

# EYE-LAW CHAMBERS®

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## A Corporate Member of the Academy of Experts

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Dear Sirs

Thank you for your request for a medico-legal report. We are happy to accept your instructions upon the following **Terms of Business** for which we require acceptance by yourselves in writing/email. A one-line reply email such as "We accept your terms of business" suffices. The contract is with the instructing solicitor/party jointly and severally for yourself and your client:

1. We will arrange an **examination** (if required) of your client within four weeks of last of the date of your acceptance in writing or by e-mail of these terms of business, the provision of your clients' medical records at your expense, and your letter of instruction on letterhead. If you are an agency could you ensure that you also send a copy of the original letter of instruction. Please advise your client to attend with photographic proof of identity such as a passport or driving license. If your client does not speak fluent English, please arrange for an independent interpreter to attend. PLEASE NOTE: We request that all physical correspondence and records come to the letterhead address above and not to the consulting rooms; thank you.
2. **For personal injury cases** we charge £450.00 an hour unless exceptional circumstances apply, subject to a minimum of £625.00. Should there be any variation to this charge, you have no liability until you receive and accept a letter of variation from a company director. You should expect that a refraction and field testing will be required as per costs below. Any medical records received after the client has attended for examination will only be incorporated into the report on receipt of a supplementary fee. All fees are subject to VAT at the standard rate.
3. **For clinical negligence and all other cases**, our fee is on an hourly basis of £450.00 per hour plus £25.00 per outgoing letter. The outgoing letter fee does not apply to e-mails. Should there be any variation to this charge, you have no liability until you receive and accept a letter of variation from a company director. This rate applies to all other work such as criminal cases, employment tribunals or *ad hoc* recommendations. All fees are subject to VAT at the standard rate.

4. **A fast-track service** may potentially be available depending on then-current levels of demand. This service is chargeable at £600.00 per hour with a 5 working days turn-around. If a shorter time frame is required, a premium fast-track service at a rate of £800.00 per hour may be available. All fees are subject to VAT at the standard rate.
5. **Screening reports** are available at a fixed rate of £700.00 for a non-CPR35 compliant report, unless exceptional circumstances apply. This assumes that documents do not exceed 250 pages which should be the relevant extracts from the medical records selected by the instructing party. If the records exceed 250 pages, charging will be at a rate of 1 minute per page at the rate in paragraph 3 in addition to the fixed fee. Should there be any variation to this charge, you have no liability until you receive and accept a letter of variation from a company director. All fees are subject to VAT at the standard rate. Screening reports cannot be processed using the fast-track options.
6. If you or your client **cancels** the appointment for examination giving less than three clear working days' notice, or fails to attend, we will charge you a cancellation fee of £150.00. No further appointment will be made until this fee is paid. Following a second failed attendance, we reserve the right not to make further appointments. We only admit to our Chambers Experts who are in active clinical practice and as a result very rarely may have to cancel appointments at short notice. Whilst we expect this to be a very rare occurrence, we cannot accept any liability should this occur. Should this eventuate, we will endeavour to give as much notice and to arrange a new appointment as quickly as possible.
7. When required for the report, we will organize **special medical investigations** which are charged as follows (+VAT):
 

a. Refraction	£200.00
b. Biometry	£200.00
c. Optic nerve imaging	£280.00
d. Fluorescein angiogram	£600.00
e. Electrophysiology	£1,250.00
f. Formal visual field test	£250.00
g. Pentacam scan / anterior segment OCT	£250.00
h. OCT Scan	£280.00
i. Orthoptic report	£250.00
j. Field of BSV	£200.00
k. Hess chart	£200.00
l. Tear function testing	£150.00
m. Pachymetry	£150.00
n. Endothelial cell count / specular microscopy	£280.00
o. Digital photography (up to 3)	£150.00
p. Aberrometry	£280.00
q. Brill Esthesiometer testing	£550.00
8. If our Expert is asked to **appear as an expert witness in a court** (or tribunal) case, our fee will be 10 hours at the rate specified in paragraph 3, per day or part thereof, plus any expenses incurred for travelling, subsistence, overnight accommodation etc. This will apply even if you subpoena the Expert to attend. We reserve the right to seek payment on account.
9. If, having required attendance at a hearing, such attendance is **cancelled** on less than 4 weeks' notice, then 50% of the fees for the whole of the allotted time will be payable. If we receive less than 14 days' notice 75% of the fees for the whole of the allotted

time will be payable and if we receive less than 7 days' notice the whole of the fee for the allotted time will be payable.

10. The fee for attending a **case conference** will be £450.00 per hour from the time that the Expert leaves his rooms/clinic/hospital, until the time that they return, subject to a minimum of £450.00 payable even if you cancel or postpone the conference. If more than 1 hour is booked, the fee for the full time will be invoiced. All fees are subject to VAT at the standard rate.
11. These fees are **not subject to assessment or taxation and** are not dependent up on the successful outcome of the case.
12. **Payment:**
  - a. **All reports** are only issued on receipt of payment and are then sent by first class post or e-mail.
  - b. **Alternatively** we may, at our discretion, agree to 30 day payment terms subject to an uplift of 5%. This means that the report and invoice will be issued at the same time. If you wish to receive the report and invoice simultaneously, this should be specified in the letter of instruction.
  - c. For **further correspondence** such as written responses to letters, other fee notes are payable within 14 days; regardless of how your client is funding the claim. Responses are released on receipt of payment.
  - d. All fees are subject to VAT at the standard rate.
13. Our **service standards** are that you are entitled to expect your report within 4 weeks of the latest of receiving all documents, written agreement to our terms of business (by the agency if you instruct us through an agency) and the examination (if requested). When an appointment for an examination is indicated, you may expect that your client will be seen within four working weeks, and also that the report will be available for you within four weeks of the appointment. We will not normally arrange appointments without all medical records and acceptance of our terms of business. Exceptionally, should this not be achievable we will notify you as soon as this is apparent. You are required to advise us of any relevant Court timetable with dates within 3 months of your instruction or accept liability for not so advising.
14. Any **liability** related to a report rests with the instructing party unless proven to the contrary. We will explicitly mention limits to our expertise in any report.
15. If we are asked to provide an **estimate of potential costs**, these are provided in good faith but are estimative and not binding. See also paragraph 22.
16. We would be grateful if you could **confirm in writing/email** that the above terms of business are accepted, but unless we hear from you to the contrary within 7 days, you will be deemed to have accepted the above terms and conditions.
17. For the avoidance of doubt, no correspondence addressed to the Company or the Expert will be of legal effect until they acknowledge receipt of it.
18. All **paper documents** that you send us will be kept for 6 years and then securely destroyed at no cost without further reference to yourselves. If you wish to have documents returned at the end of the case this can be arranged at cost.

19. If, on full examination of the case after instruction, the case is **not within our expertise**, we will inform you and withdraw. There will be no charge should this eventuate.

20. **Generally:**

- a. Should there be **non-cooperation** with the progress of this case, including non-payment of invoices, we reserve the right to withdraw from the case.
- b. We reserve the right to request **payments on account** at any stage.
- c. If you are a **litigant in person**, we will request full prepayment on account before any work, as well as a waiver for the 14 day “cooling off period” if you wish us to start within 14 days.
- d. If you are a professional instructing party domiciled outside the jurisdiction of the Court of England & Wales, we will ask for a deposit on account to confirm “goodwill” before starting.

21. This contract is **governed by the Laws of England** whatever the jurisdiction of the case.

22. **Guide schema of potential estimated fees to aid formulation of a maximum fee for the Legal Services Commission:**

Preparation of Liability (Breach) and Causation report	5-12 hours
Preparation of Condition & Prognosis report with examination	3-6 hours
Attending conference	2.5 - 5 hours
For court appearance daily rate	10 hours
Letters answering specific questions from instructing solicitors	3 hours
Answering Part 35 questions from other party	3 hours
Experts meeting and preparing an agreed note	3-6 hours
Supplemental report	2-4 hours
Ad hoc	1 hour

*This is meant to serve as a guide to formulating a maximum fee for applications to the Legal Services Commission rather than a likely charge in this case.*

23. This contract controls **communication**, and all communications must be addressed to **EYE-LAW CHAMBERS®** email or physical address. If you are invited by us to communicate directly with an Expert, such communication expressly excludes any financial details for which direct communication with **EYE-LAW CHAMBERS®** is, and remains, mandatory and exclusive.

24. In addition, the following **MODEL TERMS OF ENGAGEMENT FOR THE EMPLOYMENT OF EXPERTS ON BEHALF OF A PARTY INVOLVED IN A DISPUTE BEFORE A COURT** OF THE ACADEMY OF EXPERTS SHALL APPLY:

1. **Recital of Appointment** — The Appointor has appointed the Expert to provide services in accordance with these Terms of Engagement for such period as to allow the expert to complete his instructions or such further obligations imposed upon him by Court Order, unless determined by either party in writing.
  
2. **Definitions Unless the context otherwise requires:**
  - (1) “Appointor” means the lawyer, insurer, Government department, local authority, firm, or other body or persons instructing the Expert.
  - (2) “Expert” means the person appointed to give or prepare expert evidence for the purpose of court proceedings
  - (3) “Client” means the person(s), Government department, local authority, firm or company for whom the Expert has been instructed to provide such services.
  - (4) “Instructions” means in addition to the Appointor’s requirements, such services as may be required of the Expert to comply with an Order or Rule(s) of a Court.
  - (5) “Court” means any Court of Law, Tribunal or Arbitral body.
  - (6) “Fees” means the Expert’s professional charges, disbursements and Value Added Tax (VAT), or equivalent tax where applicable, for services provided for carrying out the Appointor’s instructions.
  - (7) “Disbursements” means all reasonable expenses incurred in carrying out the instructions or obligations arising therefrom. (By way of non-exclusive example, they include the costs of relevant photography, video recordings, computer software, reproduction of drawings and diagrams, printing and duplicating, the cost of obtaining published documents including those withdrawn, as well as all appropriate out of pocket expenses including car mileage, first class rail travel, business class air fares, reasonable refreshments and four star hotel accommodation where an overnight stay is necessary.) VAT or the equivalent tax will be charged where applicable.
  - (8) “Legal Aid” means those cases which are funded by an authority established by government power to fund a party in legal proceedings.
  - (9) References to the masculine gender shall be deemed to include the feminine.
  
3. **The Appointor — The Appointor will:**
  - (1) Promptly deliver to the Expert full instructions in writing supported by legible copies of all relevant documents together with a timetable for the provision of the Expert’s services and at such times as the timetable is revised then such revision shall be notified promptly to the Expert.
  - (2) Deal promptly with every reasonable request by the Expert for authority, information and documents and further instructions that the Expert may from time to time require.
  - (3) As soon as is reasonably practicable notify the Expert in writing of those services which the Expert shall provide pursuant to any Court Order and shall promptly deliver to the Expert a copy of such Order.
  - (4) Neither personally to, nor permit others to alter add to or remove any text of or document supporting a report delivered by the Expert nor by any act or omission compromise the Expert’s overriding duty to the Court.
  - (5) Ascertain the availability of the Expert for every hearing, meeting or other appointment at which the Expert’s attendance will or may be required and give the Expert immediate written notification together with adequate notice.
  - (6) **In Legal Aid cases (if accepted):**
    - (a) inform the Expert at the outset if the case is or is expected to be legally aided;
    - (b) inform the Expert of the scope and any limitation on the Certificate or Order and any Amendments and use his best endeavours to secure and expedite remittance of the Expert’s fees save that the subsistence of a Legal Aid Certificate or Order shall not affect the Appointor’s personal responsibility for the Expert’s fees.
    - (c) not require the Expert to provide any services before the grant of authority by the Legal Aid Board (or its generic successor) for his fees and disbursements;
    - (d) apply to the Legal Aid Board for prior approval of the Expert’s anticipated fees and promptly inform the Expert of the outcome of the application;
    - (e) apply as above for additional fees required by any further work not originally authorised;

- (f) make timely application to the Legal Aid Board or to the Court for interim and final payments for the Expert's fees and disbursements as invoiced and promptly remit to the Expert all such payments upon receipt;
- (g) use his best endeavours to ensure that the Expert's fees and disbursements are recovered in full by way of the Legal Aid Fund and in the case of the Crown Court from the Lord Chancellor's Department;
- (h) advise the Expert if he is a Legal Aid Franchisee with devolved powers in the relevant category of work and ensure prompt remittance of interim and final payments as invoiced;
- (i) use his best endeavours to ensure that the Expert's fees and disbursements are promptly remitted in full in the event of termination or suspension of a Franchise Agreement or of a Legal Aid Certificate. Where assessment of costs is necessary he will apply for, pursue or defend (as applicable) the Expert's fees in a timely manner.
- (7) In privately funded cases ensure that he is at all times in funds promptly to discharge the fees of the Expert.
- (8) Unless otherwise expressly agreed, pay in full the Expert's fees irrespective of the outcome of any assessment of costs.

#### **4. The Expert — The Expert will:**

- (1) Undertake only those parts of a case in respect of which the Expert considers that he has adequate qualifications and experience.
- (2) Use reasonable skill and care in the performance of the instructions received.
- (3) Comply with the appropriate Codes of Practice and Guidelines.
- (4) Act with objectivity and independence with regard to his instructions and, in the event of a conflict between his duties to the Client and to the Court, will hold his duties to the Court paramount.
- (5) Promptly notify the Appointor of any matter including a conflict of interest or lack of suitable qualifications and experience which could disqualify the Expert or render it undesirable for him to have continued involvement in the case.
- (6) Endeavour to make himself available for all hearings, meetings and other appointments of which he has received adequate written notice.
- (7) Not without good cause discharge himself from the appointment as Expert.
- (8) Preserve confidentiality save as expressly or by necessary implication authorised to the contrary.
- (9) Not negotiate with an opposing party, expert or adviser unless specifically instructed by the Appointor so to do. For avoidance of doubt this clause does not apply to any Order of a Court.
- (10) Attend such Meetings of Experts as Ordered by the Court or as required by the Appointor. At any such Meeting adhere strictly to the terms of reference set down in writing.
- (11) Provide all relevant information to allow the Appointor to defend the Expert's fees or disbursements at any assessment of costs.
- (12) Promptly respond to any complaint of the Appointor and within a reasonable time provide a statement of explanation or a means of rectification.

#### **5. Intellectual Property Rights**

- (1) The intellectual property rights of all original work created by the Expert shall remain vested in the Expert unless otherwise agreed in writing. The Expert asserts all his Moral Rights.
- (2) Upon settlement of all outstanding invoices presented by the Expert (subject only to such indulgence as the Expert may grant), the Expert shall be deemed to grant to the Appointor a Licence to use all the Expert's work covered by such fees, such Licence to extend to the purpose of carrying out the Client's instructions in the matter in which this Appointment has been made but for no other purpose nor for any other matter.

#### **6. Fees and Disbursements**

- (1) The amount of the fees shall be that more particularly defined in the Expert's letter confirming the Appointment which shall form part of these terms.
- (2) The daily rate shall be applied to any day or part of any day of a hearing, including waiting time.
- (3) The Expert may present invoices at such intervals as he considers fit. Payment of each invoice is due on presentation, subject to any written waiver or indulgence granted by the Expert, save that such indulgence shall apply only to the invoice in question.
- (4) The instruction and remuneration of the Expert is not made on any contingent or conditional basis and any payment sought to be made on such a basis will be unacceptable. Note: *The Judicial Committee's Guidelines on Contingency Fees make the placing of pressure upon the Expert by the*

*Appointor 10 provide extended credit terms or any other arrangement for inclusion in the Appointor 's approved list of Experts improper, is they compromise the Expert's independence and impartiality.*

- (5) For the avoidance of doubt the charge rate is the same for all activities and includes but is not limited to the following:
  - (a) *Inspection, consultation, preparation, advice, completion and engrossment of reports, attendance at meetings or hearings.*
  - (b) *Preparation of Answers pursuant to the Court Rules or Practice Directions.*
  - (c) *Travel and waiting.*
  - (d) *Time reserved by instruction, Witness Summons or Order of the Court for a hearing, meeting or other engagement.*
  - (e) *Where specific instructions have been given to the Expert for an inspection examination report or Court appearance and where, due to settlement of the dispute or any other reason not being the default of the Expert, the reservation of time has been cancelled or the Appointment has been terminated.*
  - (f) *Requests for Directions.*
- (6) The Appointor and the Client shall be jointly and severally liable for payment of the Expert's fees and disbursements.
- (7) The Expert shall at his discretion be entitled to invoice and recover interest at 1.5% per month on all unpaid invoices after 30 days and shall be entitled to recover the full amount of his administrative and legal costs and expenses incurred in recovering unpaid invoices.

## **7. Disputes**

- (1) Unless otherwise stated this Appointment shall be subject to the laws of England and Wales.
- (2) If the Appointor fails to pay an Invoice within 30 days of the time stated for payment the Expert shall be entitled to issue proceedings immediately.
- (3) In the event of a dispute over the amount of the Expert's fees such sum as is not disputed shall be paid when due irrespective of any set off or counterclaim which may be alleged.
- (4) Any other dispute arising between the Appointor or the Client and the Expert shall be referred to Mediation in accordance with The Academy of Experts' Mediation Guidelines. Upon the application of any party the Faculty of Mediation & ADR of The Academy of Experts will appoint a Mediator.
- (5) Any dispute not resolved by Mediation as in (4) above within 30 days of the appointment of the Mediator shall be referred unless the parties agree to the contrary to a single arbitrator who, if not agreed upon by the parties within 14 days thereafter, shall be appointed upon the application of either party by the President of the Chartered Institute of Arbitrators.
- (5) All expenses incurred as a result of any dispute will be borne by the Appointor. For the avoidance of any doubt this is to include all legal costs incurred and in the event of Court proceedings shall include all expenses and legal costs incurred irrespective of the track to which the dispute is allocated within the County Court.