

# HFH CONSULTING - TERMS OF BUSINESS

## Introduction

We value our reputation for high professional standards and are committed to providing you with the highest quality of service, handling your instructions with professional skill, care and attention. We believe that it is essential that you are kept fully informed of progress in carrying out your instructions. If you have any questions about the conduct of your case, please contact the Consultant concerned.

## 1. Terms for the Provision of Services

### Application

These Terms set out the basis on which we, HFH Consulting ("HFHC"), are prepared to provide the services described in paragraph 2 of these Terms ("the Services") to you ("the Instructing Client(s)"). These Terms shall apply in place of and shall prevail over any terms or conditions put forward by the Instructing Client. No variation of these Terms shall be binding upon HFHC unless made in writing and signed by an authorised representative of HFHC.

**Please note: all parties wishing to instruct HFHC must be listed and sign at the end of these Terms of Business document.**

These Terms incorporate and are subject to Part 35 of the Civil Procedure Rules (1999) ("CPR") dealing with experts and assessors and in particular Rule 35.3 which states:-

- (i) It is the duty of an Expert to help the Court on the matters within his expertise;
- (ii) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

### Agency

HFHC's agreement with the Instructing Client does not create any agency relationship between HFHC and the Instructing Client.

These Terms are not enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

### Liability

HFHC's total liability, whether in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any loss, damage, or liability incurred or sustained by the Instructing Client directly or indirectly under or pursuant to HFHC's agreement with the Instructing Client, whether in respect of an event or a series of events, whether for loss of profit, loss of business, depletion of goodwill or otherwise (whether or not caused by the negligence of HFHC or its Consultants) shall not exceed £1,000,000.

Nothing in these Terms excludes or limits the liability of HFHC for death or personal injury caused by HFHC's negligence or fraudulent misrepresentation.

The Instructing Client agrees to indemnify HFHC against all liability, actions, costs, claims, proceedings, damages or demands in any way connected with these Terms brought or threatened to be brought against HFHC by any third party except to the extent that HFHC is liable to the Instructing Client under these Terms.

## 2. The Services

### Expert Witness Services

The services offered are the provision of a Consultant to act as a Care Consultant and independent Expert at court in personal injury, medical negligence, fatal accident and other claims. Tasks include assessing a Claimant's needs arising from claimed impairments and loss of services which interfere with the Claimant's performance of daily activities.

Fees payable for expert witness services are as set out in the Schedule of Fees.

*HFHC Agrees (subject to Rule 35.3 of the CPR as aforesaid):*

- 2.1 To act on the Instructing Client's behalf as a Care Consultant and independent Expert.
- 2.2 To accept instructions only where Consultants employed by HFHC have relevant qualifications and/or experience.
- 2.3 To advise the Instructing Client of any conflict of interest (actual or perceived).
- 2.4 To ensure that all instructions are undertaken with professional skill and care.
- 2.5 To make every effort;
  - (i) to deal with matters promptly, and
  - (ii) to comply with any time limits imposed by the Court.
- 2.6 To remain objective and impartial and to preserve confidentiality in line with the Terms of the Data Protection Acts 1984/1998. This obligation shall not apply if: such information becomes public knowledge otherwise than through the fault of HFHC; or is already in HFHC's possession; or is legally acquired by HFHC from a third party; or is required to be disclosed to other parties by law or by any government authority, which disclosure shall be limited to the requirement of such law or government authority.

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- 2.7 To ensure that Consultants act consistently with their over-riding duty to the Court (CPR Part 35.3) and to maintain objectivity and independence when carrying out their instructions.
- 2.8 When acting as a Single Joint Expert, Consultants will also:
- conduct themselves consistently with the principles of fairness and transparency,
  - provide each Instructing Client with identical copies of all work instructed on this basis.
- 2.9 To accept the appointment of the Consultant in question on three alternative bases:
- Advisor
  - Party Appointed Expert
  - Single Joint Expert
- 2.10 To notify the relevant Instructing Client(s) when appointed Consultants are not able to act/continue to act as instructed and, if necessary/requested, to give reasons accordingly.
- 2.11 To notify the Instructing Client of the availability of Consultants to attend Court. In the event that a Consultant is summonsed/subpoenaed to attend more than one trial then the summons/subpoena first received by HFHC shall take preference. The Instructing Client should note that HFHC is reluctant to accept open summons/subpoenas, and if a summons/subpoena is received without a trial date, a charge will be made for any directly related expenses involved in a sudden demand for attendance by a Consultant at Court, including all professional fees lost due to cancellation of other professional engagements.
- 2.12 Where a Consultant is acting as either Party Appointed or Single Joint Expert, then, except in exceptional circumstances, to undertake a home assessment of a Claimant and thereafter to prepare a report (CPR Part,35.5). The report will assess the level and type of care required and calculate past, present and future care costs. Ordinarily, recommendations will also be made as to the need for aids and items of equipment, transport requirements and other relevant, miscellaneous costs. If requested, an estimate of the likely cost of the home assessment visit and preparation of the report will be given.
- 2.13 In cases where the Consultant is instructed to act as an Advisor, then, ordinarily, the preparation of the report will be preceded by a home assessment visit. However, when acting as an Advisor, Consultants may agree to the preparation of a report or other written advice without first undertaking a home assessment. However, all Consultants acting as Advisors reserve the right to insist on a full home assessment of a Claimant, especially where subsequently instructed to act as a Party Appointed or Single Joint Expert.

*Instructing Clients agree:*

- 2.14 To provide clear, written instructions (initially and on any variation or addition to such instructions) together with copies of all relevant documents and to deal promptly with any requests for the same. These instructions should cover all the issues that the Instructing Client wishes to be covered in the report including care, aids and equipment and any other relevant issues.
- 2.15 At all times to keep HFHC informed of all relevant time limits (particularly those imposed by the Court) as soon as possible. HFHC cannot be held liable for failure to meet such time limits without reasonable notice of the same.
- 2.16 To promptly inform HFHC of the making of any Court Order affecting the relevant Consultant and to supply HFHC with a copy thereof.
- 2.17 To keep HFHC informed of and ascertain Consultants' availability for all relevant court dates and other relevant events and to provide a witness summons/subpoena to ensure a Consultant's availability to attend Court. The Instructing Client must nominate one person to be responsible for this obligation and inform HFHC.
- 2.18 In publicly funded cases, the Instructing Client agrees not to instruct HFHC to commence work until the Legal Services Commission/the Scottish Legal Aid Board has granted the relevant authority or where the Instructing Client is a Franchisee with devolved powers in the relevant category of work.. The Instructing Client shall provide evidence of this to HFHC [on request].
- 2.19 In cases where Instructing Clients have appointed a Consultant to act as a Single Joint Expert they shall:
- provide a single set of all instructions to HFHC, signed by each Instructing Client, or
  - otherwise ensure that the written and signed consent of each Instructing Client to the relevant instructions is provided to HFHC.

It should be noted that where the Instructing Client is instructing a Single Joint Expert, HFHC is entitled to refuse to commence working on the relevant instructions until such consent has been received

- 2.20 In cases where there is divergence of opinion between the Instructing Client(s) and the HFHC Consultant then the HFHC Consultant shall have the final decision.

### 3 Fees / Charges

HFHC's charging practices aim to ensure the provision of a professional service, charging Clients a rate for the job which is demonstrably fair. Any estimate is given only as a guide and should not be regarded as a firm quotation unless otherwise agreed in writing. Invoices will be rendered on completion of each individually instructed item of work carried out, with each individually instructed item of work to be determined by HFHC.

For the avoidance of doubt, no instruction to provide services can be accepted where payment is in any way contingent on the outcome of the case.

#### *HFHC's Terms for the payment of fees are as set out below*

- 3.1 Unless otherwise agreed, HFHC shall charge the Instructing Client those fees applicable at the time of the provision of services and as set out in the attached Schedule of Fees (which may be varied from time to time). The Instructing Client should note that fees and charges are reviewed on an annual basis in April and resulting changes therefrom will be immediately effective.
- 3.2 The charges for the provision of HFHC's services may vary according to the time scale and type of service under which work is required by the Instructing Client. Please refer to Schedule of Fees for further details.
- 3.3 HFHC's fees for the provision of the Services are exclusive of any applicable value added tax, unless expressly stated to the contrary. In addition to its fees, HFHC shall be entitled to recover its out-of-pocket expenses directly incurred in the provision of the Services, including, (but not limited to) travelling and accommodation expenses.
- 3.4 HFHC's fees shall be paid in full by the Instructing Client, regardless of the outcome of any assessment or other intervention by the Court.
- 3.5 In cases where two or more Instructing Clients have both instructed HFHC in relation to the same matter, then those Instructing Clients will be jointly and severally liable for the payment of HFHC's fees.
- 3.6 In publicly funded cases, the Instructing Client must agree fees with the relevant third party (Legal Services Commission/Scottish Legal Aid Board) unless the Instructing Client has devolved powers to incur fees and charges without prior authorisation from the relevant body. The Instructing Client will be responsible for payment of all fees and charges.
- 3.7 HFHC shall be entitled to invoice each Instructing Client on completion of each individually instructed item of work, unless otherwise agreed in writing. The Instructing Client undertakes to pay our fees within 30 days of the date of the invoice. If the Instructing Client fails to make payments on the due date, HFHC shall be entitled to charge the Instructing Client interest at the rate of 2% above Lloyds TSB Bank PLC's base lending rate for the time being in force.
- 3.8 Any queries relating to any aspect of an invoice should be raised with HFHC by the Instructing Client within 15 days of the date of the invoice.
- 3.9 If any payment is overdue, HFHC shall be entitled to refrain from continuing to do any further work or undertaking to do any other work for the Instructing Client. In addition, HFHC may use its discretion to resort to whatever action it deems fit if reasonable efforts to recover the debt have been failed, including the referral of the matter to the Office for the Supervision of Solicitors.
- 3.10 In the event that HFHC is ordered by the Court to provide certain services, and if any payment remains overdue relating to the matter in at the time of the request, HFHC reserves the right to file (without notice) a written request with the Court for directions as to how to proceed - Civil Procedure Rules (CPR) Part 35.14).
- 3.11 The Instructing Client should note that HFHC shall not be liable or in breach of its agreement if, by reason of any cause beyond its reasonable control, it is delayed in performing or fails to perform any of the Services; but such failure or delay will not prejudice its right to fees accrued prior to the delay or failure concerned.

#### *HFHC's obligations in respect of fees and charges:*

- 3.12 To provide the Instructing Client(s) with details of all relevant fees and charges (including, wherever possible, travel and other miscellaneous charges).
- 3.13 If requested, to provide to the Instructing Client(s) an estimate of the likely cost of the services required and thereafter, where relevant, to notify the Instructing Client(s) if the cost of the services required is to exceed the estimate significantly.
- 3.14 To notify Instructing Clients of any cancellation charges (including any period of notice required) in the Schedule of Fees.
- 3.15 To inform all Instructing Clients 1 month in advance of any changes in fees and/or charges, other than those resulting from the annual review referred to at point 3.1 above. It should be noted, however, that there is no obligation on the part of HFHC to inform Instructing Clients of any changes in fees and/or charges arising from the aforementioned annual review.

**4 Disputes/Complaints**

- In the event of any dispute in relation to the payment of fees, such part that is not disputed shall be paid in full by the Instructing Client. Interest will continue to accrue on any unpaid amount until it has been paid or otherwise settled.
- If any Instructing Client is dissatisfied with any aspect of the service provided by HFHC, then in the first instance the Instructing Client is asked to contact the relevant Consultant. In the event that this does not lead to a result to resolution, then in the second place, Instructing Clients are asked to contact Mrs Jane James. Any complaint will be investigated thoroughly and promptly and Instructing Clients will be provided with an explanation together with a proposal for remedial action.

**5 Termination**

- Either HFHC or the Instructing Client may terminate this agreement by either party giving 1 month's written notice to the other. Further, either party is entitled to terminate such agreement with immediate effect by written notice in the event that the other commits any material breach of these Terms and within 1 month of notice of such breach the other does not take steps to remedy such breach, or in the event that either party becomes insolvent or ceases to carry on business, or has any formal step taken against it to wind it up or to have an administrator or receiver appointed over its business or assets.
- Termination of this agreement will not affect the Instructing Clients' obligation to pay HFHC's fees incurred up to the date of termination or any right or obligation to pay any fees incurred up to the date of termination or any right or obligation of either HFHC or the Instructing Client which has accrued prior to that date.

**6 Agreement**

- All Instructing Clients are asked to sign a copy of these Terms to indicate the Instructing Client's consent to the conditions contained therein; keep one copy for The Instructing Client's records and return one copy to HFHC.
- In the absence of a signed copy of these Terms being returned to HFHC, then each Instructing Client will be deemed to have accepted the above Terms once work has been commenced in accordance with the Instructing Client's instruction.

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HFHC

.....(Sign)

.....(Name)

.....(Firm/Company Name - Instructing Client)