

Rates, Terms and Conditions.

Introduction

Reports on chemical injuries are generally more complex than reports on, say, a whiplash injury or an upper limb disorder. Physicians or surgeons preparing reports on such subjects will basically know all that is to be known about such conditions and the reports will be very similar on different individuals with the same condition. Often the report is produced by inserting particular details (such as symptoms and observations) into a template. The result is that reports can be produced quickly and to a predictable cost that enables a firm quotation to be given.

No physician, hygienist or toxicologist knows every effect of the hundreds of thousands of chemicals to which exposure may occur. They know how to assess exposure, how to identify reports of toxic effects and mechanisms and how to relate alleged symptoms and signs to the reported effects or mechanisms. In order to produce their report, it is normally necessary to undertake a literature search and purchase reprints of relevant scientific papers and read them critically. For this reason, the work of producing a report in a case of alleged chemical injury is considerably greater than for other types of report and it is often unpredictable. It is not possible to give a firm quotation for the cost in most cases and the costs are much higher than for more simple reports. I therefore am prepared to give an estimate (that is not binding) and the costs of my reports are based on an hourly rate and, because of the time taken, they are relatively high.

Normal charges per hour (+ VAT)

	£
Standard rate	150.00 (£175 -urgent matters on vacation)
Travelling other than in train (1 st class)	80.00 + tickets, mileage & parking etc.
Travelling in train (1 st class) or waiting	40.00
Presentation & Barrister conferences	180.00 + preparation at £150.00
Under interrogation/cross examination	200.00
Delegated tasks under supervision from	25.00

Travel

Travel as a passenger	Cost
Travel in own car - per mile	0.50

Printing, binding, copying, archiving and incidentals

Usual charge	50.00
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(Higher charges will be justified in detail)

As a general guide, I usually take 1 to 2 hours to take a detailed exposure and medical history from the claimant. It usually takes me between 2 and 4 hours to sift through a lever arch file of medical records and other reports. Literature searching, if necessary, can take an hour or two and requesting and reading original scientific papers, if necessary can also take an hour or two. Depending on the complexity, report takes at least two hours and can be substantially longer if a detailed review of the literature is required in complex cases. More complex reports may cost £1500 or more +VAT

VAT

For all services deemed to be delivered in the UK, VAT is chargeable at the prevailing rate. For all services deemed to be delivered in an EU country other than the UK, VAT is payable by my **Client** in that country.

Terms of service

Experience leads me to advise you of my expectations and what you may expect in relation to the work I shall be doing for you. I hope that you find these acceptable and I should be grateful **if you would indicate their acceptability or any aspect on which you would like to agree differently.**

1. Contract and terminology

This is an agreement between Dr John R Jackson (the **Expert**) and the instructing Solicitor or MRO (the **Instructor**)

Name..... Firm.....

Address.....

Tel.....Ref..... email.....

In general, I ("The **Expert**") am only exceptionally prepared to accept instructions from Medical Report Agencies (MROs). I normally insist on having a contract with one Solicitor or firm of Solicitors ("the Solicitor") or one insurance company ("the Insurer"). The Solicitor or Insurer is hereinafter referred to as "the **Instructor**". I am prepared to consider exceptions and have done so.

Where I am instructed as a Single Joint Expert (SJE), one of the firms enters a contractual relationship with me and the firms make their own arrangements for giving me instructions to which both subscribe and for sharing my payment. The person(s) or entity on whose behalf the solicitors or insurers are acting is referred to hereinafter as "the **Client**".

Where I am instructed as a Single Joint Expert by direction of a court, this should be explicit in the instructions and the details of solicitors of other parties should be given to me by the **Instructor**.

In this and other cases where I am instructed jointly as an agreed **Expert** by solicitors to the parties, according to the pre action protocol for personal injury claims, I shall respond and report to all the parties identified to me by the **Instructor** if and only if one of the following is the case:

1. I receive from the **Instructor** joint instructions signed by (solicitors for) each party
2. I receive instructions from the **Instructor** a letter from (solicitors of) other parties accompanied by a photocopy of my letter of instructions and stating that they agree to these instructions.

The **Instructor** is responsible for my fee unconditionally unless there is agreement to an alternative arrangement. I am prepared to enter into deferred payment arrangements with the **Instructor** subject to a signed agreement on the precise terms. When I am acting as an agreed Expert or a SJE, the **Instructor** is responsible for my whole fee.

2. The Instructions

The **Instructor** will:

- (a) provide the **Expert** with full and timely written instructions which clearly state:
 - (i) whether the **Expert** is being instructed on the **Instructor**'s own behalf or that of one of the parties to the dispute or as a Single Joint Expert pursuant to Civil Procedure Rule 35.7
 - (ii) the purpose for which the **Expert**'s advice and services are needed, including a description of the matter on which they are being sought
 - (iii) which factual aspects of the matter may be in dispute
 - (iv) whether the advice and services are to be provided in accordance solely with information supplied or will require independent investigation by the **Expert**
 - (v) the precise kind of Expertise called for
 - (vi) the particular questions that are to be addressed
 - (vii) whether the **Expert** will be expected to confer with Experts instructed on behalf of other

parties with a view to reaching agreement on the issues or narrowing those in dispute
(viii) whether the **Expert** is to prepare a report for the advice of the **Instructor** and/or his **Client** or for use in court, and, if the latter, whether a draft version needs to be submitted first of all
(ix) any time constraints for the provision of the advice, the production of the report, etc.

(b) provide the **Expert** with such basic additional information as names, addresses, telephone numbers and dates of incidents.

(c) supply the **Expert** with good-quality copies of all relevant documents, **including those that become available after the delivery of the instructions and the initial bundle.**

(d) in the case of medical records, specify their location and identifying numbers and state whether consents for their disclosure have been given or are being obtained.

3. Obligations of the Instructor

The **Instructor** will:

a) inform the **Expert**

i) from whom funds for payment of his fees are to be obtained and whether the **Instructor** needs to obtain authority to incur the estimated fees and disbursements before confirming the **Expert's** instructions.

ii) whether the report can be considered to be produced by order of a court of law such that copyright fees need not be paid on literature appended and cited

b) in legal aid cases:

i) notify the **Expert** that a funding certificate or legal aid order has been applied for, granted or amended

ii) apply to the Area Office of the Legal Services Commission for prior authority to incur the **Expert's** anticipated fees and disbursements and immediately advise the **Expert** should this authority be refused and apply to the Area Office for interim payments on account to settle the **Expert's** invoices within the agreed time scale.

c) in privately funded cases ensure that the **Expert's** fees and disbursements are paid within the agreed time scale, whether or not the **Instructor** has been placed in funds by the **Client**.

d) respond promptly to any reasonable request from the **Expert** for, *inter alia*

i) clarification of instructions already given

ii) further information or documents

iii) permission to incur expense additional to that initially estimated

iv) authority to engage others to undertake part of the assignment.

e) not alter, or allow others to alter, the text of the **Expert's** report(s) in any way without the **Expert's** permission.

f) give prompt written warning of every meeting or hearing that the **Expert** is, or may be, required to attend and **immediate notification should they be cancelled.**

g) keep the **Expert** informed as to the progress of the case and its outcome.

h) not use, or allow others to use, the **Expert's** report(s) for any purpose other than litigation in the matter on which the **Instructor** has sought the **Expert's** advice and services. The **Instructor's** instructions are accepted by the **Expert** only upon the basis that the **Instructor** gives to the **Expert** full, timely and proper instructions, authority and information which will enable the **Expert** to lawfully and properly carry out the assignment and comply with the **Expert's** duty to the court, and that the **Instructor** will indemnify the **Expert** accordingly.

4. Obligations of the Expert

If the **Expert** is required to provide **Expert** evidence, he or she becomes subject to the provisions of the Civil Procedure Rules or the Criminal Procedure Rules that relate to **Experts**. In such circumstances the **Expert's** primary duty would be to the Court and his or her evidence must be seen to be independent, objective and having no bias towards the party responsible for paying his or her fees. Subject to these overriding considerations, the **Expert** will:

- (a) at all times, both during and after completion of the Assignment, adhere to professional boundaries of confidentiality, and raise with the **Instructor** any conflict between professional boundaries and **Instructor's** instructions, if it becomes apparent.
- (b) perform only those tasks for which he or she has the requisite qualifications and experience to undertake, and the resources needed to adequately fulfil them within the allotted time span.
- (c) keep detailed time-sheets and records of tasks undertaken.
- (d) promptly notify the **Instructor** of:
 - (i) any conflict of interest that would disqualify the **Expert** or render it undesirable for the **Expert** to have continued involvement with the case
 - (ii) any requirement the **Expert** perceives for the **Instructor** to employ additional Expertise.
- (e) endeavour to make him or herself available for all hearings, meetings or other necessary engagements for which he or she has received adequate notice.
- (f) not negotiate with the opposing party or their advisers unless specifically authorised to do so by the **Instructor** or instructed to do so by order of the Court.
- (g) if requested by the **Instructor**, provide before the hearing full and complete details of his or her costs to trial
- (h) not without good cause discharge himself or herself from the appointment as **Expert**.
- (i) at all times, both during and after completion of the Assignment, treat all aspects of it as confidential unless authorised by the **Instructor** to the contrary.
- (k) Unless agreed differently, the **Expert** will supply the **Instructor** and any other party specified by the **Instructor** and agreed by the **Expert** in the time scale indicated with a signed report and an invoice for the work done. This may be treated as a draft in that it can be checked regarding its scope, emphasis and the factual correctness of information I have obtained from the documents or any persons interviewed or examined. Comments on the format of the report, clarity of expression, use of justifying or explanatory material, etc. are welcome. The **Expert** will try to accommodate comments in these respects and if necessary will modify and re-issue the report. This is only necessary in the minority of cases.
- (m) The **Instructor** or any other party specified by him as a recipient of the report may also comment on the opinion and the **Expert** may agree to modify it if convinced that it was formed on the basis of factual error or that proper consideration was not given to material facts or evidence.
- (n) The **Expert** has been asked to delete certain opinions, for example on psychiatric or psychological aspects of a case, on the grounds that he is not a recognised **Expert** in this area. The **Expert** may be prepared to do this, but insists (if it is considered relevant) on presenting the **facts** relating to the psychological or psychiatric aspects, explaining their importance in the overall evaluation of the case and stating that a **non-Expert** opinion is being with-held on the expectation that an **Expert** opinion will be obtained.
- (p) Provided comments are received within a month, the **Expert** will modify the report and may deliver a supplementary invoice with the revised report (unless the changes are minimal or attributable to some failure on the **Expert's** part).

5. Intellectual Property Rights

(a) Unless otherwise agreed in writing, all legal and beneficial interest in intellectual property rights and rights of ownership in written reports, photographs, recordings, models and other original work created by the **Expert** relating to or developed by him or her in connection with the assignment given by the **Instructor** shall belong to the **Expert**.

(b) The **Expert** grants to the **Instructor** a non-exclusive, non-transferable licence to use the said intellectual property solely in connection with the assignment to which the instructions relate and for the duration of these terms of engagement but subject to clause 7(f) below.

6. Fees and Disbursements

In the absence of any written agreement to the contrary:

(a) the **Instructor** who instructs the **Expert** does so as principal and shall be personally responsible for payment of the **Expert's** fees and disbursements, whether or not the **Instructor** has been placed in funds by the **Client** (or, in legal aid cases, by the Legal Services Commission), and the **Instructor** shall pay them in full, notwithstanding any provisions of the Civil Procedure Rules or Criminal Procedure Rules with regard to their amount, recoverability or otherwise, and whether or not the full amount has been allowed in any assessment of the costs of the case.

(b) Fees will be charged on a time costed basis at the **Expert's** hourly rate from time to time applicable and notified in writing by the **Expert** to the **Instructor** unless a fixed fee or some other basis of charging is agreed in advance and in writing between the **Expert** and the **Instructor**.

(c) The **Expert** may present interim invoices at such intervals as he or she considers fit and payment of each invoice will be due within 40 days of its presentation, subject to any written waiver granted by the **Expert**.

(d) The **Expert** may agree with the **Instructor** to defer payment of his fees until 12 months after delivery of the report or until settlement of the case, whichever is the sooner, irrespective of the outcome of the case. Interest on the fee will be charged at 1% simple per calendar month or part thereof, beginning 41 days after the date of the invoice.

(e) The **Expert** reserves the right to charge to the **Instructor** the costs and expenses (including legal costs) of recovering late payments and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

(f) If the **Instructor** does not make payment when due the **Expert** may, in addition, modify the payment terms so as to make all fees and disbursements payable in advance or require the **Instructor** to give such assurance, guarantee or undertaking as the **Expert** may reasonably require to secure the **Instructor's** payment obligations.

(g) Until payment in full has been made by the **Instructor**, the **Expert** shall be entitled to retain all books, papers, reports, documents and other materials, whether or not these are the property of the **Instructor** and whether or not they relate to the assignment in respect of which the **Expert** has been instructed.

7. Cancellation Fees

The **Expert** shall be entitled to charge fees in the event of cancellation of any activity resulting from instructions. Such fees shall be calculated on the basis of the appropriate hourly rates for work done (detailed in the time sheet) + any necessary disbursements (such as library fees, travel to a **Client's** home) + £50.

8. Disputed Fees

In the event of a dispute over the amount of the **Expert's** fees or disbursements, such sums that are not disputed shall be payable when due, irrespective of any counterclaim that may be alleged. That part which is in dispute can then be referred for resolution to a mediator acceptable to both parties or, if agreement cannot be reached, by using the services of the Centre for Dispute Resolution. In the event that the dispute is not resolved by means of negotiation or mediation, the Courts of England and Wales will have exclusive jurisdiction in relation to the dispute and its resolution.

9. Third Parties

These terms of engagement set out the rights and obligations of the **Instructor** and the **Expert** only. For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in these terms shall be taken to confer or purport to confer any right or benefit on any third party and a third party shall have no right to the enforcement of any term contained herein.

10. Exceptions and Waivers (manuscript)

11. Other recipients of the report(s)

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Signed (Instructor) Date.....
Signed (Expert)..... Date.....