

Ben Powers, Terms & Conditions of Engagement as an Expert Witness

Set out below the terms and conditions upon which I am prepared to accept appointment as an expert witness. These terms will be the only terms which apply to the Appointment and may only be amended by agreement in writing.

In agreeing to 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 and in your own capacity to the extent that you undertake direct obligations.

1 Fees

- 1.1 My hourly rate for consulting work is £145. My time will be charged in units of a quarter of an hour.
- 1.2 My hourly rate for travelling time is £55. My time will be charged in units of a quarter of an hour.
- 1.3 All rates quoted are subject to review annually.
- 1.4 Quoted total costs remain an estimate of my fees to cover the stated work. I will keep these under review and advise you as promptly as possible if I believe they will be exceeded.
- 1.5 I will charge all time spent in connection with this Appointment, including but not limited to, all investigations, preparing reports, and telephone or written attendance on your Client and/or Instructing Solicitors. Travel time from my office will be charged as set out in the Quote.
- 1.6 I will keep a note of the time that I spend on this matter on the basis of units of a quarter of an hour and submit the same with my invoices.
- 1.7 All disbursements will be reimbursed. Disbursements will include travel and reasonable accommodation and subsistence costs as required. Any travel will only be within the United Kingdom, unless otherwise agreed in writing. Rail and plane travel will be first class and car mileage charged at £0.35/mile. I will provide you with receipted invoices in respect of all disbursements claimed.
- 1.8 I reserve the right to invoice for completed work at any stage. Payment will be due within 1 calendar month of the date of the invoice unless otherwise agreed in writing. Invoices are typically issued on submission of the initial report, completion of any subsequent report or joint statement, and following any court appearance.
- 1.9 Invoices will be issued by email and addressed to the Instructing Solicitor. You will arrange for these to be paid promptly. If you have any reason to believe your Client or other paying party may be unable to pay any fees or other sums due to me, you will notify me immediately.

- 1.10 Where I am instructed 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.
 - 1.11 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. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment, whether before or after judgment.
 - 1.12 In the event of any court appearance being cancelled the full fee shall be paid unless I receive notification 48 hours in advance. In respect of notification received in advance of 48 hours, court appearance fees will be waived.
 - 1.13 In the event that access to conduct a survey of the accident site is not agreed, or access is withdrawn less than 48 hours in advance of the Quoted visit, the full hourly fees and any disbursements incurred in travelling to the site shall still be paid. In respect of notification of a lack of proper access received in advance of 48 hours no fees will be charged for the site visit.
- ### 2 Instructing Solicitor's Obligations
- Instructing Solicitors:
- 2.1 are responsible for giving adequate instructions and obtaining all relevant notes, records and investigations and shall check that all relevant matters are addressed in the reports.
 - 2.2 shall:
 - 2.2.1 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 Instructing Solicitors.
 - 2.2.2 ensure that the information provided by your Client or on your Client's behalf is complete and accurate in all material aspects and not misleading and is updated as necessary (informing me immediately if your Client discovers or has reason to believe that any of the Information is, or becomes, untrue, incomplete, misleading or inaccurate in any material respect).
 - 2.3 acknowledge that I shall, and I am entitled to, rely upon all Information provided to me, that I shall not be responsible for the accuracy or verification of any information provided and that my report will be provided only on the basis of my site investigation and the Information disclosed to me by you.
 - 2.4 confirm that my charges are no higher than reasonably necessary for the purposes of litigation bearing in mind my professional expertise.

- 2.5 agree to comply with and take all reasonable steps to assist me in complying with the Protocol and the Civil Procedure Rules referred to in Clause 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 your Client and Instructing Solicitors to exercise reasonable skill and care in carrying out their instructions, my primary duty as an expert witness is to provide independent and unbiased evidence to the Court.
- 4 Liability
- 4.1 My total liability for professional negligence (excluding any liability for fraud or wilful misconduct) under or in connection with this Appointment shall not exceed £1,000,000.
- 5 Insurance
- 5.1 I confirm that I hold professional indemnity insurance in respect of the Appointment.
- 6 Right to Terminate
- 6.1 The Appointment is subject to receipt of all necessary and relevant information from you in sufficient time to prepare a response and payment of monthly invoices as the fall due. I will advise you promptly if:
- 6.1.1 instructions are not acceptable because, for example, they require work that falls outside my expertise, impose unrealistic deadlines, or are insufficiently clear.
- 6.1.2 I consider that instructions are or have become insufficient to complete the work.
- 6.1.3 I become aware that I may not be able to fulfil any of the terms of Appointment.
- 6.1.4 I am not satisfied that I can comply with any orders that have been made.
- 6.2 This retainer may be terminated by Instructing Solicitors at any time by written notice subject to discussion in accordance with the Protocol. Where I am instructed jointly termination will be effective when I have received written notice from all instructing parties. Termination will not affect my entitlement to payment of any fees for work conducted or invoiced before the date of the termination.
- 6.3 Upon termination, all documents and materials provided to me for the purpose of this Appointment must be returned promptly to Instructing Solicitors save for one copy that I may retain for my records.
- 7 Intellectual property
- 7.1 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 Paragraph 1 above.
- 8 Confidentiality
- 8.1 I will treat all information, facts, matters, documents and 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
- 9.1 I confirm that the work which is carried out in relation to this matter will be my own and will not be delegated or sub-contracted to someone else.
- 10 Conflict
- 10.1 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
- 11.1 In circumstances where I am jointly instructed by Instructing Solicitors, both sets of Instructing Solicitors must agree in writing to these Terms of Engagement. It is for Instructing Solicitors to resolve any disagreements the parties may have in relation to instructions or to clearly identify areas of disagreement in the Quote. Instructing Solicitors should note that Paragraph 17 of the Protocol will apply.
- 12 Governing Law
- 12.1 This Appointment is subject to English/Scottish law and the parties hereto submit to the exclusive jurisdiction of the English/Scottish courts as appropriate.
- 13 Force Majeure
- 13.1 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 limited to, ill health, acts of god, 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.