The Little Book on
Expert Witness Fees
The Little Book on
Expert Witness Fees

Chris Pamplin PhD
Editor
UK Register of Expert Witnesses

with contributions from
Philip Owen, Staff Writer
J S Publications

2nd Edition
# Contents in Brief

1 Introduction 11  
2 Terms of Engagement 23  
3 Court Procedure Rules 53  
4 Public Funding 59  
5 Medical Reporting Organisations 75  
6 Oral Evidence in Criminal Courts 89  
7 Common Concerns 103  
8 VAT for Expert Witnesses 125  
9 Getting Paid 137  
10 Appendices 169
Guide to abbreviations

AMRO ........... Association of Medical Reporting Organisations
CCA ............ County Courts Act
CFA ............. conditional fee agreements
CJC ............. Civil Justice Council
CPR ............. Civil Procedure Rules
CPS ............. Crown Prosecution Service
CrimPR .......... Criminal Procedure Rules
ECJ ............. European Court of Justice
FPR ............. Family Procedure Rules
HMRC .......... Her Majesty’s Revenue and Customs
JCS ............. Justices’ Clerks’ Society
LPCD .......... Late Payment of Commercial Debts (Interest) Act
LSC ............ Legal Services Commission
MoJ ............ Ministry of Justice; formerly the Department for Constitutional Affairs, and
before that the Lord Chancellor’s Department
MRO ............ medical reporting organisation
SJE ............. single joint expert
SRA ............ Solicitors Regulation Authority
VAT ............ Value Added Tax
Preface to Second Edition

The first edition of *Expert Witness Fees* has been the most popular so far of our Little Books for expert witnesses. Based on the feedback we have received, its value to the busy expert witness comes from the straightforward language and practical guidance. It is very satisfying to hear experts tell me that they followed the advice in *Chapter 9* (Getting Paid) and the long overdue bill that had been a source of frustration and wasted administrative time was paid in a matter of days.

The rationale behind this book has not changed, and neither, unsurprisingly, has much altered in the long-established law of contract. But because we needed to reprint the book – having sold out completely of the first edition – I have taken the opportunity to review all aspects of the text. Since 2007 there have been amendments to the professional rules that impinge on expert witness fees, most notably perhaps the removal of Law Society rule 20.01 that made lawyers personally responsible for the fees of the experts they instruct. There have also been lots of changes in the area of public funding, and some matters that were then novel – such as VAT on medico-legal reports – have now bedded in and do not deserve such lengthy treatment here.

There are no magic bullets when it comes to getting paid on time. Instead, you need to take a little care to understand the ‘lay of the land’ and then get in place a good solid contractual framework, as well as procedures to ensure you keep on top of the payment paperwork. Should your instructing lawyer then drag his heels over payment, you can turn to *Chapter 9* in the confidence that you’ve done everything you needed to do to ensure that suing the lawyer is quick, simple and, most importantly, successful.

In the current challenging business environment, it has never been more important to be thoroughly businesslike in your dealings with lawyers. Reading *Expert Witness Fees* and employing its advice is a great place to start!

*Chris Pamplin*
Preface to First Edition

Late payment of fees remains one of the most frequently encountered grumbles in correspondence received at the UK Register of Expert Witnesses, and it is a subject guaranteed to raise the temperature at any gathering of expert witnesses. This book is designed as a practical guide for expert witnesses on ways in which the risk of late payment can be minimised.

As every lawyer knows, setting out clear terms for any contract, at the outset, is essential if subsequent problems are to be avoided. The contract between expert and instructing lawyer should be no different. Indeed, the need for expert witnesses to be upfront about their terms of engagement is now a requirement of the Civil Procedure Rules.

And yet, according to the series of expert witness surveys conducted by the UK Register of Expert Witnesses (beginning in 1997), the number of experts who use a written form of contract when accepting instructions from a solicitor has never exceeded 47%. That leaves over half of all experts claiming not to use any form of written contract.

Why do so many experts fail to use a written contract? The main reason is a lack of knowledge about how to create a suitable set of terms. This book provides lots of background information about terms, and it is my hope that it will give the reader sufficient confidence to tackle the task of drafting a set of terms.

This book shows experts how to set out their contractual stall so as to minimise the opportunities for those who instruct them to delay payment of your fees. But, being a pragmatist, I also set out what needs to be done to sue for them – a task made less fraught by the solid groundwork that is a decent set of terms of engagement!

Chris Pamplin
Contents in Detail

Guide to abbreviations .......................6

1. Introduction ...............................11  
   1.1 A contractual relationship ...........13  
   1.2 Fees and disbursements ...............15  

2. Terms of Engagement .....................23  
   2.1 Elements of a valid contract .......25  
   2.2 Misrepresentations ....................29  
   2.3 Purpose of terms .......................30  
   2.4 Different types of contractual term ....32  
   2.5 Writing a set of terms ...............34  
   2.6 UK Register of Expert Witnesses framework ....35  
   2.7 Covering letter .......................46  
   2.8 Breach of contract and frustration ....48  

3. Court Procedure Rules ..................53  
   3.1 Civil Procedure Rules ...............54  
   3.2 Family Procedure Rules .............57  
   3.3 Criminal Procedure Rules ...........58  

4. Public Funding ...........................59  
   4.1 Civil cases ...........................60  
   4.2 Criminal cases .......................73  

5. Medical Reporting Organisations ..75  
   5.1 Factors in MRO development ......76  
   5.2 Why do medics support the MROs? ........78  
   5.3 Jackson on MROs ....................80  
   5.4 Protecting your position ............83  
   5.5 Getting paid when an MRO goes bust ........84  

6. Oral Evidence in Criminal Courts .89  
   6.1 Court attendance allowances .......90  
   6.2 Travel and hotel expenses ...........94  
   6.3 Travel time ...........................96  
   6.4 Claiming court fees ..................98  
   6.5 Payment beyond that determined .......98  

7. Common Concerns .......................103  
   7.1 CFAs and contingent fees ..........106  
   7.2 Cancellations and postponements ..107  
   7.3 Summoned witnesses .................111  
   7.4 Assessment ..........................115  
   7.5 Joint and several liability ..........118  
   7.6 Charging interest ....................121  
   7.7 New solicitor takes over ..........122  

8. VAT for Expert Witnesses ............125  
   8.1 Input and output VAT ...............126  
   8.2 Registration .........................127  
   8.3 Recharging expenses ...............129  
   8.4 Reclaiming VAT .....................129  
   8.5 Voluntary registration .............130  
   8.6 Cash accounting .....................131  
   8.7 Flat-Rate Scheme ....................132  
   8.8 Deregistration .......................133  
   8.9 Medics: a special case ............134  

9. Getting Paid .............................137  
   9.1 Steps to avoid late payment ......138  
   9.2 Pre-action procedures ..............146  
   9.3 Claim Form ...........................151  
   9.4 Small claims track .................154  
   9.5 Money Claim Online .................165  

10. Appendices ...............................169  
    Appendix 1: UK Register of Expert Witnesses Fee Survey data ...170  
    Appendix 2: CPR Part 35 ................172  
    Appendix 3: CPR Part 35 Practice Direction ..................176  
    Appendix 4: Annotated CJC Experts Protocol ..................180  
    Appendix 5: FPR Part 25 ..............193  
    Appendix 6: CrimPR Part 33 ..........197  
    Appendix 7: Terms of Engagement Framework ..................200  
    Appendix 8: Criminal Regulations ...205  
    Appendix 9: MoJ Guidance to Determining Officers 2003 ....208  
    Appendix 10: Civil Claim ‘Tracks’ ...210
1 Introduction

1.1 A contractual relationship .......................................................... 13
  1.1.1 Conditional fee arrangements ........................................... 14
  1.1.2 Prior authority .................................................................. 15
  1.1.3 Criminal courts ................................................................ 15

1.2 Fees and disbursements ............................................................. 15
  1.2.1 Basis of the fee .................................................................. 16
  1.2.2 Charging rates .................................................................. 18
When you’ve handed over your expert report on the date requested, answered written questions on time, attended court (if necessary) and generally been a first-class asset to your instructing lawyer, the last thing you want or need is to spend any more of your valuable time chasing up payment that is rightly due. You’ve offered a top-quality, professional service, so why can’t the solicitor pay you on time?

There are many reasons why timely payment could be a problem for you. For example:

- Did you **fail to obtain a signed version of your terms** of engagement?
- Did your contract or covering letter **omit details about your required timing of payment**?
- Did you **forget to issue your invoice**?
- Did you **fail to provide the necessary detail** to support an assessment of the fees you charged?
- Did your instructing solicitor **fail to obtain prior authority** for case funding?
- Has your **invoice simply been lost** in the law firm’s accounts department or in the post?
- Does the accounts team, as standard procedure, **wait for a telephone call to chase payment before finally authorising the fee**?

Whatever the reason, in this book we’ll try to offer best advice on minimising payment problems and provide you with a better understanding of the difficulties faced by lawyers.

This first chapter summarises the contractual relationship that exists between you as the expert and the instructing solicitor. And much more detail on compiling a set of Terms is offered in *Chapter 2*. 

---

**So much can go wrong that the key is to minimise likelihood**

---

**Why put up with late payment after you’ve offered a first-rate service?**
Terms of Engagement

2.1 Elements of a valid contract ........................................... 25
  2.1.1 Terminator .......................................................... 26
  2.1.2 Creating a binding contract ................................ 26
  2.1.3 Revoking the offer to act .................................... 29
2.2 Misrepresentations ......................................................... 29
2.3 Purpose of terms ............................................................ 30
  2.3.1 Ambiguity ........................................................... 31
  2.3.2 General considerations ...................................... 31
  2.3.3 Special circumstances ....................................... 32
2.4 Different types of contractual term ................................. 32
  2.4.1 Condition ............................................................ 33
  2.4.2 Warranty ............................................................. 33
  2.4.3 Innominate terms ............................................... 33
  2.4.4 Definition within the terms .................................. 34
2.5 Writing a set of terms...................................................... 34
2.6 UK Register of Expert Witnesses framework ................. 35
  2.6.1 Parties to the agreement and Recital of
    Appointment (Clause 1) ..................................... 35
  2.6.2 Definitions (Clause 2) .................................... 37
  2.6.3 The Instructions (Clause 3) ................................ 37
  2.6.4 Obligations of the Appointor (Clause 4) ............. 39
  2.6.5 Obligations of the Expert (Clause 5) .................. 41
  2.6.6 Intellectual Property Rights (Clause 6).............. 42
  2.6.7 Fees and disbursements (Clause 7) ................. 43
  2.6.8 Cancellation Fees (Clause 8) ............................ 45
  2.6.9 Disputed Fees (Clause 9) ................................. 45
  2.6.10 Third Parties (Clause 10) ................................ 45
  2.6.11 Jurisdiction ......................................................... 46
2.7 Covering letter ................................................................ 46
2.8 Breach of contract and frustration .................................. 48
  2.8.1 Breach of contract .............................................. 48
  2.8.2 Frustration of contract ........................................ 49
  2.8.3 Intention ............................................................. 50
  2.8.4 Uncertainty .......................................................... 50
According to the series of expert witness surveys conducted by the UK Register of Expert Witnesses (from 1997 to 2009; see Appendix 1: UK Register of Expert Witnesses Fee Survey data on page 170), the number of experts who use a written form of contract when accepting instructions from a solicitor has never exceeded 47%. That leaves over half of all experts claiming not to use a form of written contract.

As every lawyer knows, setting out clear terms for any contract, at the outset, is essential if subsequent problems are to be avoided. The contract between you and your instructing lawyer should be no different. Indeed, the need for you both to be upfront about your terms of engagement is now a requirement of the CPR.

The Experts Protocol requires you and your instructing lawyer to place your professional relationship on a firmer footing by ensuring a contract – ideally written – is in place before any work begins. §7.2 of this Protocol states:

'Terms of appointment should be agreed at the outset and should normally include:

(a) the capacity in which the expert is to be appointed (e.g. party appointed expert, single joint expert or expert advisor);

(b) the services required of the expert (e.g. provision of expert’s report, answering questions in writing, attendance at meetings and attendance at court);

(c) time for delivery of the report;

---

1 See http://www.jspubs.com/Surveys/feesurveys.cfm for full survey reports.
2 CJC Experts Protocol, see Appendix 4: Annotated CJC Experts Protocol on page 180.
3 Court Procedure Rules

3.1 Civil Procedure Rules ........................................... 54
  3.1.1 Party experts ............................................. 54
  3.1.2 Questions to experts ................................. 55
  3.1.3 Single joint experts ................................. 55
3.2 Family Procedure Rules ...................................... 57
3.3 Criminal Procedure Rules ................................. 58
Given the contractual nature of the expert–lawyer relationship, it is perhaps unsurprising that the rules of procedure governing the courts have little to say on the matter. Nonetheless, there are a few references in the various rules relating to the fees of experts that should be considered.

3.1 Civil Procedure Rules

3.1.1 Party experts

CPR 35.4(4) gives the court the power to ‘limit the amount of the expert’s fees and expenses that the party who wishes to rely on the expert may recover from any other party’. Notice our emphasis on the word ‘party’. Rule 35.4 limits costs between the parties. **It does not override any contractual obligations to pay some other amount to you.** Any difference between what you are to be paid under contract by a party and what the court says that party may claim from the other side falls to the party to find from its own pocket.

Generally, the court will have made a ruling under CPR 35.4 before you are instructed. Therefore the lawyer will know before agreeing to instruct you whether there is likely to be a problem, i.e. your contractual fee outstripping the sum recoverable from the other side.

However, there is a general lesson here that many lawyers ‘struggle’ to understand. **When the court makes orders about your fees it is concerned only with costs between the parties: this usually has nothing whatsoever to do with the fee you can charge.** This topic will be revisited when we consider assessment (see §7.4 Assessment on page 115).
Public Funding

4.1 Civil cases .................................................................60
  4.1.1 Scope of civil legal aid.................................60
  4.1.2 Experts in legal aid cases .........................62
  4.1.3 Obtaining prior authority for expenditure ....63
  4.1.4 Payments on account..................................64
  4.1.5 Failure to obtain authority.........................65
  4.1.6 Payment for court appearances...............66
  4.1.7 Proposals for reform in public funding........67

4.2 Criminal cases ..........................................................73
  4.2.1 Criminal Defence Service (Funding) Order ....73
  4.2.2 Prosecution experts .....................................74
The current Government is desperate to make savings in the public funding of cases as part of its wholesale review of public spending. As such, the MoJ’s 2010/11 consultation on the reform of legal aid in England and Wales looks set to have to make some difficult and potentially damaging amendments to the fee rates paid for expert witness reports and court attendance in publicly funded cases.

In this heavily cost-cutting arena, how will that affect you in publicly funded civil and criminal cases? Has the time come to withdraw your services for publicly funded cases?

4.1 Civil cases

The Government signalled in 1997 that it wanted to focus public funds on:

- the care of children
- the threat of homelessness
- judicial review, and
- the defence of those accused of crime.

Accordingly, the removal of the restrictions on which cases could be funded by CFAs was accompanied by the removal of public funding for those cases. It is no surprise, then, that between 1997 and 2005 the number of publicly funded civil cases dropped by around 40%.¹

4.1.1 Scope of civil legal aid

Even so, in the civil arena, the current civil legal aid scheme is very broad. Legal aid funding is available to provide legal advice on almost any area of law, other than the following which are explicitly excluded:

- personal injury

¹ ‘A Fairer Deal for Legal Aid’, July 2005, TSO, Cm 6591.
Medical Reporting Organisations

5.1 Factors in MRO development ............................................... 76
   5.1.1 Effects of these factors ........................................... 77
5.2 Why do medics support the MROs? ..................................... 78
5.3 Jackson on MROs .............................................................. 80
   5.3.1 MROs cause delay and unnecessary expense .. 80
   5.3.2 A close shave ...................................................... 83
5.4 Protecting your position .................................................... 83
5.5 Getting paid when an MRO goes bust .................................. 84
   5.5.1 What is an agent? .................................................. 85
   5.5.2 MRO agent of the solicitor ..................................... 85
   5.5.3 MRO agent of the expert ....................................... 86
   5.5.4 Agent’s duties to the principal ............................... 86
   5.5.5 Right to bypass an insolvent agent ..................... 87
   5.5.6 When you can bypass an agent on fees .......... 88
Medical reporting organisations (MROs) exist to manage the provision of expert medical reports for solicitors and insurers. The regular flow of questions received on the helpline of the UK Register of Expert Witnesses about their role, status and financial security demonstrates the level of curiosity in experts. However, curiosity has been replaced by unease following the succession of high-profile commercial failures, such as Synapse and Expert Reports Ltd, which have left experts carrying the financial can.

Typically, an agency offers solicitors an inclusive package of services that encompasses:

- finding an expert
- obtaining relevant records
- issuing instructions
- setting up an examination
- chasing the report, and
- paying the expert.

Unfortunately, problems arise at each stage with monotonous regularity.

There is no restriction on or regulation of the setting up of an agency. And there is no requirement for expert or legal experience. Unsurprisingly, then, there is wide variation in the type, aim and, above all, performance of these agencies.

5.1 Factors in MRO development

So how and why have MROs come about?

The first, and possibly most important, factor was the provision of an optional ‘uninsured loss recovery’ clause in motor policies. These clauses have achieved a very high take up and give potential
Oral Evidence in Criminal Courts

6.1 Court attendance allowances ............................................... 90
  6.1.1 At the determining officer’s discretion .................. 91
  6.1.2 Prosecution experts .............................................. 92
  6.1.3 Defence experts .................................................. 93
6.2 Travel and hotel expenses .............................................. 94
6.3 Travel time ...................................................................... 96
6.4 Claiming court fees ...................................................... 98
6.5 Payment beyond that determined ............................... 98
  6.5.1 Goulden -v- Wilson Barca ................................. 99
Experts giving oral evidence in criminal courts come under some special provisions that are the source of much confusion. As a matter of public policy, all witnesses in such cases are entitled to be compensated out of central funds for their loss of time and the incidental expenses incurred in attending court. Furthermore, the Prosecution of Offences Act 1985 assigned to the Lord Chancellor the responsibility for making the necessary arrangements. This was duly done by implementation of the Costs in Criminal Cases (General) Regulations 1986, Part V of which is headed ‘Allowances to Witnesses’. It contains detailed provisions for calculation of the compensation due.

These provisions apply to witnesses for both the prosecution and the defence. Moreover, with regards the latter, they apply whether or not the defendant is legally aided. Indeed, the very existence of the Act that gave rise to the 1986 Regulations deprives defendants of the possibility that their witnesses might be paid for under a Legal Aid Order. This much is clear from Section 25(3) of the Legal Aid Act 1988. It lays down that in criminal cases the costs of representation payable from the legal aid fund:

‘... shall not include any sum in respect of allowances to witnesses attending to give evidence in the proceedings... where such allowances are payable under any other enactment.’

6.1 Court attendance allowances

As far as you are concerned, the 1986 Regulations distinguish between two kinds of witness:

- ‘professional’ witnesses, and
- expert witnesses proper.
7 Common Concerns

7.1 CFAs and contingent fees ............................................106
7.2 Cancellations and postponements ...............................107
  7.2.1 Civil cases ........................................................108
  7.2.2 Criminal cases ..................................................108
  7.2.3 Judicial support ................................................109
  7.2.4 Legal aid cases ................................................110
7.3 Summoned witnesses ..................................................111
  7.3.1 Called by the other party ..................................112
  7.3.2 Dangers for ‘unwilling’ experts .........................113
7.4 Assessment ..................................................................115
  7.4.1 Assessment of fees in publicly funded cases ...116
  7.4.2 Justifying your fees ..........................................117
7.5 Joint and several liability ..............................................118
  7.5.1 How it works.....................................................119
  7.5.2 SJE appointments ............................................119
  7.5.3 Non-SJE multi-party appointments ..................120
  7.5.4 Firmest foundations ..........................................121
7.6 Charging interest ..........................................................121
7.7 New solicitor takes over ...............................................122
  7.7.1 When new terms are not agreed in advance ... 123
This chapter is populated by sections that answer the questions asked most regularly on our expert witness helpline about expert witness fees.

- **Can I take a case under a CFA?** Answer: No way, but you could alter the timing of payment to make life easier for your instructing solicitor. See §7.1 CFAs and contingent fees on page 106 for all the relevant information.

- **Can I charge a cancellation fee?** Answer: Yes, but make specific referral to this element in your written contract (see §7.2 Cancellations and postponements on page 107). If your contract is signed by the lawyer, then regardless of the court, you can justifiably charge a reasonable cancellation fee.

- **Why is my solicitor refusing to pay my cancellation fee?** Answer: There may be more than one reason (see §7.2 Cancellations and postponements on page 107). Which applies to you?  
  (i) Has your solicitor omitted to negotiate the fee into an early settlement? If so, he will have to pay your fee out of his own pocket, so long as he signed your contract!  
  (ii) Is this a publicly funded case? If so, is the LSC refusing payment as per §7.2.4 Legal aid cases on page 110? If so, if your solicitor has signed your contract agreeing to your right to charge a cancellation fee, then he’ll have to find the money himself.  
  (iii) Is your fee unreasonably high? If your lawyer has agreed to your terms, this is irrelevant. He must pay. However, see (iv) below.  
  (iv) Could you have rescheduled other work to fill the time? If you have made no effort to mitigate your loss, the courts may well look unfavourably upon any request by you for payment of the full...
VAT for Expert Witnesses

8.1 Input and output VAT .................................................... 126
8.2 Registration ............................................................... 127
  8.2.1 Taxable turnover ............................................... 128
8.3 Recharging expenses ................................................... 129
8.4 Reclaiming VAT ............................................................ 129
8.5 Voluntary registration .................................................... 130
8.6 Cash accounting........................................................ 131
8.7 Flat-Rate Scheme ...................................................... 132
8.8 Deregistration ............................................................. 133
8.9 Medics: a special case .................................................... 134
  8.9.1 Personal or ‘corporate’ registration? ................. 134
Value Added Tax (VAT) is a tax on the final consumption of many goods and services in the UK.

The supply of some goods and services is exempt from VAT. These include:

- the sale and letting of land
- financial and insurance services
- postal services
- education
- sport, and
- burial and cremation services.

If in doubt, the liability of supplies can be checked on the HMRC website.¹

There are currently three rates of VAT in the UK:

- ‘standard’ rate at 20%
- ‘reduced’ rate at 5%, and
- ‘zero’ rate at 0%.

It is important to bear in mind that zero-rated goods and services are not the same as exempt goods and services. A zero rating means that VAT applies at the rate of zero per cent, so no tax is being collected on those goods. An exempt item falls outside the scope of VAT entirely and doesn’t figure in any reporting done to HMRC in relation to VAT.

Registration for VAT is mandatory for a supplier who is caught by the provisions. But in some circumstances one can register on a voluntary basis.

### 8.1 Input and output VAT

When dealing with VAT, you will quickly come across the terms ‘input’ and ‘output’.  

---

Getting Paid

9.1 Steps to avoid late payment .................................................. 138
  9.1.1 Stipulating a time for payment ........................................... 139
  9.1.2 Compensation for late payment ......................................... 143
  9.1.3 Discount for early settlement ............................................. 143
  9.1.4 Retention of title clauses .................................................. 143
  9.1.5 Credit control .................................................................... 145
  9.1.6 Lien .................................................................................. 145

9.2 Pre-action procedures ............................................................ 146
  9.2.1 Is the debt due? ................................................................. 147
  9.2.2 Chasing payment ................................................................ 147
  9.2.3 Assessing whether to sue .................................................. 149
  9.2.4 Letter before action ............................................................ 150

9.3 Claim Form ............................................................................ 151

9.4 Small claims track .................................................................. 154
  9.4.1 Defence filed ................................................................. 154
  9.4.2 Establish the dispute ............................................................. 155
  9.4.3 No need to reply to a defence ............................................ 155
  9.4.4 Reply to counterclaims ....................................................... 156
  9.4.5 Consider summary judgment ............................................. 156
  9.4.6 Allocation questionnaire ..................................................... 157
  9.4.7 Allocation hearing ............................................................... 161
  9.4.8 Notice of Allocation ............................................................. 161
  9.4.9 Preliminary hearing .............................................................. 162
  9.4.10 Disclosure ........................................................................ 163
  9.4.11 Privilege ........................................................................... 163
  9.4.12 Witness statements ............................................................. 164

9.5 Money Claim Online ............................................................... 165
  9.5.1 In action ............................................................................ 166
  9.5.2 Default judgment and enforcement ...................................... 167
A survey carried out by the UK Register of Expert Witnesses in 2009\(^1\) revealed that only 41% of expert respondents were paid on time in even half of the cases on which they had worked. Furthermore, 29% of the experts reported that they had sued for their fees at some stage in the preceding 5 years.

So, how can you minimise payment problems?

### 9.1 Steps to avoid late payment

The expert witness business as a whole has a very poor payment record for two reasons.

- Experts are generally not good businessmen. They prefer to concentrate on completing assignments, leaving the somewhat embarrassing subject of terms of engagement, fees and timing of payment to one side. Invoices are sent late, and the thought of chasing a lawyer for payment sends shudders of distaste down the spine. And lawyers know this!

- Lawyers, on the other hand, are generally poorly organised. While there are mechanisms in place to make the payment of experts on time and in full, they require a degree of forethought and planning. With multiple cases on the go, it can be very difficult for the lawyer and his team to keep track of who has submitted an invoice, who is due payment, who has been granted prior authority, and so on. Lawyers prefer to settle bills at the end of a case because it is then that the expenses are known, all the bills can be collected, and any financial awards made or received. But cases can continue for years!

---

1 See [http://www.jspubs.com/Surveys/feesurveys.cfm](http://www.jspubs.com/Surveys/feesurveys.cfm) for full survey reports.
Appendices

Appendix 1: UK Register of Expert Witnesses Fee
  Survey data ..................................................................170
Appendix 2: CPR Part 35 .................................................172
Appendix 3: CPR Part 35 Practice Direction .......................176
Appendix 4: Annotated CJC Experts Protocol .....................180
Appendix 5: FPR Part 25................................................193
Appendix 6: CrimPR Part 33 ............................................197
Appendix 7: Terms of Engagement Framework ..................200
Appendix 8: Criminal Regulations ...................................205
Appendix 9: MoJ Guidance to Determining Officers 2003....208
Appendix 10: Civil Claim ‘Tracks’ ....................................210
Index

A
Access to Justice Act 20, 21
Allocation hearing 161
Allocation questionnaire 157
Allowances. See also Travel expenses
court attendance 90
Ambiguity 31, 50
Assessment of costs 63, 115
justifying expert fees 117
legal aid 116
Availability 42

B
Breach of contract 32, 33, 48–51

C
Cancellation fees 25, 45, 66, 107, 108
civil courts 108
criminal courts 108
judicial support 109
removal of in legal aid cases 110
Case transfers 122
Cash accounting 131
CFA. See Conditional fee agreements
Charging interest 44, 121, 142
Charging rates 18–22
Chasing payment 147
Civil Claim 'Tracks' 210
Civil courts
cancellation fees 108
Civil Procedure Rules 54
cost inflation 20
Experts Protocol 24
Civil Procedure Rules Part 35 172
Civil Procedure Rules Part 35 Practice
Direction 176
Claim Form 151
Conditional fee agreements 14–15, 21, 60,
77, 106
Confidentiality 39, 113
of terms 32
Conflicts of interest 41, 113
Contingency fees 106
Contracts 13, 24–51
acceptance 27
avoid uncertainty 27
binding 26
breach of 32, 33, 48–51
condition of 33
disputes 31, 45, 50
elements of 25
frustration of 49–51
identify the principal 43
intention 50
misrepresentations 29
offer 27
partnership 35, 36
rescission 30
revocation 29
silent acceptance 28
uncertainty 43, 50
variations 43
void 30
Contracts (Rights of Third Parties) Act 1999
46
Contractual lien 145
Copyright 32, 40
Costs assessment 115
justifying expert fees 117
legal aid 116
Costs in Criminal Cases (General) Regulations 1986 90
Court attendance allowances 90
Court determining officer 91, 98, 108
Court fees 149, 152
Court power to limit expert fees 54
Covering letter 46
Credit control 145
Criminal courts
attendance allowances 90
cancellation fees 108
claiming shortfall from solicitor 98
oral evidence 90–101
Criminal Defence Service (Funding) Order 2007 73
Expert Witness Fees

Criminal Procedure Rules 58
Criminal Procedure Rules Part 33 197
Criminal Regulations 205
CVs 29, 30

D
Debt chasing cost recovery 44
Defence experts 93
Determining officers 91, 98, 108
Disbursements 14, 15–16, 25, 43, 62, 106
Disputed fees 45
Disputes 121
contract 31

E
Early settlement discounts 143
Expert fee surveys 138
Expert obligations 41
Experts Protocol 17, 24, 25, 56, 57, 107, 114, 116, 123, 124, 180

F
Factoring bills 79
Family Procedure Rules 57
Family Procedure Rules Part 25 193
Fee rates 18–22
current rates 19
Fees 15
basis of 16
calculation of 44
court power to limit 54
Fee surveys 18–19, 24, 138
Flat-Rate Scheme 132
Framework set of terms 35
Frustration of contract 49–51
Funding certificate 40, 62, 73

G
Getting Paid 137–168

H
Holidays 112
Hotel expenses 94

I
Innominate terms 33
Instructions 37
Intellectual property 32, 40, 42, 144
Interest charges 44, 121, 142
Interim payments 40, 43

J
Joint and several liability 55, 118
Joint instructions 120
Jurisdiction 46
Justices' Clerks' Society 97

L
Late Payment of Commercial Debts (Interest) Act 44, 121, 143, 153
Late payment penalties 143
Letter before action 150
Lien 145
Limits of expertise 42

M
Medical experts
VAT 134
Medico-legal reporting organisations 76
agency law 85
breach of contract 84
costs 21
insolvent 87
the Jackson Report 80–81
Mileage rate 95
Ministry of Justice
attendance allowances 90
Misrepresentations 29
MoJ. See Ministry of Justice
MoJ Guidance to Determining Officers 208
Money Claim Online 165–168
MRO. See Medico-legal reporting organisations
Multi-party appointments 120

N
Net liability agreement 119
Notice of Allocation 161

O
Oral evidence
civil 66
criminal 90–101
Overnight expenses 94

P
Parking fees 95
Party-appointed experts 54
Payment 137–168
  charging interest 44, 121, 142
  timing 13, 25, 107, 139
Payment chasing 147
Payment on account 15, 40, 44, 64, 73
Prior authority 15, 40, 63, 73
Private car 95
Privity 45
Professional witnesses 91
Prosecution experts 92
Prosecution of Offences Act 1985 90
Public funding 60–74
  civil 60
  criminal cases 73–74
  reform 67–72
Public transport 94

R
Reasonable time 14, 38
Recital of appointment 35
Record keeping 18, 42, 118
Retention of title 143
  duty to the court 145

S
Sale of Goods Act 33
Scope of civil legal aid 60
Separate billing 56
Single joint experts 55, 58, 119–121
SJE. See Single joint experts
Small claims track 149, 154
  hearing fees 162
Solicitor instructions 37
Solicitor obligations 39
Solicitors Regulation Authority 13, 107, 148
Standard set of terms 35
Statement of truth 153
Suing for fees 151
  allocation questionnaire 157
  defence filed 154
  establish the dispute 155
  notice of allocation 161
  Preliminary hearing 162
  reply to counterclaim 156
  summary judgment 156
Supply of Goods and Services Act 33

T
Taxis 95
Terminator 26
Terms 24–51, 139
  ambiguity 31, 50
  cancellation fees 25, 66, 107, 108
  Cancellation fees 45
  conditions 30
  confidentiality 32
  copyright 32
  covering letter 46
  debt chasing cost recovery 44
  definitions 37
  disputed fees 45
  expert obligations 41
  fees and disbursements 43
  general considerations 31
  how fees are calculated 44
  innominate 33
  instructions 37
  intellectual property 32
  intellectual property rights 42
  jurisdiction 46
  purpose of 30
  retention of title 143
  solicitor obligations 39
  Terminator application 26
  third parties 45
  travel expenses 32
  warranties 30
  warranty 33
Terms of Engagement Framework 200
Third parties to contracts 45
Time constraints 24, 38, 42
Time is of the essence 38, 142, 147
Travel expenses 25, 32, 94. See also Allowances
Travel time 96

U
UK Register of Expert Witnesses 18, 19, 24, 26, 34, 35, 76, 84, 138, 139
  framework set of terms 35
Unwilling experts 113

V
Variations 43
VAT 126–136
bad debts 131
cash accounting 131
deregistration 133
deregistration threshold 133
exemption 126
exemption from registration 128
Flat-Rate Scheme 132
input tax 126, 127
medical experts 134
on court fees 98
output tax 126, 127
personal or ‘corporate’ registration 134
rates 126
recharging expenses 129
reclaiming 129
record keeping 130
reduced rate 126
registration 126, 127
standard rate 126
taxable supplies 127, 128
taxable turnover 127, 128, 130
threshold 127
voluntary registration 130
zero rate 126

W
Warranty 33
Witness summons 111
Written questions 17, 55