

The Expert Witness Institute

Guidance of Terms and Conditions of Engagement

From time to time the Institute is asked by members to give guidance and assistance in relation to terms and conditions for experts to use in dealing with their professional clients.

Because of the varied nature of work undertaken by members of the Institute it has been impossible to produce a “one size fits all” template for adoption by members.

What this document attempts to do is to look at the various issues that experts might wish to consider when drafting their own contractual document.

The Institute takes the view that it is very much better to have formal terms of engagement with professional clients. It avoids the possibility of any misunderstandings and, in the rare case where a dispute arises, form a proper basis for the matter to be addressed.

1. Who am I?

The document ought to make clear the full name of the expert and the nature of the expert services that are to be supplied. No expert should accept instructions which are outside his/her field of expertise and a clear description of the expertise of the expert is helpful.

2. What sort of cases do I want?

If the expert will only accept criminal cases, or civil cases, this ought to be mentioned

3. Instructions

It is usual to say that the expert will undertake to supply expert services in accordance with the instructions received from the client and in accordance with the terms set out below. This makes it clear that the responsibility for providing the relevant instructions and information lies with the instructing solicitor or lay client. You will expect to be given full, clear and proper instructions and to be given all relevant information.

4. Fees

How are you going to charge? If you charge by the hour, say so and set out the hourly rate for time spent on the case. Is there a fixed fee for particular cases? What circumstances would entitle you to increase this fixed fee?

Ensure that it is clearly stated that VAT is charged in addition.

Do you want to be able to commission extra work over and above the examination and report – specialist tests for example? Most solicitors will require you to seek prior authority but your terms should consider this.

What about travel? Do you charge at the full hourly rate? If not, at what rate? How will you charge for travel or other expenses?

Will you give an estimate? If you do, how will you reserve the right to charge more? In what circumstances?

When do you expect to be paid? 30 days from completion/submission of invoice? 6 months' time? 12 months' time? At the end of the case? Be very clear.

What about delayed payments? You ought to include reference to the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002. This is your authority to levy interest (should you wish to do so) on unpaid debts.

5. Legal Services Commission

Where you are undertaking work paid for by the LSC, where your fees constitute a disbursement, you ought to insist that the solicitor makes an application for interim payment as soon as possible. Your terms might include your assumption that the client or solicitor has the authority to incur you fees.

6. Assessment

Many experts take the view that they are not prepared to accept a reduction in fees if the fees are reduced or disallowed following Court assessment. If so, you should say so.

7. Cancellation

What happens if you have done some work on a case and then your instructions are withdrawn? You ought to make it clear that you expect to be paid for work done.

8. Questions/Discussions

Your terms should make it clear that you accept the requirement to answer questions under part 35 CPR and take part in discussions with any other expert in the case if ordered to do so. However you will require assistance from the solicitor in dealing with those issues as appropriate.

9. Trial

Set out your fees for attending court. Make it clear that a separate fee will be charged for work necessary to prepare for trial including conferences with counsel.

Most experts include the right to charge a cancellation fee if the trial is cancelled within, say, 14 days of the trial date of the whole, or proportion, of the daily rate. Imagine being warned for 5 days, and having to block out that time in your diary,, and then the trial gets settled two days before the trial date. Can you fill those 5 days with paid work? Probably not. Your terms must make it clear how you will charge in such circumstances.

10. Court orders

The Civil procedure Rules require your instructing solicitors to provide you with copies of all Orders which might affect you. Your terms should make it clear that you expect this to be done.

11. Termination

In what circumstances will you want to terminate the agreement? Failure to co-operate with you might be a ground if it prevents you from doing your job. Provision of misleading or false information might also be.

12. Negligence

Many terms of engagement seek to limit liability for work done by the expert. Some suggested words are to be found in the model agreement attached.

As stated at the commencement of this document, it is impossible to produce a standard template that will accommodate all users. However to assist in the understanding of these suggestions we attach a very basic form of standard terms. These can be used as a basis for individual redrafting and alteration.

The Institute takes no responsibility for giving legal advice to members on drafting of their own terms and conditions and it should not be assumed that the draft document

attached, and all or any of the terms set out therein is necessarily legal binding, if followed, in whole or in part.