1.
- 5.7 Where the expert is appointed as an SJE unless otherwise provided for the appointors will be jointly and severally liable for the expert's fees.
- 5.8 The Expert's fees shall be paid in full regardless of the outcome of any assessment by the court.
- 5.9 Disbursements including travel and accommodation costs shall be charged at the cost incurred. They shall include, but not be limited to those listed at clause 2.10.
- 5.10 Where travel time is chargeable, that fact and the hourly rate is specified in Section 1.
- 5.11 Where a cancellation fee may be charged, that fact and the basis of charge are specified in Section 1.

5.12 Where questions are posed to an expert under CPR Part 35.6(1)(a) by a party other than his appoint or the party posing the questions will bear the cost of the time and any disbursements incurred in replying.

5.13 Where a fee note has been rendered, payment must be received in full before any additional instructions will be accepted.

5.14 Interim fees may be charged at any reasonable point, e.g., (but not limited to) on production of a draft advice or report. Where the expert reserves the right to seek payments on account, that fact is specified in Section 1.

5.15 I am not prepared to have my accounts subjected to assessment and look to the appointor to fund any assessment deducted relating to the Case at any time.

Disputes:

6.1 In the event of a dispute over fees, such part as is not disputed shall be paid within the agreed credit period.

6.2 Any dispute arising between the expert and appointor shall, if not resolved, be referred to a mediator agreed by both parties.

6.3 In the event that mediation does not resolve the dispute, it shall be referred to an arbitrator agreed by both parties. The arbitrator shall deal with costs in his award.

Miscellaneous:

7.1 The expert shall retain all intellectual property rights over his advice and/or report.

7.2 The expert should be identified by name.

7.3 These terms are not intended to cover the appointment of the expert as assessor to the court under CPR Part 35.15.