

## **Terms and Conditions for Medico-Legal Work**

**Mr Iain Packham, on behalf of Iain Packham Ltd.**

### **1. General**

- a. The Following terms and conditions shall apply to the provision of medical reports and expert witness work by Mr Iain Packham, on behalf of Iain Packham Ltd. (“the Medical Witness”).
- b. These Terms and Conditions supersede any agreement made prior, whether written or oral, and may only be amended by the Medical Witness in writing.
- c. Where the Appointment is made on behalf of a “Client” by a Medical Referral Organisation or other Instructing Party, all references in the Appointment to “Instructing Solicitor” or “Instructing Solicitors” shall be construed as references to the Instructing Party, Instructing Parties or Agency.
- d. It is a condition of the Appointment that these Terms and Conditions have been agreed by the Instructing Solicitors. The Appointment will only be accepted by the Medical Witness in writing.
- e. Upon acceptance by the Medical Witness, this Appointment will constitute a legally binding contract between the Medical Witness and the Instructing Solicitor subject to the terms herein.

### **2. Fees**

- a. The preparation of a written report is chargeable for all time spent at an “hourly rate” is £350 per hour (charged in units of 0.1 of an hour rounded to the next 0.1 above) for all the time spent by the Medical Witness in connection with this appointment, including, but not limited to inspection of all relevant documentation and medical records, conferences with counsel, all investigations, travel time and preparing reports and telephone or written attendance on the Client and/or instructing Solicitors.
- b. The fee for a standard Personal Injury Report would usually be in the region of £700 to £1050, while the fee for a Clinical Negligence Case would usually be in the region of £1050 to £2800. The Medical Witness reserves the right to charge a higher fee based on the complexity of the report, the quantity of the medical records submitted by the Instructing Solicitor and the time spent in connection with this appointment in line with the “hourly rate”.
- c. All disbursements are to be reimbursed by the Instructing Solicitor. Disbursements will include first class rail travel, business class air travel, executive car hire, car mileage at £1.20 per mile, photocopying, postage and reasonable accommodation and subsistence costs (as required).
- d. If the Instructing Solicitors cancel their request for a Medical Report before completion, the Medical Witness shall be entitled to charge the Instructing Solicitors an appropriate fee reflecting the work and administrative time to the date of cancellation.

- e. Written notice of attendance at court must be received a minimum of 8 clear weeks before any court date. A non-returnable booking fee of £500 is required, payable on notification of any court date.
- f. A fee of £1400 will be charged for a half-day appearance in court of up to 4 hours (“Minimum Charge”). If the length of the appearance exceeds 4 hours then a daily rate of £2800 will be charged.
- g. The Instructing Solicitor shall provide prompt written notice of the cancellation of any court appearance or hearing and agrees to pay the fee in the event of such a cancellation, calculated as follows:

Date prior to earliest scheduled court appearance or hearing on which I receive written notice of cancellation	Cancellation fee per day booked
Fewer than 7 days’ notice inclusive	£2800
Between 8 and 21 days inclusive	£1400
Between 22 and 60 days inclusive	£560
61 days or more	No cancellation fee.

- h. The Instructing Solicitor shall provide prompt written notice of the cancellation of any consultation, meeting or appointment. If less than 48 hours’ notice of cancellation is given the Instructing Solicitor shall pay the full amount for the attendance at such consultation, meeting or appointment had it not been cancelled, calculated using the “hourly rate” as set out above and including any Disbursements actually incurred.
- i. If the Client fails to attend a confirmed appointment or cancels within 48 hours of the agreed appointment the Instructing Solicitor shall pay the full amount for the attendance at such appointment using the “hourly rate” as set out above and including any Disbursements actually incurred, typically £350.
- j. For the avoidance of doubt, in the event any cancellation fee applies, the Instructing Solicitor shall also pay all outstanding Disbursements in connection with the appearance or appointment that has been cancelled.
- k. In the event of non-payment of any sum due under the terms of the Appointment, the Instructing Solicitor shall reimburse all reasonable costs incurred in recovering such sums (including but not limited to the appointment of a debt collection agency and all associated costs).
- l. Whilst it is appreciated that the Instructing Solicitor may require the Client and/or a third party to meet the costs of the Fee, the Instructing Solicitor agrees be ultimately liable for the Fee and will pay the Fee in accordance with the terms of this Appointment.

- m. The “hourly rate” and any other fees may be reviewed from time-to-time. The Instructing Solicitors will be advised in advance of any increases to these rates, fees and charges.
- n. Invoice for Fees will be provided upon delivery of the report or provision of service. Payment will be due within 30 days of the date of the invoice (the “Due Date”). The Instructing Solicitor shall pay all amounts by bank transfer to the nominated account as detailed on the invoice within 30 days of the date of the invoice. The Medical Witness reserves the right at all times to require advance payment for work undertaken prior to supplying that work to the Instructing Solicitor.
- o. If any payment due to the Medical Witness under the terms of the Appointment is not paid by the Due Date, interest shall accrue on the overdue amount at the statutory rate applicable under the Late Payment of Commercial Debts (Interest) Act, plus any applicable fees. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment, whether before or after judgment. Interest shall accrue at the rate of 8% plus the Bank of England base rate for business to business transactions per annum from that date, on a daily basis on the overdue amount until paid.
- p. The Instructing Solicitor will notify the Medical Witness of any Legal Aid or other third party funding prior to the Appointment.
- q. If the Appointment is as a Single Joint Expert by the solicitors of both parties, both firms of Instructing Solicitors will be jointly and severally liable for the fees and disbursements. Where the Appointment is by an Agency which has itself been instructed by solicitors, both the Agency and its Instructing Solicitors will be jointly and severally liable for payment of the fees and disbursements.
- r. The Medical Witness reserves the right to charge VAT where applicable.
- s. For the avoidance of doubt, the Instructing Solicitor will be liable for all Fees payable under this Appointment.

### **3. The Instructing Solicitors Obligations**

- a. Instructing Solicitors:-
- b. Are responsible for giving adequate and timely instructions, and obtaining all relevant notes, records and investigations, and shall check that all relevant matters are addressed in the instructions and any reports;
- c. Shall provide the Medical Witness with, or procure the provision of, all information which might reasonably be expected to be relevant in enabling the Medical Witness to fulfill the Medical Witness’ responsibilities under this Appointment (“Information”) as and when it becomes available to the Client and/or the Instructing Solicitor.
- d. Shall check that the factual matter covered in the Medical Witness' report(s) and replies to any pre-trial questions are correct, appropriate and complete.

- e. Shall ensure that the Information provided or prepared by the Client or on the Client's behalf is complete and accurate in all material aspects, is not misleading and is updated as necessary.
- f. Shall inform the Medical Witness immediately if the Instructing Solicitor or the Client discovers or have reason to believe that any of the Information is, or becomes, untrue, incomplete, misleading or inaccurate in any material respect.
- g. Shall acknowledge that the Medical Witness shall, and is entitled to, rely upon all Information provided to the Medical Witness, that the Medical Witness shall not be responsible for the accuracy, omission or verification of any Information, and that the report will be provided only on the basis of the Information disclosed to the Medical Witness by the Instructing Solicitor.
- h. Shall confirm promptly in writing that the Fees and Disbursements are no higher than reasonably necessary for the purpose of litigation, bearing in mind the professional expertise of the Medical Witness.
- i. Shall obtain any approvals required from any other third party from whom the Instructing Solicitor may seek contributions in respect of my charges at the required times.
- j. Shall comply with and take all reasonable steps to assist the Medical Witness in complying with the Protocol and the Civil Procedures Rules.

**4. Duties to the Court**

- a. The Medical Witness will comply with the ("Protocol") published by the Civil Justice Council, CPR35, PD35, and PD Pre-Action Conduct. It is accepted by the Instructing Solicitor that the primary duty of the Expert Witness is to provide independent and unbiased evidence to the Court.

**5. Insurance**

- a. The Medical Witness is insured by Medical Protection Society in respect of all medico-legal work, policy number is 220627.
- b. The liability of the Medical Witness to the Instructing Solicitor and/or their Client for professional negligence (excluding any liability for fraud or willful misconduct) under or in connection with this Appointment shall not exceed the amount received by the Medical Witness for the services provided in relation to this Appointment.

**6. Right to Terminate**

- a. The Appointment is subject to the receipt of all the necessary and relevant information in sufficient time to prepare a response and payment of invoices as they fall due.
- b. The Medical Witness will notify the Instructing Solicitor promptly if:

- i. Instructions are not acceptable because, for example they require work that falls outside his expertise, impose unrealistic deadlines, or are insufficiently clear;
  - ii. Instructions are or have become insufficient to complete the work;
  - iii. It becomes apparent that the Appointment cannot be fulfilled;
  - iv. He is not satisfied that he can comply with any orders that have been made.
- c. The Appointment may be terminated by the Instructing Solicitors at any time by written notice in accordance with the Protocol. Where the instruction was made jointly, termination will be effective when written notice is received from all the Instructing Parties.
- d. Termination will not affect such entitlement to any sums payable under the terms of this Appointment accruing before the date of the termination.
- e. Upon termination, all documents and materials provided for the purpose of this Appointment shall be confidentially destroyed after a period of 2 months unless the Medical Witness receives a request in writing from the Instructing Solicitors to return such documents. The Medical Witness may securely retain for his records one copy of each document returned. All costs associated with the return or destruction of the documents are to be borne by the Instructing Solicitors.

**7. Intellectual Property**

- a. The Medical Witness will own the copyright in all reports and/or materials produced.
- b. The Medical Witness will retain the title to all reports and/or materials produced until full payment has been received in accordance with the terms of the Appointment. Subject to receipt of all payments due under the Appointment, the Client is authorised to use the same for the purposes of the matters contained in Medical Witness' instructions only.

**8. Confidentiality**

- a. All Information, facts, matters, documents and all other materials of a confidential nature which are received or created as a result of this Appointment will remain confidential (except insofar as they have been referred to when setting out the substance of the instructions in the report or as required by law).
- b. All documents, save for a copy securely retained by the Medical Witness, shall be confidentially destroyed after a period of 6 months from when the Medical Witness has discharged his duties under the Appointment, unless instructed otherwise by the Instructing Solicitor. All the costs for the destruction are to be borne by the Instructing Solicitors.

**9. Responsibility**

- a. The Medical Witness confirms that the work which is carried out in relation to this retainer will be his own and will not be delegated or sub-contracted to someone else.

**10. Governing Law**

- a. This Appointment and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this letter or its subject matter or formation.

**11. Joint Instructions**

- a. In circumstances where the Medical Witness is jointly instructed by Instructing Solicitors, both sets of Instructing Solicitors must sign and return a copy of this letter and completed schedule within seven days and ensure it is copied to all Instructing Solicitors. It is for Instructing Solicitors to resolve any disagreements the parties may have in relation to instructions.
- b. Each Instructing Solicitor will be jointly and severally liable for all the Medical Witness' fees and expenses.

**12. Conflict**

- a. The Instructing Solicitor has notified the Medical Witness in writing of all parties who have some limited involvement in this matter including Counsel and Solicitors and other Experts already instructed in this case.
- b. The Medical Witness confirms that he does not have an actual or potential conflict of interest in accepting this Appointment in respect of any parties so named and that he will let the Instructing Solicitor know without delay if he becomes aware of such a conflict.

**13. Force Majeure**

- a. The Medical Witness shall not be liable for any delay in the performance of any of obligations under this Appointment (and the time for the performance of any obligations under this Appointment shall be extended accordingly) if such delay arises from or is attributable to acts, events, omissions or accidents beyond the Medical Witness' reasonable control, including but not limited to, ill health, acts of God, or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, severe weather, and acts or omissions of subcontractors or third parties.

Please sign and return a copy of this letter to the Medical Witness. Please note that the Appointment will only be confirmed when the Medical Witness has received your letter of instruction pursuant and has confirmed his acceptance of the Appointment to the Instructing Solicitor in writing.

In signing these terms for your Client, you warrant that you have all requisite full power and authority to do so both as agent for your Client(s) and in your own capacity to the extent that you undertake direct obligations.

Signed by .....

For and on behalf of

Instructing Solicitor.....

Dated .....

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