



THE EXPERT WITNESS SITE

## **SUGGESTED LETTER OF INSTRUCTIONS TO EXPERT WITNESS**

**[Address of Expert]**

**[Date]**

**Re: [Name of case]  
Instructions to provide Expert Witness Services**

Dear [Expert],

Thank you for agreeing to provide Expert Witness services in relation to the above matter, and for agreeing to provide a report on or before **[Set out agreed date]**.

Please note that while this firm acts for the **[Plaintiff/Defendant]** in this case, it is imperative that you understand that you are acting as an Independent Expert Witness, and that your overriding duty is to the Court throughout the process, and not to our client or this legal team. For your convenience we have set out in an Appendix to this letter, the duties of an Expert Witness as defined by the High Court (Humphreys J) in the 2024 decision of *Brownfield Restoration Ireland Limited -v- Wicklow County Council* [2024] IEHC 260, and we would ask you to ensure that you are fully familiar with those duties and comply with same throughout.

### **The Nature of the Case:**

The case concerns **[Set out here the nature of the case]**.

Your opinion is sought in the context of the question of **[State here whether the opinion relates to e.g. liability/causation/damages]**, and the specific queries on which we require your expert opinion are as follows:

**[Here list clearly the questions which the Expert is being asked to provide an opinion on].**

Please can you ensure that you are satisfied that you have the requisite specialist knowledge to provide an opinion in relation to the matter(s) at issue, and if there is any question over this please revert to me as soon as possible.

### **The Legal Test**

Please note that in Ireland, the applicable legal test in a claim such as this is **[Set out legal test here]**.

### **Court Rules**



THE EXPERT WITNESS SITE

Please note that in Ireland, the Rules of Superior Courts applicable to Expert Witnesses can be found at Order 39 Rules (Rules 45 and 46; and Rules 56 – 61 [**Note – please amend as appropriate - Rules 59–61 only apply to proceedings (a) which is listed for trial in the Commercial List or which is required to be heard in the Competition List, or (b) in which an order may be made under Order 63C, rule 4.]**) and these should be considered in full before undertaking any Expert Witness work. We would like to draw your attention in particular to the Disclosure rules at Rules 45 – 46; which in essence provides that any “report” containing “the substance of the evidence to be adduced” must be disclosed to the other side in the case, and ultimately the Court. Therefore, any drafts of your report, or indeed written notes ancillary to your report, are likely to be disclosable.

### **Declarations**

We would also draw your attention to Order 39 Rule 57 which sets out the requirement for certain declarations to be set out in your report, including an acknowledgment of “the duty of an expert to assist the Court as to matters within his or her field of expertise” and the fact that “...this duty overrides any obligation to any party paying the fee of the expert.” You will also be required to disclose any financial or economic interest you have, or that any person connected with you has, in any business or economic activity of our client, including any sponsorship of or contribution to any research of yours or of any University, institution or other body with which you were, are or will be connected, other than any fee agreed for the preparation by you of the report provided or to be provided in the proceedings concerned and any fee and expenses due in connection with your participation in the proceedings concerned.

We would ask that you please notifying us if:

- (a) You consider that any particular aspect of these instructions is outside your expertise.
- (b) At any time your opinions or conclusions change as the result of any new information, or having considered the report of any other Expert retained in the case.
- (c) you consider that another opinion will be required from an expert in your own area of specialisation or another area of specialisation.

Following receipt of your report, you may be required, pursuant to your duty to the court to:

- (a) Answer questions put by one of the other parties to the case;
- (b) Consider a report provided from an expert retained by one of the other parties;
- (c) Attend a joint meeting with other expert witnesses to establish what matters are agreed between you, and what matters are in dispute;
- (d) Prepare a joint report following the joint meeting referred to above;
- (e) Give evidence in court, answer questions put in cross-examination, or attend a ‘debate among experts’ pursuant to the rules of court.

Should you have any queries, please do not hesitate to contact me.



THE EXPERT WITNESS SITE

Yours etc.

SAMPLE

## Appendix

Duties of an Expert Witness as set out in *Brownfield Restoration Ireland Limited -v- Wicklow County Council* [2024] IEHC 260

### PART A - GENERAL DUTIES OF EXPERTS

#### 1. Duty of truthfulness

In oral and written evidence and reports.

#### 2. Duty to comply assist the court

Order 39, Rule 57(1) RSC

"It is the duty of an expert to assist the Court as to matters within his or her field of expertise. This duty overrides any obligation to any party paying the fee of the expert."

This duty should be acknowledged in any written reports, as required by rule 57(2) (a).

#### 3. Duty of independence from the parties

Any opinion must be the expert's own independent opinion, reached without reference to the interests of any party and without any attempt to persuade the court of the case of any party:

see *Cala Homes (South) Ltd & Ors v. Alfred McAlpine Homes East Ltd* [1995] EWHC 7 (Ch), *Emerald Meats Ltd v. Minister for Agriculture* [2012] IESC 48, *Byrne v. Ardenheath* [2017] IESC 293.

#### 4. Duty to ascertain or investigate the relevant facts or to clearly inform the court where this has not been possible

Thus if an expert is only giving a provisional opinion based on limited facts, she is obliged to make this clear.

Comply with the following or make explicit any non-compliance:

1. ensure that she has been given a full factual background;
2. determine and make explicit whether postulated facts are supported by objective facts;
3. interview all appropriate witnesses, or ensure that she has received their accounts of the issue in question;
4. conduct a thorough examination of the subject matter of the expertise
5. keep a record (such as a note, a photograph or photocopy) of any material fact that might be disputed at a later stage;



6. ensure that all material facts are included in his or her written report or otherwise disclosed to court and all parties, including those that do not support her own conclusions.

**5. Duty to identify what her expertise is and apply that expertise in a professional and informative manner**

Provide an explanation of his or her specialised knowledge, as it relates to the case, in an informative and unbiased manner.

If a particular question falls outside the expert's own specialist knowledge, he or she should make it clear to the court and the parties (*Connolly v. Kelly* 1995 WJSC-HC 1940, [1995] 6 JIC 1501) and should not offer opinion on such matters.

Provide her evidence/report to the court in a manner likely to be informative to the court.

Disclose the facts, assumptions and scientific methodology on which their evidence is based where any of these could reasonably be in dispute.

Identify any relevant secondary materials/ academic textbooks/ academic papers relied on and an indication of whether these represent generally applied principles in the field of study.

Identify where any proposition relied on is contested by other schools of thought if they apply to the issue and if so provide an explanation.

Where statistical probability is relied upon to explain certain findings, a clear presentation of the statistics without exaggeration or over-complication.

Distinguish between matters of fact and opinion.

Any opinion must be firmly grounded in the facts of the case and the expert's own specialisation.

The expert must take reasonable care in the preparation of any oral or written evidence or report

*Davie v Magistrates of Edinburgh* [1952] S.C. 34:

"Their duty is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence".

See also *Re Glaxo Group Ltd* [2009] IEHC 277 and *James Elliot Construction Ltd v. Irish Asphalt Ltd* [2011] IEHC 269.

**6. Duty to keep conclusions under review**

The duty to provide an objective unbiased opinion applies throughout the trial process.



Any opinion must be subject to revision where new information comes to light and any such revision must be disclosed.

*Anglo Group plc v. Winther Brown and Co. Ltd* [2000] EWHC Technology 127, Toulmin, J.:

"An expert should be ready to reconsider his opinion, and if appropriate, to change his mind when he has received new information or has considered the opinion of the other expert. He should do so at the earliest opportunity."

Quoted in *Kenneally v De Puy International Ltd* [2016] IEHC 728.

**7. Duty to co-operate with other parties and experts to the extent directed by the court**

*Anglo Group plc v. Winther Brown and Co. Ltd* [2000] EWHC Technology 127, Toulmin, J.:

"He should co-operate with the expert of the other party or parties in attempting to narrow the technical issues in dispute at the earliest possible stage of the procedure and to eliminate or place in context any peripheral issues. He should co-operate with the other expert(s) in attending without prejudice meetings as necessary and in seeking to find areas of agreement and to define precisely arrears of disagreement to be set out in the joint statement of experts ordered by the court."

Quoted in *Kenneally v De Puy International Ltd* [2016] IEHC 728.

**8. Duty of disclosure**

The expert witness must set out any financial and economic interests relating to the case.

Any matters adverse to the proposed conclusions should be disclosed

**PART B - ADDITIONAL DUTIES OF COURT-APPOINTED EXPERT**

**9. Duty to act only pursuant to the directions of the court**

**10. Duty not to communicate with any party without simultaneously including all other parties**