

**Mr. Jonathan Luck FRCS FRCOphth**  
**Consultant Ophthalmic Surgeon**



The Royal United Hospital Bath NHS Foundation Trust  
Combe Park  
Bath BA1 3NG

Dear Sir / Madam,

Thank you for your enquiry / instruction.

Please find attached my standard Terms and Conditions of Engagement. Please see in Appendix I my Privacy Notice.

The issuing of instructions by the instructor after considering the terms and conditions set out below denotes an understanding and acceptance by both parties of a **contractual agreement** and the fee structure shown below EXCEPT where explicit alterations have been agreed in writing prior to instruction on a case-by-case basis.

These terms replace any terms which may have been agreed for previous work. These terms may not be altered in retrospect and constitute a legally binding contract.

On receipt of the relevant documentation, I normally aim to turn a report around within at the most 4 weeks. My fee structure is laid out below.

My reporting tends to be claimant / defendant / joint in approximately an 80 / 15 / 5 ratio.

Yours faithfully

Mr. Jonathan Luck MB ChB FRCS FRCOphth

## **Terms and Conditions of Engagement**

Mr. Jonathan Luck MB ChB FRCS FRCOphth

### **Obligations of the Solicitor**

To deal promptly with every reasonable request by myself for authority to obtain any information and documents deemed by me necessary to fulfill your instructions.

To give prompt written notification of every meeting, hearing, trial or other appointment at which my attendance will be required.

To not alter or permit others to alter any of the reports produced by me.

### **For civil cases**

To provide me with all documents relevant to the case, in particular:

The Claimants/Defendant's statements

The Claimants Statement of Claim in the High Court, or Particulars of Claim in the County Court and, once the case has been started, any other pleadings

All Claimant and Defendant Witness Statements

The reports of other Experts, for both the Claimant and the Defendant.

Any directions of the Court as to how the case is to be conducted

Any other relevant documents.

### **For criminal cases**

To provide me with all documents relevant to the case and in particular:

To notify me what the Defendant is charged with and to notify me what defence if any the Defendant is relying on

To provide me with a copy of the Defendant's Statement

To provide me with Witness Statements for the Prosecution and Defence (or summaries)

To provide me with reports of the Expert Witnesses for both the Prosecution and the Defence.

## **Obligations of the Expert**

As the Expert I will:

Use reasonable skill and care in the performance of the instructions given to me.

Act with objectivity and independence with regard to my instructions and, in the event of a conflict between my duties to your client and to the Court, hold my duties to the Court paramount.

Undertake only those parts of the case in respect of which I consider I have adequate qualifications and experience.

Promptly notify the Solicitor of any matter (including a conflict of interest or lack of suitable qualifications and experience) which would disqualify me or render it undesirable for me to have continued involvement in the case.

Use all reasonable endeavors to make myself available for all meetings, hearings, trials and other appointments for which I have received adequate written notice.

Not without good cause discharge myself from the appointment as Expert.

Preserve confidentiality save as expressly or by necessary implication authorised to the contrary.

Not negotiate with another party or advisor unless specifically authorised by the Solicitor to do so. For the avoidance of doubt this does not apply to any order of a Court or Tribunal.

## **Telephone Discussion**

Solicitors wishing to speak to me to discuss an initial instruction may do so free of charge - a telephone appointment will be promptly arranged. Telephone calls and letters (other than for initial instruction) will be charged at the usual hourly rate in 15 minute units. No charge is made for emails in response to instructors' emails, if brief in nature. No charge is made if the instructor wishes to leave a telephone message which does not require a response, e.g. to pass on information. Administrative enquirers from agencies should be made by email only.

## **Pro-bono request for opinion**

I will on occasion provide a brief pro-bono opinion on a summary of a case on the understanding that indemnity is provided by the lawyer, agreement for any information given to us loses any legal privilege and our pro-bono advice does not prevent us from taking subsequent instruction from the other side, if that opportunity arises, without the need to refer back to the first side for permission.

## **Intellectual property rights**

The rights of ownership in respect of all documents and other original work created by me shall remain vested in me and less otherwise agreed in writing.

## **Fees**

My fees are based upon the degree of responsibility and skill involved and the time necessarily occupied on the work. Unless otherwise agreed they will be charged separately for each class of work mentioned above.

I agree to provide witness services as an expert in the field of Ophthalmology in accordance with instructions received and in accordance with the terms of engagement as set out below:

**Reports (Part 35 compliant)** - my current hourly fee rate for preparing such reports is £375 per hour for all work undertaken on the case, to include review of records, examination of patient (if condition and prognosis report required), preparation of report, literature searches, travel time, and supplementary enquiries. A report will be provided within 4 weeks after receipt of the records / examination of the client unless otherwise notified. I am happy to provide an estimate of costs, however this is only an estimate and can vary according to case complexity. I will promptly inform the instructing party if this is liable to be more than 10% of the original quote.

**Screening / Desktop (non-Part 35 compliant)** requests are accepted at a fixed rate of £850. For this type of report, it is assumed that the medical records and any other documentation the expert needs to review and consider do not exceed 100 pages. If the records exceed 100 pages, an additional fee may be payable with the agreement of the instructing solicitor. A report will be provided within approximately 2 weeks of receipt of the records

**Fast-track** reports can be provided, dependent on case complexity, if required. These would have a one-week turnaround and are charged at £500 per hour, with approximately the same amount of work required. Again, on receipt of the records I can provide a fixed fee quotation.

**Examination** (if required) will be arranged by us within 4 weeks of receipt of instruction and your acceptance of these T&C's.

**Attendance at case conference** either face-to-face or via videoconferencing will be charged at £375 per hour (a minimum total charge of £375) including travel time. and travel expenses if necessitated

**Attendance at Court** as an expert witness, whether oral evidence is eventually required or not, is charged at £1500 per half day or part thereof, plus accommodation and subsistence expenses and travelling expenses at £200 per hour with First Class rail

travel or car mileage at 120 pence per mile. Copies of receipts will be provided if requested

Whilst trying to retain flexibility to assist the Court at least 8 weeks' notice is normally required for Court appearances in order to cancel any other commitments. Not more than 4 working days can normally be block booked. Solicitors MUST contact me for dates of non-availability before arranging a hearing for me to attend. I will endeavour to respond promptly to request for non-availability but please give at least 10 days' notice. If after 28 days Court dates have not been set, then please contact me again to check for non-availability.

I appreciate that the nature of medicolegal litigation means that a case may often settle relatively late before a Court date. The instructing party must also appreciate that I have clinical commitments and patients should not have their appointments cancelled at the last minute.

I will therefore ensure that any date reserved for Court or Attendance with Counsel is honoured.

Cancellation charges will be applied in any case which I have been warned for Court or a Summons issued, the charges depending upon notice of cancellation:

**Notice of cancellation (calendar days) Percentage of fee payable**

Less than 7	100% of fee for dates set aside
7-13	75%
14-27	50%

Invoices for work done will be rendered at appropriate times.

If an overnight stay should be required, reasonable accommodation and subsistence expenses will be chargeable.

Where it is necessary to undertake specific investigations or tests in order properly deal with the matter, I will seek the Client's authority before incurring the cost of such investigations or tests. The Client will be responsible for the charges for such tests and investigations.

Instructing Solicitors accept sole responsibility for paying my fees and disbursements unless instructions are received from an agency in which case the instructing solicitor and agency both accept **joint and several liability** for my fees. Payment is due within 60 days of the date of invoice irrespective of whether you have received reimbursement of my fee from your client, the legal aid agency or a third-party insurer.

Separate invoices will be rendered for further such work undertaken on the case and will be paid within 60 days from delivery of such further invoice.

**Late Payment:** Where accounts are not settled by the Instructing Solicitor within the agreed period and, at the discretion of the Expert, interest will be charged at the rate of 2% per month, or part of a month, until full settlement is received, pursuant to the Late Payment of Commercial Debts (interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002.

Fees are not redactable by taxation and form an agreement between myself and the instructing solicitors. Legal and third-party companies and agencies may have their own terms and conditions. Acceptance of instructions by myself supersedes any such local agreements.

## **General**

I will use my best endeavours to comply with any Court order affecting me. I require the Client to supply me with copies of all such Court orders as soon as possible after such has been made. I will deal with any questions about my report put to me by either party but may require assistance and guidance from the Client. I will deal with any order or request to attend an experts' meeting. Once the case has been set down for trial I will use my best endeavours to keep those dates free of other work or other trial commitments.

I reserve the right to terminate this agreement upon giving written notice to the Client, without prejudice to any accrued rights under the agreement, if the Client is dissolved or becomes insolvent, or makes a general assignment, arrangement or composition with its creditors.

The rights and remedies set forth in this agreement are not exclusive and are in addition to all other rights and remedies provided by law

This agreement shall be governed by and construed in accordance with the laws of England and constitutes the entire agreement between the parties.

I will use my experience, care and skill in fulfilling your instructions to the best of my ability. In the event of dissatisfaction with my services, the Client shall put reasons to me in writing.

The Client shall provide me with comprehensive instructions including whether the matter is pre-trial advice or litigation is likely and all timetabling information as far as is practicable including track allocation.

I reserve the right to terminate this agreement and charge for work undertaken to that point if the client or anyone representing the Client or anyone representing the Client shall have provided me with information which is false or misleading and which may compromise my duty to the Court.

The Client understands and accepts the nature of my duty to the Court under Part 35 Civil Procedure Rules.

I shall not incur any liability to the Client for any loss or damage which may be suffered as a result, directly or indirectly, by the supply of services being prevented, hindered or delayed because of circumstances outside my control.

### **Intellectual property**

The intellectual property of any report produced by myself is mine alone. It is only on the receipt of full settlement of any outstanding accounts that I will release the IP (report, documented opinions and correspondence) enabling any third party to use part of all of that material.

### **Single Joint Expert**

If the Medical Witness is instructed by two or more Instructing Solicitors, these Terms and Conditions shall apply subject to contrary agreement between the Instructing Solicitors and myself. Each Instructing Solicitor will be jointly and severally liable for all my fees and expenses.

### **Legal Aid funded cases**

In cases where my fees are to be funded by the Legal Services Commission, I will provide a costed program of work and require you to obtain its approval (prior authority) by the Commission. I wish to receive a copy of the Form of Approval, before any work is undertaken. I reserve the right to approach the Legal Services Commission through you for prior approval of fees to complete the work, or to undertake additional work, should this prove necessary.

Where a fee has been agreed in advance with the Legal Services Commission or your client, I reserve the right to invoice the full cost of my fees even if this exceeds the fee agreed in advance.

I will not demand payment of that excess until the conclusion of the case, at which stage all or part of that excess will be cancelled if it is not recovered by instructing Solicitors, at taxation of costs or otherwise.

Instructing Solicitors will apply promptly to the Legal Services Commission for interim payment of my fees and disbursements as invoiced and will remit promptly to me all such payments received.

Where a taxation/assessment of costs is necessary, it will be applied for, pursued or defended (as appropriate) in a timely manner, and that my reasonable fees and disbursements are recovered in full by way of the Legal Services Commission.

### **Privately funded cases**

In privately funded cases, the instructing Solicitors will at all times ensure that they are in funds to discharge and that they promptly discharge my fees and disbursements

(within 60 days of date of invoice as above) unless specifically agreed otherwise. May I remind you that you remain liable to pay my invoice even if your client has not met your costs. My full fees are to be paid irrespective of the outcome of any taxation of costs.

### **Diligence**

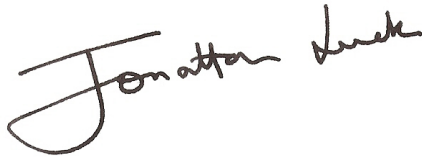
I have read and am compliant with:

- Part 35 of the Civil Procedure Rules and the accompanying Practice Direction
- The Civil Justice Council's 2014 advice
- The Academy of Medical Royal Colleges report 2019

Once it has been agreed this letter will remain effective until it is replaced.

Jonathan Luck MB ChB FRCS FRCOphth

February 2025

A handwritten signature in dark ink, reading "Jonathan Luck". The signature is written in a cursive style, with the first name "Jonathan" and the last name "Luck" clearly legible.



## **Appendix I**

### **Privacy Notice**

#### **Information Governance**

Copies of medical records and other relevant documentation can be sent electronically, on CD or in paper form (hard copy). These will be stored in a secure location, compliant with the 1998 Data Protection Act and the EU General Data Protection Regulations, until the conclusion of the case, or the end of my involvement in a case (whichever is sooner), whereupon the data will be destroyed. Data acquired from a consultation for an expert report is treated in the same way. Reports are sent securely to the instructing solicitor/other lawyer and are retained safely for 6 years, after which they are destroyed.

I am registered as a data controller with the Information Commissioner. My ICO registration number is CI472562.

#### **Purpose of Data Storage & Processing**

I am provided with personal data about data subjects, by the legal teams that instruct me. This data is stored by me, and processed only in so far as it is required to enable me to offer expert opinion on the standard of practice of Ophthalmologists in two broad scenarios:

- 1) For the Court in civil litigation on behalf of the Claimant, and on behalf of the Defendant.
- 2) For the General Medical Council (GMC), and/or the Medical Practitioners Tribunal Service (MPTS) in the professional regulation of Ophthalmologists on behalf of the GMC, and on behalf of registered medical practitioners

#### **Purpose of Data Storage & Processing**

Data includes: demographic data, health records, witness statements from individuals involved in a case, opinions from other medical experts, and legal documents pertaining to the case. Health records may contain, in addition to information about health, information about race, ethnic origin, religion, sex life, and sexual orientation. The General Data Protection Regulation 2018 (GDPR) defines the data that I store and process as **“Special Category Data”**.

#### **Nature of Processing**

- The contents of the documents referred to above are scrutinised by myself only, for the purposes of considering the information contained within them insofar as in it relates to questions about standard of practice of Ophthalmologists

- This information informs opinions provided by me in writing and orally to the Court, the GMC, the MPTS, and the legal teams involved in conduct of professional regulation proceedings and civil litigation
- Parts of the aforementioned documents may be transcribed into documents (reports and letters) that I write for the Court, the GMC, the MPTS, and the legal teams involved in conduct of professional regulation proceedings and civil litigation
- The whole of the aforementioned documents are scrutinised, as it is not apparent until they are scrutinised which parts of them contain relevant information. However, only relevant information is transcribed into, or referred to, in reports, letters and oral advice or evidence

### **“Lawful Basis”**

The law requires that I identify one of six categories of “Lawful Basis” for storing and processing data. The lawful basis for my processing and storage of data is: “Legal Obligation”. The Information Commissioner’s Office (ICO) says that:

*“Article 6(1)(c) provides a lawful basis for processing where: processing is necessary for compliance with a legal obligation to which the controller is subject.”*

*“Article 6(3) requires that the legal obligation must be laid down by UK or EU law. Recital 41 confirms that this does not have to be an explicit statutory obligation, as long as the application of the law is foreseeable to those individuals subject to it. So it includes clear common law obligations”*

*“This does not mean that there must be a legal obligation specifically requiring the specific processing activity. The point is that your overall purpose must be to comply with a legal obligation which has a sufficiently clear basis in either common law or statute.”*

*“You should be able to identify the obligation in question, either by reference to the specific legal provision or else by pointing to an appropriate source of advice or guidance that sets it out clearly. For example, you can refer to a government website or to industry guidance that explains generally applicable legal obligations”*

As an expert witness I have legal obligations to provide honest and impartial opinion to the Courts, GMC, MPTS, and the legal teams responsible for conducting civil litigation and professional regulatory matters. It is impossible to provide expert opinion without storing and processing the data, which means that such storage and processing is essential so that I can comply with my legal obligations.

The legal obligations of expert witnesses are clearly defined in law, including:

- **Civil Procedure Rules 1998(CPR)**

- **Medical Act 1983** together with the **Fitness to Practise Rules 2004**
- The General Professional duties of an expert as defined by the GMC in **Acting as a Witness in Legal Proceedings**; and
- Common Law obligations.

### **“Special Category Condition”**

As the data is “Special Category Data”, the law also requires me to identify an additional “Special Category Condition” for my storage and processing of the data. The “Special Category Condition” listed in Article 9(2) of the GDPR that applies is:

*“(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.”*

The draft UK Data Protection Bill defines ‘legal claim’ at Schedule 1, Part 3, Section 29 thus:

*“Legal claim.... This condition is met if the processing—*

*a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),*

*b) is necessary for the purpose of obtaining legal advice, or*

*c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights”*

It is my view that my work meets this definition.

### **Risk Assessment**

Risks associated with the loss of data are very small as all data that is stored and processed by me is also stored by other organisations. For example: a data subject’s health records will be stored by both the healthcare provider that created the record, and the legal teams involved in conduct of the proceedings.

Unauthorised access to data may occur by deliberate attempt by an unauthorised person, or by an error on the part of myself, for example sending a report to the wrong person.

Deliberate attempts to access health records by unauthorised persons are rare in the healthcare sector. However, if unauthorised access did occur, the potential consequence of such a breach is great for the individual subject as health records contain extremely sensitive personal information.

Whilst unauthorised access to such information is unlikely to cause direct financial or physical harm to the data subject, it might cause great embarrassment, emotional

distress, disruption to personal relationships, detriment to employability, and vulnerability to discrimination. In summary, the potential personal consequences for data subjects of a data breach involving health data are significant.

It is not possible to guarantee protection against unauthorised access to data by a determined third party acting outside the law. However, the measures described below represent accepted healthcare industry best practice in terms of protecting personal data and are likely to limit the possibility of unauthorised access to a great degree. Furthermore, they are proportionate, affordable and practical.

## **How Data Are Stored**

Data are only received in electronic format.

Electronic documents are stored in one computer. This is protected by a password and /or biometric security at log-in.

The data are continuously synchronised via a cloud service, which also stores a copy of each file on remote servers which are located within the UK in data centres that meet the ISO 27001 standard. The data is fully encrypted in transmission as well as in storage. If local data loss occurs, files can be restored from the remote servers.

Health records are stored until either:

- I am informed by the instructing legal team that the matter has concluded, or
- 2 years after the last activity on the file in that particular matter has expired, whichever is sooner.

This is because legal proceedings frequently experience long delays, and if records are destroyed sooner, this may necessitate copies being re-sent to me if I am asked to comment further at a later date. This would introduce additional risk of data breach in transmission.

Documents that are created by me in the course of my processing of the data, for example letters and reports, are stored for 6 years from the date that the last document on file was created. I am personally liable for the opinions I give, and as such need to retain this work product in order to defend myself against potential claims.

## **How Data Are Stored**

Data are transmitted in one of two ways:

- 1) Via the cloud storage service referred to above.
- 2) Email, in which case files containing sensitive personal data are encrypted and password protected.

Data are not transferred outside the EU.

### **Access by Data Subjects**

Should data subjects require access to the data I store about them, then this can be provided, free of charge. Data subjects should contact me to arrange this. For contact details please see my website: [www.jonathanluckmedicolegal.org.uk](http://www.jonathanluckmedicolegal.org.uk)

### **Accountability**

If data subjects have any concerns about how their data is processed, they are invited to contact me to discuss this in the first instance. Alternatively, or if their concerns remain unresolved, they can contact the Information Commissioner's Office (ICO). Their contact details are:

Web: [ico.org.uk](http://ico.org.uk)

Tel: [0303 123 1113](tel:03031231113)