

# MR MATTHEW G SMITH MB CHB FRCS(Tr & ORTH) CONSULTANT ORTHOPAEDIC SURGEON

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## ***TERMS OF ENGAGEMENT***

**Mr Matthew Smith, CONSULTANT ORTHOPAEDIC SURGEON ("the Expert")**  
**("the Appointer")**

The following sets out the terms and conditions on which the Expert agrees to supply his Services as an Expert Witness and Orthopaedic Surgeon to you in respect of a person who is or may be a party to any court arbitration or tribunal proceedings.

### **1. Supply of the Services**

The Expert shall supply such Services as are instructed or requested in writing by the Appointer and which are accepted by the Expert, subject to these terms of engagement which shall govern the contract to the exclusion of any other terms and conditions subject to which any such requests or instructions are made or purported to be made by the Appointer.

### **2. The Services**

The Services shall include (but not be limited to) receiving instructions, inspecting and considering all relevant documentation including medical records, carrying out medical examinations and tests, providing medical reports and advice, attending any court or other proceedings on dates so instructed in order to give expert evidence and/or assist the Appointer in the progression of the matter.

The Expert shall at all times act objectively and independently in carrying out the Services and his duties to the court in all of these respects shall be paramount.

### **3. The Expert's Obligations**

The Expert shall:

- 3.1 use reasonable care and skill in the performance of the Services;
- 3.2 promptly notify the Appointer of any matter in which the Expert has a conflict of interest or lacks suitable qualifications or experience which would disqualify the Expert or render it inappropriate for him to continue providing the Services;
- 3.3 endeavour to make himself available for all court hearings and meetings and other appointments of which he has received notice;
- 3.4 not without good cause discharge himself from the appointment as Expert;
- 3.5 preserve confidentiality of all matters and information disclosed to the Expert regarding the matter save as expressly or by necessary implication authorised to the contrary; and
- 3.6 not negotiate or communicate with an opposing party or adviser unless specifically authorised to do so by the Appointer or by any Court Order.
- 3.7 provide his services on basis of what medical evidence (clinical notes, x-ray films etc) the Appointer has made available to him at the time of the preparation of requested service.

#### **4. Fees and Disbursements**

4.1 Medical Reports shall be provided on a fixed fee basis and shall include any medical examinations and preparatory work required for the same. Such fees will be charged as follows:

Reports with examination			£950.00
Subsequent follow-up reports with examination	(each)		£950.00
Review of, and report on, medical notes			£475.00/hr
Reports from notes only		£475.00/hr	(£950.00min)
Subsequent follow-up reports from notes only	(each)	£475.00/hr	(£950.00min)
Subsequent response to questions pertaining to a "Medical Report"	(per question, min £150)		£ 150.00
Letters and other correspondence		from	£ 150.00
Failure of a client to attend for interview/examination without reasonable notice			£200.00
Attending any Court in the Expert's capacity as an Expert Witness		Per day	£5,250.00
(The fee for attendance at court will be liable in full in the event of cancellation within 28 days of attendance)			
-plus reasonable travel and accommodation expenses			
Meeting with Counsel etc.		Per hour	£525.00
-plus reasonable travel and accommodation expenses			

4.2 The Expert reserves the right to charge higher fees in respect of the Additional Fees quoted above in cases of greater complexity or urgency.

4.3 Where the Expert shall incur disbursements such as X-ray fees in the course of performing the Services the Expert shall obtain the Appointer's authority prior to incurring the same.

4.4 The Fees detailed above apply and will be charged unless the Expert shall agree alternative fees in writing.

#### **5.Payment Terms**

5.1 The Expert shall present an invoice with each item that attaches a fee. Such invoices shall be payable 30 days from the date of the invoice (subject to clause 5.2 below) or upon case completion, whichever is sooner.

5.2 Notwithstanding clause 5.1 above, where the Expert's Fees are to be paid by the Legal Aid Board or the Crown Court or some such similar body, any invoices rendered shall be payable immediately on the Appointer receiving such funds from such body.

5.3 The Appointer shall reasonably endeavour to claim payment from the Legal Aid Board promptly and shall not cause any unreasonable delay.

5.4 In the absence of prior written agreement to the contrary, payment of the Expert's invoice is required within 30 days of the invoice date. Failure to make payment within 30 days of the invoice date will result in the matter being referred to the Solicitors Regulation Authority or our Debt Collection Agents whose charges will be added to, and payable with the invoiced debt.

#### **6.Where the Appointer's client is not a private payer**

6.1 Where the Appointer's client is funded by the Legal Aid Board or other such similar body, the Appointer shall inform the Expert of this fact and state whether the Appointer's client is funded by criminal legal aid or civil legal aid.

6.2 Where the Expert's Fees are to be paid by the Legal Aid Board or such similar body, the Appointer shall, in any case where (in the Appointer's reasonable opinion) the Legal Aid Board may not, for whatever reason, pay the Expert's Fees as set out in paragraph 4 hereof, endeavour to obtain the Legal Aid Board's (or such other similar body's) prior authorisation to incur such fees and the Expert shall supply an estimate of the same, upon the Appointer's request. If such authority is declined, the Appointer shall inform the Expert forthwith.

6.3 Notwithstanding the provisions of sub-clause 6.2 above, where the Expert is required to attend the Crown Court or the Magistrates Court on a voluntary basis, the Appointer shall ensure that a Defendant's Cost Order is applied for.

6.4 In any case where the Expert's Fees as detailed in clause 4 hereof are unlikely to be met in full, due to the Costs in Criminal Cases (General) Regulations 1986 or some such similar regulations or statutory scale of fees whereby the sums payable to Expert Witnesses are fixed the Appointer shall inform the Expert of this fact as soon as is practicably possible.

6.5 Notwithstanding any other provisions in these terms of Engagement the Appointer shall not be responsible for any shortfall in payment of the Expert's Fees, which occurs as a result of legal taxation or any regulations or statutory scale of fees which may apply from time to time.

#### **7.Cancellation**

7.1 Where the Appointer cancels any request for a medical report before the medical report has been completed, the Expert shall be entitled to charge a reasonable fee for work done up to and including the date of cancellation.

7.2 Where the Appointer's client fails to attend a pre-arranged appointment with the Expert, for any reason whatsoever, the Expert shall be entitled to charge a reasonable fee for his loss of income resulting there from.

7.3 Where the Expert is required to attend any court hearing meeting or other engagement, and the same is cancelled within eight weeks of the date such court hearing, meeting or other engagement was scheduled to take place the Expert shall be entitled to charge a fair and reasonable fee by way of compensation for loss of income which may otherwise have been earned, PROVIDED THAT such sum shall be paid (in the case of a legally aided client) by the Legal Aid Board or some such similar body.

7.4 Where the Expert is required to attend any court hearing meeting or other engagement, and the same is cancelled within twenty eight days of the date such court hearing, meeting or other engagement was scheduled to take place the Expert shall be entitled to charge his full daily fee for attending Court as an Expert Witness.

**8.The Appointer's Obligations**

The Appointer shall:

8.1 use his reasonable endeavours to ensure that where a taxation of costs is required, it will be applied for, pursued or defended (as appropriate) in a timely manner;

8.2 use his reasonable endeavours to ensure that the reasonable fees and disbursements for the Expert are recovered in full by way of the Legal Aid Fund or other such similar body;

8.3 where it is possible to do so, reasonably endeavour to give to the Expert six weeks prior notice of any court hearing, meeting or other appointment at which the Expert's attendance will be required. Where it is not possible to give such notice, the Appointer shall give as much notice as is practicable in the circumstances.

8.4 provide the expert with medical evidence (medical notes, x-ray films etc) relevant to the case and he is directly responsible for requesting such evidence and for any fees incurred for obtaining it or for the Expert returning it.

**9.Liability**

Any liability of the Expert for negligence, whether it arises in tort or in contract or otherwise, in respect of any loss or damage caused by the Expert whatsoever and howsoever shall be limited to that covered by his professional indemnity insurance.

**10.General**

If any provision of these terms of engagement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions shall remain in full force and effect. The contract shall be governed by the laws of England and the Appointer agrees to submit to the non-exclusive jurisdiction of the English courts.

**I agree to the above Terms of Engagement:**

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Mr M G Smith (the Expert)

..... on behalf of

(the Appointer)

Date: \_\_\_\_\_

Date: \_\_\_\_\_