

Draft letter from Expert Witness to
Instructing Solicitors and Agencies
setting out Terms and Conditions of
Appointment



DISCLAIMER

These draft terms and conditions of appointment and the accompanying notes are intended to be a guide only to assist the expert witness to consider the matters that are most relevant to their contract to provide services and their obligations to the Court. The BMA recommends that expert witnesses take legal advice on any terms and conditions

Before accepting any instruction, the expert witness must ensure that the services required of them and all terms and conditions are clearly identified in writing and that they are aware of and compliant with the following:

- Protocol for the Instruction of Experts to give Evidence in Civil Claims ('Protocol');
- Civil Procedure Rules Part 35 Experts and Assessors ('CPR35');
- Practice Direction Part 35 Experts and Assessors ('PD35'); and
- Practice Direction Pre-Action Conduct ('PD Pre-Action Conduct').

Expert witnesses using this document are advised to seek their own independent advice and they may also wish to consider training/membership of one of the organisations established to train and assist professional expert witnesses.

[Instructing Solicitors/Agency]

Dear Solicitor/Agent

Re: [Insert client details] ("Client") [N.B. Insert details of Patient and Insurers where applicable]

Following our recent discussions, I set out below the terms and conditions on which I am prepared to accept appointment as an expert witness (the "Appointment"). These terms will be the only terms which apply to the Appointment and may only be amended by agreement in writing.

Where I am instructed jointly by more than one party, references to 'you' shall be construed as references to any instructing party, and each instructing party acknowledges and agrees that they are jointly and severally liable for complying with the terms of this letter, including without limitation the payment of the Fee and all Disbursements, unless agreed otherwise by me in writing.

1. Fees

[Option A: Where charging a Fixed Fee]

- 1.1. In consideration of the provision of my services as expert witness under the Appointment, you shall pay a fixed fee of £[AMOUNT] plus VAT (the "Fee"). You shall pay the Fee by bank transfer to my nominated account, details of which will be contained on the invoice provided to you, [[quarterly in arrears] OR [in instalments as set out in Schedule 2]].
- 1.2. Whilst it is appreciated that you may require your Client and/or a third party to meet the costs of the Fee, your firm agrees to be [ultimately liable OR jointly and severally liable with other instructing parties] for the Fee and will pay the Fee in accordance with the terms of this Appointment.
- 1.3. You shall pay all reasonable disbursements that I incur in connection with the Appointment. Disbursements will include (but will not be limited to) travel, printing costs, photocopying and reasonable accommodation and subsistence costs ("Disbursements"). You confirm and agree that I will only be required to travel within the United Kingdom for the purposes of the Appointment. Travel by rail and air will be first class and car mileage charged at £[AMOUNT]¹ per mile. [I will seek your written authority before incurring any significant disbursements or expenses over £[AMOUNT]].
- 1.4. I will send you invoices on a [SPECIFY FREQUENCY FOR EXAMPLE MONTHLY] basis, which will include all Disbursements incurred for that month, attaching relevant receipts where possible. You shall pay all Disbursements by bank transfer to the nominated account described in paragraph 1.1 of this letter within [number] days of the date of the invoice. My invoices will also include a breakdown of work done and time spent on any given date. I understand that my invoices may need to be shown to the other side and to the costs judge on the issue of your Client's costs.
- 1.5. If any payment due to me under the terms of the Appointment is not paid by the due date for payment (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.

¹Insert the appropriate rate approved by the Inland Revenue (dependent on size of car engine). Insert

- 1.6. You shall provide prompt written notice of the cancellation of any court appearance or hearing, and you agree to pay me a fee in the event of such cancellation, calculated as follows:

Date prior to earliest scheduled court appearance or hearing on which I receive written notice of cancellation	Cancellation fee (Percentage of fees per day booked)
Fewer than 7 days' notice inclusive	100%
Between 8 and 21 days inclusive	50%
Between 22 and 60 days inclusive	20%
61 days or later	No cancellation fee.

- 1.7. You shall provide prompt written notice of the cancellation of any consultation or appointment with you and/or your Client. If I receive less than two days' written notice of any such cancellation (excluding the date on which the consultation or appointment was to take place) [and the consultation or appointment in question is not covered by my fixed fee] you shall pay me the full amount for my attendance at such consultation or appointment had it not been cancelled, calculated using my hourly rate as set out at Schedule 2 and including any Disbursements actually incurred.

- 1.8. For the avoidance of doubt, in the event any cancellation fee applies, you shall also pay all outstanding Disbursements in connection with the appearance or appointment that has been cancelled.

- 1.9. In the event of non-payment of any sum due to me under the terms of the Appointment, you shall reimburse all reasonable costs incurred by me in recovering such sums (including but not limited to the appointment of a debt collection agency and all associated costs).

OR

[Option B: Where charging by hourly rate:

- 1.1. Save as may be provided in Schedule 2, my fees for the time I spend on this matter will be calculated at the rate of £[AMOUNT] per [hour or day] plus VAT ("Fees"). My time will be charged in units of [INSERT] of an hour. [The daily rate assumes a working day of [] hours (including travel)].
- 1.2. Whilst it is appreciated that you may require your Client and/or a third party to meet the costs of the Fee, your firm agrees to be [ultimately liable OR jointly and severally liable with other instructing parties] for the Fee and will pay the Fee in accordance with the terms of this Appointment.
- 1.3. I may review my hourly rates and any other fees and charges from time-to-time. I will advise Instructing Solicitors in advance of any increases to these rates, fees and charges.
- 1.4. Schedule 2 contains an estimate of my fees for matters set out therein. I will keep these under review and advise you if I believe these fees will be exceeded.
- 1.5. You shall pay all disbursements that I incur in connection with the Appointment. Disbursements will include (but will not be limited to) travel, printing costs, photocopying and reasonable accommodation and subsistence costs ("Disbursements"). You confirm and agree that I will only be required to travel within the United Kingdom for the purposes of the Appointment. Travel by

rail and air will be first class and car mileage charged at £[AMOUNT]² per mile. I will seek your written authority before incurring any significant disbursements or expenses over £[AMOUNT].

- 1.6. I will invoice you in respect of my Fees monthly in arrears, and my Disbursements [monthly or upon delivery of my report]. Payment will be due within [NUMBER] days of the date of the invoice (the "Due Date"). You shall pay all amounts by bank transfer to my nominated account, details of which I shall confirm to you separately in writing, within [NUMBER] days of the date of the invoice. I will provide you with relevant receipts where possible in respect of all Disbursements.
- 1.7. If any payment due to me 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.
- 1.8. You shall provide prompt written notice of the cancellation of any court appearance or hearing, and you agree to pay me a fee in the event of such cancellation, calculated as follows:

Date prior to earliest scheduled court appearance or hearing on which I receive written notice of cancellation	Cancellation fee (Percentage of fees per day booked)
Fewer than 7 days' notice inclusive	100%
Between 8 and 21 days inclusive	50%
Between 22 and 60 days inclusive	20%
61 days or later	No cancellation fee.

- 1.9. You shall provide prompt written notice of the cancellation of any consultation or appointment with you and/or your Client. If I receive less than two days' written notice of any such cancellation (excluding the date on which the consultation or appointment was to take place), you shall pay me the full amount for my attendance at such consultation or appointment had it not been cancelled, calculated using my hourly rate as set out at Schedule 2 and including any Disbursements actually incurred.
- 1.10. For the avoidance of doubt, in the event any cancellation fee applies, you shall also pay all outstanding Disbursements in connection with the appearance or appointment that has been cancelled.
- 1.11. In the event of non-payment of any sum due to me under the terms of the Appointment, you shall reimburse all reasonable costs incurred by me in recovering any sum due (including the appointment of a debt collection agency and all associated costs).

2. Your obligations

2.1. You must:

- 2.1.1. give adequate and timely instructions, and obtain all relevant notes, records and investigations, and check that all relevant matters are addressed in your instructions and my reports;

²Insert the appropriate rate approved by the Inland Revenue (dependent on size of car engine).

2.1.2. pursuant to paragraph 2.1.1 above, provide me with a letter setting out your instructions which shall, as a minimum, cover the areas listed in Schedule 1 to this letter;

2.1.3. provide me with, or procure the provision of, all information which might reasonably be expected to be relevant in enabling me to fulfil my responsibilities under this Appointment (“Information”) as and when it becomes available to your Client and/or to you;

2.1.4. ensure that the Information provided or prepared by your Client or on your Client’s behalf is complete and accurate in all material aspects, is not misleading and is updated as necessary. You shall inform me immediately if you or your Client discovers or have reason to believe that any of the Information is, or becomes, untrue, incomplete, misleading or inaccurate in any material respect. You acknowledge that I shall, and am entitled to, rely upon all Information provided to me, that I shall not be responsible for the accuracy or verification of any Information, and that my report will be provided only on the basis of the Information disclosed to me by you.

2.1.5. [confirm to me promptly in writing that my Fees and Disbursements are no higher than reasonably necessary for the purpose of litigation, bearing in mind my professional expertise. You shall obtain any approvals required from the Legal Aid Board or any other third party from whom you may seek contributions in respect of my charges at the required times. If you are seeking contributions in respect of my Fee from the Legal Aid Board or insurers, please provide in writing all relevant details of these arrangements, including policy details:]

2.1.6. comply with and take all reasonable steps to assist me in complying with the Protocol and the Civil Procedures Rules referred to in Paragraph 3.

3. Duties to the Court

3.1. I confirm that I have read and will comply with the Protocol published by the Civil Justice Council, CPR35, PD35, and PD Pre-Action Conduct. In particular I understand that, although I owe a duty of care to you and your Client to exercise reasonable skill and care in carrying out the instructions, my primary duty as an expert witness is to provide independent and unbiased evidence to the Court.

4. Liability

My total liability for professional negligence (excluding any liability for fraud or wilful misconduct) under or in connection with this Appointment shall not exceed £[INSERT AMOUNT].

5. [Insurance

I confirm that I hold professional indemnity insurance in respect of the Appointment.]

6. Right to Terminate

6.1. I may terminate this Appointment immediately by giving you written notice if:

6.1.1. I consider that any of your instructions are not acceptable. Examples of unacceptable instructions may include (but will not be not limited to) instructions that require work that falls outside my expertise, impose unrealistic deadlines, are insufficiently clear, or are or have become insufficient to complete any work required in connection with the Appointment;

6.1.2. I reasonably consider that I may not be able to fulfil any term of the Appointment; or

6.1.3. I am not satisfied that I can comply with any orders and/or directions that have been made by the Court.

6.2. In the event that I consider it necessary and prudent for me to terminate this Appointment, I will discuss this with you first before providing written notice of termination. Any such notice will specify the relevant ground for termination set out in paragraph 6.1 above.

6.3. Subject to discussions with me in accordance with the Protocol, you may terminate this Appointment by written notice.

6.4. Termination will not affect my entitlement to any sums payable to me under the terms of this Appointment accruing before the date of the termination.

6.5. On termination I will return all documents and materials provided to me for the purpose of this Appointment promptly to you, save for one copy that I may retain for my records. Any copies that I receive or retain shall be held in accordance with my privacy policy, a copy of which is attached.

7. Intellectual Property

I will own the copyright in all reports and/or materials produced by me. Additionally, I will retain the title to all reports and/or materials produced by me until I have received full payment in accordance with the terms of the Appointment. Subject to receipt of all payments due under the Appointment, your Client is authorised to use the same for the purposes of the matters contained in my instructions only.

8. Confidentiality

I will treat all information, facts, matters, documents and all other materials of a confidential nature which I receive or create as a result of this Appointment as confidential (except insofar as I have to refer to them when setting out the substance of my instructions in your report or as required by law).

9. Responsibility

[I confirm that the work which is carried out in relation to this retainer will be my own and will not be delegated or sub-contracted to someone else.]

OR

[I have indicated that it will be more cost effective to delegate some aspects of the work. I will let you know before involving anybody else, which aspects of the work are likely to be delegated, to whom they are likely to be delegated, their experience and their charge out rates.]

10. Conflict

You have notified me 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. I confirm that I do not have an actual or potential conflict of interest in accepting this Appointment in respect of any parties so named and that I will let you know without delay if I become aware of such a conflict.

11. Joint Instructions

In circumstances where I am 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. Instructing Solicitors should note that Paragraph 17 of the Protocol

will apply.

12. Governing Law

This letter 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.

13. Force Majeure

I shall not be liable for any delay in the performance of any 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 my reasonable control including but not restricted 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 me. Please note that the Appointment will only be confirmed when I have received your letter of instruction pursuant to paragraph 2.1.2 above and I have confirmed my acceptance of the Appointment to you 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 [NAME OF EXPERT]

Signed by [NAME OF INSTRUCTING PARTY]

for and on behalf of [NAME OF INSTRUCTING FIRM OR AGENCY] [TITLE OF INSTRUCTING PARTY]

Schedule 1 (Scope of Instructions)

1. Capacity (i.e. area of expertise for expert witness)
2. Services required
3. Background Facts
4. Issues to be addressed in advice/report
5. Timing
 - 5.1. Delivery of full information to expert
 - 5.2. Delivery of report
 - 5.3. Court Dates (if known) (Expert to specify dates upon which they will not be available)
6. Details of other parties (see paragraph 10).

Schedule 2 (Fees)

[Fixed Fee

The Fee includes the work specified below. Where there is no figure next to an item, or where I undertake any work outside of the scope of work below, my standard hourly rate of £[INSERT AMOUNT] plus VAT will apply. You shall pay the Fee [quarterly in arrears OR in the following instalments: [list amount of each instalment and dates on which they are to be paid.]]

OR

Estimate of Fees

The following estimates are by way of guidance only. Where there is no figure next to an item, or where I undertake any work outside of the scope of work below, my standard hourly rate of £[INSERT AMOUNT] plus VAT will apply.]

Scope of Work

Reports

1. **Professional reports** of facts for uncontested personal injury cases, fast track, value under £10,000: £[INSERT AMOUNT] plus VAT
2. **Expert medical reports** in more complex cases involving opinion as to injuries, causation, and prognosis: £[INSERT AMOUNT] plus VAT
3. Further reports, reviews, joint consultations: to be charged at my hourly rate plus VAT
4. **Medical and Clinical Negligence:** CPR compliant consultation reports: £[INSERT AMOUNT] plus VAT
5. Advisory reports based on records: £[INSERT AMOUNT] plus VAT
6. Capacity reports: £[INSERT AMOUNT] plus VAT
7. Court of Protection reports: £[INSERT AMOUNT] plus VAT

Court Appearances and Attendance at Conference etc.

1. Conference with Counsel (if required): £[INSERT AMOUNT] plus VAT per half day
2. Attendance at Client meetings (if required): £[INSERT AMOUNT] plus VAT per half day
3. Attendance at joint expert meetings: (if required): £[INSERT AMOUNT] plus VAT per half day
4. Attending court or at hearings to give evidence (if required): £[INSERT AMOUNT] plus VAT per day]

BMA Guidance to Standard Retainer Letter

Structure

Most Instructing Solicitors or agencies will prefer to use their own terms or may try and change yours in correspondence. However, please note that you are not required to adopt their standard terms and conditions or fixed fee rates and can negotiate the terms on which you agree to provide your services. Please ensure you review any proposed terms thoroughly and make notes of any discussions entered into. Before entering into a contract you should also seek independent legal advice and, if the contract is with an agency you may also wish to conduct due diligence checks on the agency e.g. consider obtaining a report from a credit-rating agency which may disclose any county court judgments, risk warnings and the financial position of the agency.

Client

The reference to the “Client” refers to the person or entity for whom the Instructing Solicitors or the Agency is acting and who requires your services as an expert witness. This could include claimant patients, defendant medical professionals, or insurance companies. We suggest that both patient and insurer are named where the insurers are the paying party.

Fees

This section, together with Schedule 2, sets out your fee structure. Payment is the responsibility of the Instructing Solicitor (or Solicitors) or the Agency.

You may wish to set a fixed fee for your services or for certain tasks or to charge an hourly rate for all activities (which you may choose to record and charge in smaller units of parts of an hour e.g. 1/10, 1/3 or 1/2 an hour). Both fixed fee and hourly rate options are accommodated in the draft terms and conditions and there is the option in the latter case of specifying the time unit basis of calculation. Where the hourly rate is applied you will be expected to keep detailed notes of the tasks performed and the time spent. Not only will this process assist you in providing estimates it will assist in limiting any challenges to your costs. If the instructions are likely to be extended/varied then you may wish to refer to an hourly rate.

The draft terms and conditions envisage that disbursements will be reimbursable regardless of whether you choose to charge a fixed fee for your services or to charge based on an hourly rate for your services. Nonetheless, it is advisable to obtain consent before incurring significant expenses.

With regard to cancellation fees (and in particular paras 1.6 and 1.8 of the terms) the Unfair Contract Terms Act 1977 and Consumer Rights Act 2015 requires that cancellation fees reflect a reasonable estimation of the wasted fees involved should a particular appointment or hearing be cancelled. You should satisfy yourself that the fees you intend to charge for cancellations do indeed reflect a reasonable estimation of the fees likely to be wasted by the cancellations.

VAT

You must charge VAT for your services if you are VAT registered. Registration is only required if your annual earnings for the provision of your services (other than as an employee) exceed the VAT threshold or may soon exceed said amount. Different VAT rates apply to different services and there are currently three rates: standard rate, reduced rate and zero rate. Exemptions apply to services provided by health professionals if said services are (i) within the profession in which the professional is licensed to practice and (ii) the primary purpose of the services is the protection, maintenance or restoration of the health of
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the person in question. Provision of expert witness services will usually attract the default rate as they contain no element of therapeutic care but instead enable a third party to make a decision in relation to a patient. For more information on VAT refer to HM Revenue & Customs (HMRC) at: <http://www.hmrc.gov.uk/index.htm>

Liquidation of agency

Please note that should an instructing solicitor or agency go into liquidation, an expert will have no security over monies owed to him/her. However, by virtue of the agency principle, i.e. the fact that an instructing solicitor or agency is acting on behalf of their client as agent, the expert witness can attempt to recover any sums outstanding from the Client directly. If an expert witness has any concerns about the potential solvency of an instructing agency, they may wish to secure payment for certain services in advance.

Fees (Schedule 2)

An estimate of the Fee, or detail of which work will be covered as part of a fixed Fee, should be included in Schedule 2.

Late payments

The statutory rate for late payments is determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 as amended and supplemented by the Late Payment of Commercial Debts (Interest) Regulations 2002. It is set at 8% above the "reference rate" covering the sixth month period in which the debt becomes late. The "reference rate" for 1st January to 30th June is the Bank of England's base rate on 31st December and, for 1st July to 31st December, it is the base rate on 30th June.

Legal Aid

Where fees are being funded by the Legal Aid Board, it is important that Instructing Solicitors or the instructing agency keep the Board informed as to when and how payments should be made as the Board is not a party to the Appointment.

Joint and Several Liability

Under the terms of the Appointment, the instructing parties assume joint and several liability for all fees and charges, which means that they are both collectively and individually obliged to meet the payments under the Appointment. This is intended to protect the expert witness in circumstances where one of the instructing parties has gone into liquidation or administration as the expert can proceed against any one or more of the instructing parties for the full amount due. Please note that, for joint and several liability to be effective, all parties should sign this letter.

Duties/Protocol (Paragraph 3)

Instructing Solicitors will require confirmation that you, as an expert witness, understand and are prepared to comply with the relevant requirements. It is extremely important that you understand the nature of the duties which the Appointment would impose on you.

All expert witnesses should therefore be familiar with the Protocol, and the relevant Civil Procedure Rules and Practice Directions before agreeing to the Appointment. These may be found on the Ministry of Justice website www.justice.gov.uk

A requirement to comply with these obligations will be of principal importance to any Instructing Inse

Solicitors. Providing this confirmation will reassure Instructing Solicitors who may as a result be comfortable to use your terms and conditions as a basis for negotiation in place of imposing their standard terms on you.

The Protocol contains guidance to experts and to those instructing them in the interpretation of and compliance with CPR35 and its associated practice direction PD35. It is intended to both assist in the interpretation of those provisions and to establish “good practice” standards for the conduct of experts and those who instruct them. The existence of this Protocol does not replace the need for experts and those who instruct them to comply with CPR35 and PD35.

The 50th Update to the Civil Procedure Rules (SI 2009 No. 2092) came into force in England and Wales on 1 October 2009. This included a number of changes relevant to expert witnesses. Experts are required to contain a statement at the end of the report confirming that they:

- a) understand their duty to the court, and have complied with that duty; and
- b) are aware of the requirements under CPR35, PD35 and the Protocol.³

Requirements under PD Pre-Action Conduct also apply to expert witnesses. Where an expert’s evidence is necessary the parties should consider how best to minimise expense. Guidance on instructing experts can be found in Annex C of PD Pre-Action Conduct.⁴ The following suggested wording may be used by experts at the end of their report:

An expert’s report must also be verified by a statement of truth⁵ in the following form – the wording is mandatory and may not be modified:

“I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”

Individuals signing a statement of truth must print their full name clearly beneath their signature.⁶ Proceedings for contempt of court may be brought against a person verifying a document containing a false statement without an honest belief in its truth.⁷

Please note that an expert’s breach of their duty to the Court can lead to their evidence being publicly disregarded and the Client losing the case. Whilst an expert may be immune from civil suit in respect of any work that “is so intimately connected with the conduct of the case of the Court”, they will not be immune from disciplinary proceedings before their professional body. Further, immunity from suit will not protect an expert from prosecution for perjury, contempt of court or perverting the course of justice.

Notwithstanding any caps on the expert’s liability (see paragraph 4), the Court is able to make a costs order in appropriate circumstances against an expert who has disregarded his duties to the Court.

³ Paragraph 3.2(9) of Practice Direction Part 35 Experts and Assessors. See also rules 35.3 and 35.10 of Civil Procedure Rules Part 35 Experts and Assessors Practice

⁴ Paragraph 9.4 of Practice Direction Pre-Action Conduct

⁵ Paragraph 3.3 of Practice Direction Part 35 Experts and Assessors

⁶ Paragraph 3.9 of Practice Direction Part 22 Statements of Truth

⁷ Rule 32.14 of Civil Procedure Rules Part 32 Evidence

Cap on Liability (Paragraph 4)

The cap on an expert's liability has to be reasonable, particularly where the expert witness is acting for a consumer. This is due to the fact that an individual consumer is deemed to be more vulnerable than a commercial entity (in this case the expert witness) and, therefore, requires greater protection. Consumer protection legislation is intended to protect the consumer (as opposed to a business).

There will always be doubt as to what is a reasonable level of limitation depending on the respective bargaining position of the expert witness and the Client. However, it will always seem more reasonable if, where a financial limit is inserted, the liability is limited in professional negligence excluding fraud or wilful misconduct. A sensible position is to align the cap with the expert's professional indemnity insurance cover.

Insurance (Paragraph 5)

This is a standard requirement and it is unusual for an expert witness not to carry such insurance. This is particularly important since the Court has held in principle at least that an expert witness who breaches his or her duties to the Court (admittedly in a flagrant and reckless fashion) may be held liable for the wasted costs incurred in dealing with his or her evidence.

Right to Terminate (Paragraph 6)

Once the Appointment has been accepted this should only be used after reviewing the Protocol and discussing the matter with the Instructing Solicitors.

Intellectual Property (Paragraph 7)

It is important at this early stage to assert ownership of copyright and title in relation to any reports that may be produced by the expert witness. This is very necessary in the event that an expert witness fails to receive payment for their work undertaken. If full reimbursement is not forthcoming along the terms set , then the expert witness may wish to decide to withhold handing over the report until such time as they do receive payment, subject to any specific advice from their respective medical defence body.

Joint Instructions (Paragraph 11)

Where the expert witness is jointly instructed, both sets of Instructing Solicitors should execute the Appointment in order that they both confirm their obligations as Instructing Solicitors under the Appointment.

Governing Law (Paragraph 12)

Where the Client is not based in the UK, it may not be effective to keep proceedings in the UK but it is the right starting point.