

TERMS AND CONDITIONS

Frank Ray – Software Expert Witness

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Version: 7.0

1. About These Terms

These terms and conditions apply when you instruct me to provide technical advisory or expert witness services in relation to software development or IT system disputes.

By instructing me, you agree to these terms. If you are a solicitor instructing me on behalf of a client, you remain personally responsible for my fees under these terms.

2. Services I Provide

Pre-litigation technical assessment through to formal CPR Part 35 expert evidence. Work conducted at any stage is performed to expert witness standards and may, if proceedings commence, form part of expert evidence to the court.

3. My Professional Duties

When you instruct me:

- My overriding duty is to the court. This duty overrides any obligation to you or anyone paying my fees.
- I will provide opinions that are independent, impartial, and objective.
- I will only give opinions on matters within my expertise.
- I will comply with CPR Part 35, Practice Direction 35, and the Civil Justice Council Guidance for the Instruction of Experts in Civil Claims.
- I will not act as an advocate for any party.
- I will express the same opinion regardless of which party instructs me.

Professional Standards

I am committed to:

- Maintaining professional objectivity and impartiality
- Working within the limits of my knowledge and skills
- Respecting confidentiality (subject to my duty to the court)
- Keeping proper records of my work
- Complying with GDPR and UK data protection requirements
- Maintaining Professional Indemnity Insurance

4. Accepting Instructions

Confirmation

I will confirm within 48 hours whether I can accept your instructions.

When I Cannot Accept Instructions

I will decline instructions if:

- The work falls outside my area of expertise
- There is a conflict of interest
- Deadlines are unrealistic given the scope of work
- Instructions are insufficiently clear
- I have insufficient capacity to meet your timescales

I will request clarification if instructions are unclear, but I am not obliged to proceed.

Previous Involvement

If I have previously advised one party in a dispute (even in an unrelated matter), I will disclose this before accepting instructions.

5. Fees and Payment

Fee Rates

My current fee rates are set out below.

My hourly rates are:

- £250 per hour

Court attendance:

- Full day: £2,300
- Half day: £1,300

Travel Expenses

In addition to fees, I charge:

- Travel time: £150 per hour, door-to-door from Surrey (GU22)
- Mileage: £0.45 per mile (HMRC advisory rate)
- Rail travel: Standard class, at cost with receipts
- Parking and accommodation: At cost with receipts

Overnight accommodation (up to £150 per night) may be charged where travel exceeds 2 hours from Surrey (GU22).

Cost Estimates

Following initial discussion of your case, I will provide:

- Detailed cost estimate breaking down anticipated work and hours for each phase
- Cost budget compliant with CPR 35.4(2) where required for court proceedings
- Clear explanation of what's included

Cost estimates are based on information available at the time. Actual costs may vary if case complexity changes, new evidence emerges or scope expands.

The agreed estimate forms the basis of the 50% retainer payable on instruction — see Section 6.

6. Payment Terms

Expert Reports

The fee for an expert report covers all preparatory work (document review, code analysis, technical investigation, conferences, draft preparation) and the finalised report itself. The fee is based on the cost estimate agreed at the outset and confirmed when the report is complete.

- On instruction, I invoice 50% of the estimated fee as a retainer, payable in advance.
- I will not commence substantive work until the retainer has been received in cleared funds.
- The retainer is held as an advance on account against time and disbursements at the rates set out in Section 5.
- When the report is complete, I invoice the balance.
- The report is released to you on receipt of payment of the balance in cleared funds.
- If the report is released before payment of the balance has been received (for example, to meet a court-ordered deadline or other binding date), the balance increases by 25%. This uplift reflects the additional credit risk and administrative cost of releasing without payment, and applies automatically.

Retainer refund. If the instruction is terminated, or the matter settles, before the retainer is fully consumed by time and disbursements, the unused balance is refunded — subject to a minimum engagement fee of £500 retained in any event, covering initial case assessment, conflict checking, and capacity reserved.

Cancellation of the instruction is otherwise governed by Section 16.

Court and Tribunal Attendance

Court and tribunal attendance is booked in advance as either a half day or a full day, at the rates set out in Section 5.

- I invoice you when attendance is booked.
- Payment is due in cleared funds no later than 7 days before the hearing date (or, where attendance is booked at shorter notice, immediately on booking).
- If a hearing proceeds before payment in cleared funds has been received, the attendance fee increases by 25%. As with reports, this uplift reflects the credit risk and applies automatically.

Rescheduling. A booked attendance may be rescheduled at no charge, subject to my availability on the proposed new date.

Cancellation of a booked attendance. Cancellation fees are calculated against the booked fee (half day or full day):

- 7 or more clear days before the hearing date: £250 administration fee retained; balance refunded.
- Less than 7 clear days but at least 24 hours before the hearing date: 50% of the booked fee retained; 50% refunded.
- Less than 24 hours before the hearing date, or non-attendance on the day: no refund.

Written Questions under CPR 35.6

Answers to written questions put to me under CPR 35.6 are charged at my hourly rate for time spent.

- I invoice you after the answers have been provided.
- Payment is due within 30 days of invoice date.

Travel Expenses and Disbursements

Travel time, mileage, rail fares, parking, accommodation and any other disbursements agreed in advance are charged at the rates set out in Section 5.

- I invoice you after the relevant expenses have been incurred.
- Payment is due within 30 days of invoice date.

Non-refundable disbursements

Where I have already paid for, or become contractually committed to, expenses or disbursements that cannot be cancelled or refunded (for example: non-refundable rail tickets, prepaid accommodation, conference or training fees, agreed sub-contractor costs, purchasing technical standards), those amounts are payable in full regardless of any subsequent cancellation, termination, or settlement of the underlying matter.

Solicitor Instructions

If you are a solicitor instructing me:

Under CPR, solicitors are personally liable for expert fees. This personal liability applies regardless of:

- Whether you receive payment from your client
- Whether your client wins the case
- Whether costs recovered from the opposing party cover my full fees

Payment must be made in the ordinary course of business, not at the conclusion of the case.

Single Joint Expert

Where I am instructed by two or more parties as a single joint expert:

- All instructing parties are jointly and severally liable for my fees
- Invoices will be sent simultaneously to all instructing parties (or their solicitors)
- The advance-payment requirements above apply to the engagement as a whole; the full fee (including the retainer) must be received in cleared funds before release of the report or

court attendance, regardless of how the parties choose to apportion payment between themselves

Assessment of Costs

My fees are payable in full regardless of the outcome of any costs assessment by the court. Where my fees are subject to detailed assessment, summary assessment, or any other form of cost review, any reduction by the court does not affect your obligation to pay my fees in full. You may seek to recover assessed amounts from the opposing party in the usual way, but that recovery (or non-recovery) is a matter between you and them.

Late Payment

Interest will be charged on all overdue invoices at 8% above the Bank of England base rate from the due date until payment is received in cleared funds. This applies to any invoice not paid by its due date, whether the underlying work is charged in advance or in arrears.

7. My Work and Reports

Report Delivery

Reports are typically delivered within 3 – 4 weeks of receiving all necessary materials and clear instructions. I will agree specific timescales with you at the outset.

If delays occur due to late receipt of documents or unclear instructions, delivery timescales will be adjusted accordingly.

Content of Reports

My expert reports will:

- Be addressed to the court (for CPR Part 35 work)
- Comply with CPR Part 35 and Practice Direction 35
- State facts within my own knowledge separately from assumed facts
- Include a statement of truth
- Declare my understanding of my duty to the court
- State the substance of all material instructions received

My Professional Opinion

Reports are based on my independent professional opinion.

I will not:

- Change my professional opinion to favour the instructing party
- Include suggestions that do not accord with my views
- Act as an advocate or promote a party's point of view

I will:

- Amend reports to ensure accuracy, clarity, and completeness

- Correct factual errors when identified
- Update reports to reflect new evidence where appropriate

Changes to My Opinion

If my opinion changes materially on any issue:

- I will inform you immediately in writing
- I will explain the reasons for the change
- I will amend my report accordingly

You must inform other parties as soon as possible of any change to my opinion.

Responding to Written Questions

Under CPR 35.6, parties may put written questions to me about my report.

- I will answer properly directed questions within the timeframe specified by the court
- Answers become part of my report and are covered by the statement of truth
- I charge my hourly rate for preparing answers, as set out in Section 6

If I believe questions are not properly directed or are asked out of time, I will discuss this with you and, if necessary, seek directions from the court.

8. Discussions with Other Experts

Expert Discussions

The court may direct (or parties may agree) that I should discuss the case with experts instructed by other parties.

The purpose of these discussions is to:

- Identify and narrow the expert issues
- Reach agreement where possible
- Clarify areas of disagreement

I will not:

- Accept instructions to avoid reaching agreement with other experts
- Defer from reaching agreement on any matter within my competence
- Use discussions to settle the proceedings (that is for the parties)

Joint Statements

Following discussions with other experts, I will prepare a joint statement setting out:

- Issues that are agreed
- Issues that are not agreed and the reasons for disagreement
- Any further action recommended

Agreements reached in expert discussions do not bind the parties unless the parties expressly agree to be bound.

9. Independence and Conflicts

No Contingency Fees

My fees are not contingent on the nature of my evidence or the outcome of the case. Payment of expert fees based on case outcome is prohibited.

Conflicts of Interest

I will disclose any potential conflict of interest as soon as I become aware of it, including:

- Any relationship with a party or their legal representatives
- Any financial interest in the outcome
- Any previous involvement with the parties or subject matter

Withdrawal

I reserve the right to withdraw from an instruction if:

- Instructions become incompatible with my duties to the court
- A conflict of interest arises that cannot be resolved
- I am asked to work beyond my area of expertise
- Payment terms are not honoured

Before withdrawing, I will:

- Discuss the position with you
- Consider whether it is more appropriate to request directions from the court
- Provide formal written notice if I decide to withdraw

10. Requesting Directions from the Court

Under CPR 35.14, I may request directions from the court to assist me in carrying out my functions.

I will normally discuss this with you before making a request. However, I may make a request directly to the court if necessary to fulfil my duties.

If I intend to request directions, I will (unless the court orders otherwise):

- Send the proposed request to you at least 7 days before filing
- Send it to all other parties at least 4 days before filing

11. Access to Information

Disclosure of Information

I need access to all relevant information held by the parties to provide a complete and accurate opinion.

You must provide:

- All relevant documents, whether they support your case or not
- Access to relevant witnesses and technical staff
- Information about any other expert reports (whether served or draft)
- Updates if new evidence emerges

Court Orders and Directions

You must promptly inform me of:

- Any court orders or directions that affect my work
- Any case management decisions that impact timescales or scope
- Any orders limiting or capping expert fees
- Any directions about expert discussions, joint statements, or concurrent evidence

I cannot comply with court orders I am not aware of. You remain responsible for ensuring I am kept informed of all relevant court directions throughout the case.

Equal Information

In single joint expert instructions, I will seek to ensure that all parties provide me with the same information. If one party has information not available to others, I may request that the court directs disclosure under CPR 35.9.

12. Confidentiality and Data Protection

Confidentiality

I will maintain confidentiality of information provided to me, subject to:

- My overriding duty to the court (for CPR Part 35 work)
- Legal obligations to disclose information
- Your consent to disclosure

Data Protection

All personal data will be processed in accordance with UK GDPR and Data Protection Act 2018.

I will:

- Only use personal data for the purposes of providing expert services

- Securely destroy documents and records provided to me by you or other parties two years after the last activity on the matter, unless I am notified earlier that the matter has concluded
- Retain my work product (draft and final reports, working notes, and correspondence) for six years from the date of the last activity on the matter, to enable me to defend potential claims and to comply with my professional obligations
- Not transfer data outside the UK without appropriate safeguards

A copy of my privacy policy is available on request.

13. Professional Indemnity Insurance

I maintain Professional Indemnity Insurance appropriate to the nature and scale of my expert witness work. A certificate of insurance is available on request.

14. Limitation of Liability

The principles established in Jones v Kaney [2011] UKSC 13 removed the immunity previously enjoyed by expert witnesses, so I may be held liable in negligence for the services I provide under these terms.

Subject to the paragraph below, my total aggregate liability to you in respect of all claims arising out of or in connection with my services under these terms (whether in contract, tort including negligence, breach of statutory duty, or otherwise) is limited to the level of professional indemnity insurance cover I maintain at the date the claim is notified to me. A certificate of insurance is available on request (see Section 13).

Nothing in these terms limits or excludes liability for:

- Death or personal injury caused by negligence
- Fraud or fraudulent misrepresentation
- Any other liability that cannot lawfully be limited or excluded

15. Complaints

If you are dissatisfied with my services, please contact me in writing at info@bettersoftware.uk

I will:

- Acknowledge your complaint within 7 days
- Investigate the matter
- Respond substantively within 28 days

If you remain dissatisfied, you may refer the matter to my professional indemnity insurer or relevant professional body.

16. Cancellation by You

You may cancel my instruction at any time by giving written notice.

If you cancel:

- You remain liable for all fees and expenses incurred up to the date of cancellation
- I will provide a final invoice showing work completed

Cancellation, refund and disbursement provisions in Section 6 apply.

17. General Terms

Entire Agreement

These terms, together with my letter of instruction and fee quote, constitute the entire agreement between us.

Variation

Any variation to these terms must be agreed in writing.

Assignment

You may not assign your rights or obligations under this agreement without my written consent.

Intellectual Property

I retain all intellectual property rights (including copyright) in my advice, draft reports, final reports, and any other materials I produce in connection with your instruction. You are granted a non-exclusive, royalty-free licence to use these materials for the purposes of the proceedings to which they relate, and for no other purpose without my prior written consent.

Severability

If any provision of these terms is found to be invalid or unenforceable, the remaining provisions will continue in full force.

Governing Law

These terms are governed by the laws of England and Wales. The courts of England and Wales have exclusive jurisdiction.

18. Contact

For questions about these terms and conditions:

Email: info@bettersoftware.uk