

**PRACTICE DIRECTION NO 01 OF 2023**

**IN THE COURT OF JUDICATURE OF NORTHERN IRELAND**

**PRACTICE DIRECTION FOR CLINICAL NEGLIGENCE LITIGATION**

1. This Practice Direction has effect from 1<sup>st</sup> June 2023 .
2. This Practice Direction dis-applies Practice Direction No 1 of 2015 Commercial List Practice Direction: Expert Evidence in so far as it applies to Clinical Negligence Litigation.
3. The Practice Direction accompanies and supports the Clinical Negligence Protocol which sets out best practice and procedure to be followed by practitioners on both sides of clinical negligence litigation and should allow practitioners to meet the expectations of the court.
4. The protocol revokes and replaces the Pre-Action Protocol issued on the 25 February 2013 by HHJ McFarland, Recorder of Belfast.

Signed this *1<sup>st</sup>* day of *June* 2023



The Honourable Dame Siobhan Roisin Keegan

Lady Chief Justice

**IN THE COUNTY COURT IN NORTHERN IRELAND**  
**PRACTICE DIRECTION FOR CLINICAL NEGLIGENCE LITIGATION IN THE**  
**COUNTY COURT**

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**PRACTICE DIRECTION NO 01 /2023**  
**IN THE COUNTY COURT IN NORTHERN IRELAND**

**CLINICAL NEGLIGENCE**

**EXPERT EVIDENCE**

**INTRODUCTION**

1. This practice direction applies to all clinical negligence actions with effect from 1<sup>st</sup> June 2023. From that date onwards, practitioners should reference this practice direction. Before an expert is instructed, practitioners should also consider the “Protocol for Clinical Negligence Litigation”.
2. When an expert has been instructed to give or prepare evidence for the purposes of court proceedings, the expert owes a duty to assist the court on matters within his or her expertise and this duty overrides any obligation to the party from whom the expert has received instructions or by whom the expert is to be paid. A statement of the expert’s duties, known as the “Ikarian Reefer Rules”, is set out in Appendix 1.
3. Expert witnesses should follow best practice as set out in “The Code of Practice for Experts” issued by the Academy of Experts and the Expert Witnesses Institute and attached as Appendix 2 ([code-of-practice.pdf \(ignition-learn.co.uk\)](https://www.ignition-learn.co.uk)).
4. Experts should be mindful of the overriding objective as set out in the County Rules [Northern Ireland] 1981 which is to enable the court to deal with cases justly, and which includes, so far as is practicable:
  - (a) Ensuring that the parties are on an equal footing;
  - (b) Saving expense;
  - (c) Dealing with the case in ways which are proportionate to:
    - (i) the amount of money involved;
    - (ii) the importance of the case;
    - (iii) the complexity of the issues;
    - (iv) financial position of each party.
  - (d) Ensuring that the case is dealt with expeditiously and fairly.

- (e) Allocating to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
5. Experts should have regard to the objectives of the "Protocol for Clinical Negligence Litigation", namely:
- (a) early communication between patients and healthcare providers of any perceived concerns about medical care or treatment;
  - (b) the development by healthcare providers of early reporting and investigation systems;
  - (c) disclosure of sufficient information so as to enable patients and healthcare providers to understand the issues and encourage early resolution;
  - (d) the timely provision of relevant medical records by healthcare providers to patients or their legal representatives;
  - (e) placing the parties in a position where they may be able to resolve cases fairly and early without litigation, together with the consideration of mediation and/or other forms of alternative dispute resolution, where appropriate;
  - (f) the promotion of an overall "*cards on the table*" approach to litigation in the interests of keeping the amount invested by the participants in terms of money, time and stress to a minimum, consistent with the requirement that the issues be resolved in accordance with the accepted standards of fairness and justice for both parties.
6. Ordinarily, the court will expect an expert witness to be familiar with, and have a knowledge of, matters relevant to medico-legal litigation and, specifically, in relation to those matters upon which they have been asked to report.
7. Experts should be aware that any failure to comply with the County Court Rules or the directions of the court or this practice direction, or any excessive delay for which they are responsible, may result in the parties who instructed them being penalised in costs, or debarred from relying upon the expert evidence. In addition, the expert may be held responsible for wasted costs and may have some or all fees and expenses disallowed.
8. Model forms of expert reports have been produced by The Academy of Experts ([www.academy-experts.org](http://www.academy-experts.org)) ([Model Form of Expert Report - The Academy of Experts](#)) and the Expert Witness Institute ([www.ewi.org.uk](http://www.ewi.org.uk)). A Model Form of Expert Witness CV has been produced by the Academy of Experts ([Expert witness CV - The Academy of Experts](#)).
9. Some professional bodies have produced guidance for members acting as expert witnesses, for example, the General Medical Council ([Acting as a](#)

[witness in legal proceedings - GMC \(gmc-uk.org\)](#) and ([Domain 4 - Maintaining trust - GMC \(gmcuk.org\)](#)), the Academy of Medical Royal Colleges ([expert witness guidance final.pdf \(ficm.ac.uk\)](#)), and the Royal College of Psychiatrists ([college-report-cr193.pdf \(rcpsych.ac.uk\)](#)).

## THE NEED FOR AN EXPERT WITNESS

10. Those intending to instruct an expert to give, or prepare evidence for, the purpose of civil proceedings should consider whether expert evidence is necessary and, if so, from which specialism(s).
11. Any party intending to call an expert witness or witnesses, or to serve reports from experts, should notify this intention at the earliest opportunity at review before the County Court Judge. Any party should be prepared to explain the justification for retaining an expert and the relevance of his/her expertise.
12. Consideration should be given to the appointment of a single joint expert for the purposes of the litigation or for the purposes of dealing with any one or more separate issues.
13. The parties should bear in mind that there may well be cost implications for the use of unnecessary expert evidence.

## DUTIES AND OBLIGATIONS OF EXPERTS

14. Experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any relevant professional code. However, when they are instructed to give or prepare evidence for civil proceedings, they have an overriding duty to help the court on matters within their expertise. This duty overrides any obligation to the person instructing or paying them. Experts must not serve the exclusive interest of those who retain them.
15. Experts must provide opinions that are independent, regardless of the pressures of litigation. A useful test of 'independence' is that the expert would express the same opinion if given the same instructions by another party. Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates or mediators. The General Medical Council's 'Acting as a witness in legal proceedings' states:

*"You must give an objective, unbiased opinion and be able to state the facts or assumptions on which it is based. If there is a range of opinion on an issue, you should summarise the range of opinion and explain how you arrived at your own view. If you do not have enough information on which to reach a conclusion on a particular*

*point, or if your opinion is qualified (for example, as a result of conflicting evidence), you must make this clear."*

16. Experts should confine their opinions (including those that might detract from their opinions) to matters which are material to the disputes and provide opinions only in relation to matters which lie within their expertise. Experts should indicate without delay where particular questions or issues fall outside their expertise. The General Medical Council's 'Acting as a witness in legal proceedings' states:

*"You must only give expert testimony and opinions about issues that are within your professional competence or about which you have relevant knowledge including, for example, knowledge of the standards and nature of practice at the time of the incident or events that are the subject of the proceedings. If a particular question or issue falls outside your area of expertise, you should either refuse to answer or answer to the best of your ability but make it clear that you consider the matter to be outside your competence."*

17. Experts should take into account all material facts before them. Their reports should set out those facts and any literature or material on which they have relied in forming their opinions. They should indicate if an opinion is provisional, or qualified, or where they consider that further information is required or if, for any other reason, they are not satisfied that an opinion can be expressed finally and without qualification. If the expert considers that an examination of the plaintiff is required before being able to complete his/her report, he/she should inform his/her instructing solicitor without delay.
18. Experts should inform those instructing them without delay of any change in their opinions on any material matter and the reasons for this.

## **THE APPOINTMENT OF EXPERTS**

19. Before experts are instructed, it should be established whether the experts:
- (a) have the appropriate expertise and experience for the particular instruction;
  - (b) are familiar with the general duties of an expert;
  - (c) can produce a report, deal with questions and have discussions with other experts within a reasonable time, and at a cost proportionate to the matters in issue;
  - (d) are available to give evidence at trial, if attendance is required; and
  - (e) have any potential conflict of interest.

- (f) have knowledge of any of the parties to the action and, if so, the extent of that knowledge.
20. 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 or single joint expert);
  - (b) the services required of the expert (e.g. provision of an expert's report, answering questions in writing, attendance at meetings and attendance at court);
  - (c) time for delivery of the report;
  - (d) the contractual basis on which the expert's fees and expenses will be charged and paid (e.g. legal aid or private funding, daily or hourly rates and an estimate of the time likely to be required, or a fixed fee for the services), which contractual basis should not conflict with the duties and responsibilities of the expert;
  - (e) travelling expenses and disbursements;
  - (f) cancellation charges;
  - (g) any fees for attending court;
  - (h) time for making the payment;
  - (i) whether fees are to be paid by a third party;
  - (j) if a party is publicly funded, whether the expert's charges will be subject to assessment; and
  - (k) guidance that the expert's fees and expenses may be limited by the court.
21. When necessary, arrangements should be made for dealing with questions to experts and discussions between experts, including any directions given by the court.
22. Experts should be kept informed about deadlines for all matters concerning them. Those instructing experts should send them promptly copies of all court orders and directions that may affect the preparation of their reports or any other matters concerning their obligations.

## **INSTRUCTIONS TO EXPERTS**

23. Those instructing experts should ensure that they give clear written instructions (and attach relevant documents), including, but not limited to,

the following (as per the Law Society's template "Letter of Instruction to Expert" (attached)):

- (a) basic information, such as names, postal and email addresses, telephone numbers and any relevant claim reference numbers;
- (b) the nature of the expertise required;
- (c) the purpose of the report, a description of the matter(s) to be investigated, the issues to be addressed and the identity of all parties;
- (d) the (pre-issue) protocol correspondence, the proceedings to date, including any Notice for Particulars and/or Replies, those documents which form part of disclosure and witness statements and expert reports that are relevant to the report, making clear which have been served and which are drafts and when the latter are likely to be served;
- (e) an outline programme, consistent with good case management and the expert's availability, for the completion and delivery of each stage of the expert's work;
- (f) the dates of any directions issued by the Judge, negotiations, mediation, court hearings (including any reviews) as appropriate, any requirements for the attendance of experts at, or the production of information by experts, for any negotiations, mediation, court hearing (including any review), the dates fixed by the court or agreed between the parties for the exchange of experts' reports and any other relevant deadlines to be adhered to;
- (g) bringing to the attention of the expert this practice direction and the "Protocol for Clinical Negligence Litigation".

#### **ACCEPTANCE OF INSTRUCTIONS BY EXPERTS**

24. Experts should confirm without delay whether they accept their instructions.
25. They should also inform those instructing them (whether on initial instruction or at any later stage) without delay if:
  - (a) instructions are not acceptable because, for example, they require work that falls outside their expertise, impose unrealistic deadlines, or are insufficiently clear. Experts who do not receive clear instructions should request clarification and may indicate that they are not prepared to act unless and until such clear instructions are received;
  - (b) they consider that instructions are insufficient to complete the work;
  - (c) they become aware that they may not be able to fulfil any of the terms of appointment;



- (d) the instructions and/or work have, for any reason, placed them in conflict with their duties as an expert. Where an expert advisor is approached to act as an expert witness they will need to consider carefully whether they can accept a role as expert witness; or
  - (e) they are not satisfied that they can comply with any directions of the court that have been made.
26. Experts must neither express an opinion outside the scope of their field of expertise, nor accept any instructions to do so.
27. Where an expert identifies that the basis of his instruction differs from that of another expert, he should inform those instructing him.
28. Experts should agree the terms on which they are to be paid with those instructing them.

#### **INSTRUCTIONS TO SINGLE JOINT EXPERTS**

29. When appropriate in clinical negligence litigation, the parties may agree joint instructions to single joint experts. Where they do so, the parties are referred to paragraphs 41-50 of the Expert Evidence Practice Direction 1/2015 for guidance in respect of the said single joint instruction.

#### **EXPERTS' ACCESS TO INFORMATION HELD BY THE PARTIES**

30. The instructing solicitor should try to ensure that they have provided access to all relevant information held by the parties, and that the same information has been disclosed to each expert in the same discipline. Experts should seek to confirm this soon after accepting instructions, notifying their instructing solicitors of any missing omissions.
31. If experts require information which has not been disclosed, they should discuss the position with those instructing them without delay, so that a request for the information can be made and, if not forthcoming, an application can be made to the court.
32. Any request for further information from the other party made by an expert should be in a letter to the expert's instructing solicitor party and should state why the information is necessary.

#### **EXPERTS' REPORTS**

33. The content of experts' reports should be governed by their instructions and general obligations, any court directions, and the experts' overriding duty to

the court. The report should identify the individual who prepared the report and any individuals who contributed to its preparation.

34. An expert's report must:

- (a) give details of the expert's qualifications. (The details of experts' qualifications in reports should be commensurate with the nature and complexity of the case. It may be sufficient to state any academic and professional qualifications. However, where highly specialised expertise is called for the report should include the detail of particular training and/or experience that qualifies them to provide that specialised evidence);
- (b) give details of any literature or other material which has been relied on in making the report;
- (c) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) state who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
- (f) where there is a range of opinion on the matters dealt with in the report:
  - (i) summarise the range of opinions; and
  - (ii) give reasons for the expert's own opinion;
  - (iii) contain a summary of the conclusions reached;
  - (iv) if the expert is not able to give an opinion without qualification, state the qualification;
- (g) contain a statement that the expert:
  - (i) understands their duty to the court, and has complied with that duty; and
  - (ii) is aware of this practice direction and the "Protocol for Clinical Negligence Litigation".
- (h) be verified by signing, dating and appending of the Expert's Declaration set out at Annex A of Appendix 3.

35. In preparing reports, experts should always maintain professional objectivity and impartiality at all times.

#### **SIMULTANEOUS EXCHANGE OF BREACH OF DUTY AND CAUSATION REPORTS**

36. The parties will agree a date and time to simultaneously exchange all expert reports upon which they intend to rely in relation to breach of duty and causation. This is normally arranged by exchange of correspondence setting out a list of the expert reports held, identifying the discipline of each expert. The exchange of liability evidence (including causation) is on a like-for-like basis. There is no obligation on a party to disclose evidence obtained from any medical expert on liability except where the party or parties to whom exchange is to be made is also relying on such evidence and simultaneous exchange is to take place.

#### **SEQUENTIAL EXCHANGE OF QUANTUM REPORTS**

37. Where there is to be sequential exchange of quantum reports, the defendant's expert's report usually will be produced in response to the plaintiffs. The defendant's report should then:
- (a) confirm whether the background set out in the plaintiff's expert report is agreed or identify those parts that in the defendant's expert's view require revision, setting out the necessary revisions. The defendant's expert need not repeat information that is adequately dealt with in the plaintiff's expert report;
  - (b) focus only on those material areas of difference with the plaintiff's expert's opinion. The defendant's report should identify those assumptions of the plaintiff's expert that they consider reasonable (and agree with) and those that they do not; and
  - (c) in particular, where the experts are addressing the financial loss (for example, wage loss, care costs or loss of profits), the defendant's report should contain a reconciliation between the plaintiff's expert loss calculation and the defendant's, identifying for each assumption any different conclusion.

#### **EXPERTS' WITHDRAWAL**

38. Where experts' instructions are incompatible with their duties, through incompleteness, a conflict between their duty to the court and their instructions, or for any other reason, the experts may consider withdrawing

from the case. However, experts should not do so without first discussing the position with those who instruct them. If experts do withdraw, they must give formal written notice to those instructing them.

## MEETINGS BETWEEN EXPERTS

39. The Judge will direct meetings to be convened between the experts on a set date in advance of the trial of the action and after a mutual exchange of reports between the parties. The meetings will be conducted between experts of the same discipline, unless agreed by the parties or otherwise directed by the court that experts of more than one discipline should attend.
40. No later than 35 days prior to the experts' meeting, the plaintiff's solicitor will prepare and circulate a draft agenda as between the parties. The solicitor(s) for the defendant(s) shall provide their comments on the draft within 14 days. The agenda should be agreed by the parties and sent to the experts no later than 7 days prior to the date of the experts' meeting.
41. When preparing the agenda, the parties should endeavour to adopt a neutral agenda, seeking to avoid leading questions. The agenda should not be an exhaustive list of issues to be discussed, but rather should focus on a small number of issues, permitting the experts to express themselves beyond a 'yes' or 'no' response, and to provide an explanation for their view only if necessary.
42. No later than 21 days prior to the experts' meeting, the parties shall agree a properly collated, paginated, and indexed core bundle of documents, including any literature on which the experts seek to rely, for use at the experts' meetings. The parties will also agree which expert is to take the minute of the meeting.
43. The purpose of meetings between experts should be, wherever possible, to:
  - (a) discuss the expert issues in the proceedings as identified by the parties and as set out in the agreed agenda for the meeting;
  - (b) reach agreed opinions on those issues, and, if that is not possible, narrow the issues between the parties;
  - (c) discuss the questions included within the agenda for the meeting, their respective answers to those questions being set out in the "Scott Schedule" in the minute of the meeting;
  - (d) identify those issues on which they agree and disagree and summarise their reasons for disagreement on any issue; and
  - (e) identify what action, if any, may be taken to resolve any of the outstanding issues between the parties.

44. Arrangements for discussions between experts should be proportionate to the value of cases. The meeting of experts between the respective experts for the parties to the action should ordinarily be convened by telephonic means (or whichever method of communication is most timely and convenient).
45. Legal representatives instructing experts must not instruct experts to avoid reaching agreement (or to defer doing so) on any matter within the experts' competence. Experts are not permitted to accept such instructions.
46. At the conclusion of the meeting, or when this is not possible, as soon as practicable thereafter, and in any event no later than 7 days after the date of the meeting, a minute of the meeting will be prepared by the expert assigned that task, in the form of a '*Scott Schedule*' identifying:
  - (a) issues that have been agreed and the basis of that agreement;
  - (b) issues that have not been agreed and the basis of the disagreement;
  - (c) any further issues that have arisen, that were not included in the original agenda for discussion, and a summary of the reasons for agreement/disagreement;
  - (d) a record of further action, if any, to be taken or recommended, including if appropriate a further discussion between experts.
47. The minute should be agreed and signed by all the experts participating in the discussion at the conclusion of the meeting, and when this is not possible, the minute should be prepared as soon as possible after the meeting has concluded. The minute shall then be circulated amongst the other experts for approval. It should then be agreed and signed by the experts, incorporating the Joint Statement Declaration found at Annex B of Appendix 3, within 7 days of the date of the experts' meeting.
48. The minute must not in any circumstances be circulated to anyone other than the experts participating in the meeting prior to it being agreed and signed by all of the experts present at the meeting.
49. The minute of the meeting should not be the subject of any input from any of the parties' legal advisors.

#### **ADDENDUM REPORTS**

50. Where experts change their opinion, whether following an experts' meeting or as a result of new evidence or for any other reason, they must inform those who instruct them by way of an addendum to their report explaining the reasons.

51. Those who are instructing those experts should inform other parties as soon as possible of any change of opinion and forward the addendum to those who have received the report.

#### **ATTENDANCE OF EXPERTS AT COURT**

52. Those instructing experts should ascertain the availability of experts before trial dates are fixed. In the event that trial dates are allocated by the court, and an expert is not available to attend, the parties should notify the court office within 7 days from the allocation of the trial date to seek (preferably by agreement) an alternative trial date. In that event the parties should attempt to agree an alternative trial date in advance and seek approval of same from the court.
53. The parties shall keep experts updated with timetables and relevant court directions (including the dates and times experts are to attend), the location of the court and directions of the court; and inform experts immediately if trial dates are vacated or adjourned.
54. A party instructing an expert may apply to the court, on notice to all other parties, for leave to present expert evidence by video link.
55. Experts have an obligation to appear and give evidence at court and should ensure that those instructing them are aware of any dates to avoid, and experts shall take all reasonable steps to be available to so attend.
56. Experts should normally attend court without the need for a witness summons, but on occasion such a summons may be served to require their attendance. The use of witness summonses does not affect the contractual or other obligations of the parties to pay experts' fees.
57. Cross-examination of experts on the contents of their instructions will not be allowed unless the court permits it (or unless the party who gave the instructions consents). Before it gives permission, the court must be satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete. If the court is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice.

#### **CONCURRENT EVIDENCE**

58. The court may direct that experts of like disciplines give their evidence at trial concurrently. The experts will then be questioned together, firstly by the Judge based upon disagreements recorded in the minute of experts' meeting and then by the parties' advocates. Concurrent evidence can save time and costs and can assist the Judge in assessing the difference of views between

experts. Experts need to be aware that the court may order evidence to be given concurrently.

## SANCTIONS

59. The parties and experts should be aware that sanctions might be applied because of a failure to comply with the County Court Rules, this practice direction and/or the directions of the court.
60. Whether or not court proceedings have been commenced, a professional instructing an expert, or an expert, may be subject to sanction for misconduct by their professional body or regulator.
61. If proceedings have been issued the court may:
  - (a) impose cost penalties against those instructing the expert;
  - (b) direct that an expert's report or evidence be inadmissible;
  - (c) order that the expert be responsible for wasted costs;
  - (d) order that some or all of the expert's fees and expenses be disallowed.
62. Experts should also be aware of other possible sanctions, including:
  - (a) in more extreme cases, if the court has been misled it may invoke general powers for contempt of court. The court would then have the power to fine and/or imprison the wrongdoer;
  - (b) if an expert commits perjury, criminal sanctions may follow;
  - (c) if an expert has been negligent there may be a claim on their professional indemnity insurance.

## APPENDIX 1

### THE IKARIAN REEFER RULES

Mr Justice Cresswell set out the following rules for experts in National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer) [1993] 2 Lloyd's Rep. 68 at 81-82:

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to the form or content by the exigencies of litigation (Whitehouse v Jordan [1981] 1 W.L.R. 246, HL, at 256, per Lord Wilberforce).
2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise (see Pollivitte Ltd v Commercial Union Assurance Company Plc [1987] 1 Lloyd's Rep. 379 at 386, per Garland J., and Re J (1990) F.C.R. 193 , per Cazalet J. An expert witness in the High Court should never assume the role of an advocate.
3. An expert witness should state the facts or assumption on which their opinion is based. They should not omit to consider material facts which could detract from their concluded opinion (Re J, above).
4. An expert witness should make it clear when a particular question or issue falls outside their expertise.
5. If an expert's opinion is not properly researched because they consider that insufficient data are available then this must be stated with an indication that the opinion is no more than a provisional one (Re J, above). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification that qualification should be stated in the report (Derby & Co Ltd v Weldon (No.9), The Times, November 9, 1990, CA, per Staughton L.J.
6. If, after exchange of reports, an expert witness changes their view on the material having read the other side's expert report or for any other reason, such change of view should be communicated (through legal representative) to the other side without delay and when appropriate to the court.
7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.



## APPENDIX 2

### THE CODE OF PRACTICE FOR EXPERTS

#### PREAMBLE

This Code of Practice shows minimum standards of practice that should be maintained by all Experts.

It is recognised that there are different systems of law and many jurisdictions in Europe, any of which may impose additional duties and responsibilities which must be complied with by the Expert.

There are in addition to the Code of Practice, General Professional Principles with which an Expert should comply.

These include the Expert:

- Being a "fit and proper" person;
- Having and maintaining a high standard of technical knowledge and practical experience in their professional field;
- Keeping their knowledge up to date both in their expertise and as Experts and undertaking appropriate continuing professional developments and training.

#### THE CODE

1. Experts shall not do anything in the course of practising as an Expert, in any manner which compromises or impairs or is likely to compromise or impair any of the following:
  - a) the Expert's independence, impartiality, objectivity and integrity,
  - b) the Expert's duty to the Court or Tribunal,
  - c) the good repute of the Expert or of Experts generally,
  - d) the Expert's proper standard of work,
  - e) the Expert's duty to maintain confidentiality.
2. An Expert who is retained or employed in any contentious proceeding shall not enter into any arrangement which could compromise his impartiality nor make his fee dependent on the outcome of the case nor should he accept any benefits other than his fee and expenses.

3. An Expert should not accept instructions in any matter where there is an actual or potential conflict of interests. Notwithstanding this rule, if full disclosure is made to the judge or to those appointing him, the Expert may in appropriate cases accept instructions when those concerned specifically acknowledge the disclosure. Should an actual or potential conflict occur after instructions have been accepted, the Expert shall immediately notify all concerned and in appropriate cases resign his appointment.
4. An Expert shall for the protection of his client maintain with a reputable insurer proper insurance for an adequate indemnity.
5. Experts shall not publicise their practices in any manner which may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.
6. An Expert shall comply with all appropriate Codes of Practice and Guidelines.

[code-of-practice.pdf \(ignition-learn.co.uk\)](#)

## APPENDIX 3

### Reports prepared on or after 1<sup>st</sup> October 2021

1. This Appendix sets out the wording of the Expert's Declaration and the Joint Statement Declaration (to be added to the minute of a meeting of experts) to be used in any expert's report or minute of meeting of experts prepared on or after 1<sup>st</sup> October 2021.
2. The report of an expert witness shall contain the Expert's Declaration set out in Annex A.
3. A minute of the meeting prepared after discussions between expert witnesses shall contain the Joint Statement Declaration set out in Annex B.
4. Declarations should be inserted between the end of the report or minute of meeting and the expert's signature.
5. The Expert's Declarations contained in Practice Direction 7/2014 shall not apply to expert's reports prepared in clinical negligence actions on or after 1<sup>st</sup> October 2021.

## ANNEX A

### EXPERT'S DECLARATION

I [*Insert Full Name*]

**DECLARE THAT:**

1. I understand that my duty in providing written reports and giving evidence is to help the court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
11. I understand that -
  - (a) My report will form the evidence to be given under oath or affirmation.

- (b) I must co-operate fully and actively engage with the party by whom I am instructed and will take all reasonable steps to promptly respond to queries raised and requests made by them.
- (c) I am required to make myself available for court-directed experts' meetings, and to actively participate and positively engage with those experts retained on behalf of the other parties. I will not be obstructive or otherwise impede the progress of that meeting and at all times my conduct will be courteous, objective, and professional
- (d) Following the court-directed experts' meeting, a minute shall be circulated between the respective experts for approval within 7 days of the Experts' meeting. I am required to engage in that process, prepare the minute if appointed and approve the minute when agreed and will not circulate that minute to any party prior to it being agreed by all the experts present at the meeting.
- (e) I will make myself available to appear at the hearing of this action if my attendance is required and will take all reasonable steps to be available for the trial of the action.
- (f) At the trial of this action the court may order concurrent evidence of experts of like disciplines.
- (g) I am likely to be the subject of public adverse criticism by the Judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- (h) If I fail to comply with the Rules of the Court, this Practice Direction, or the directions of the court, sanctions may be imposed by the court and / or my professional body, which can include:
  - (i) a wasted costs Order being imposed against me.
  - (ii) being found in contempt of court.
  - (iii) criminal sanctions if I am found to have committed perjury.
  - (iv) a claim on my professional indemnity insurance if I have been negligent.

**STATEMENT OF TRUTH**

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signature

.....

Date .....

**ANNEX B**

**JOINT STATEMENT DECLARATION**

**MEETINGS BETWEEN EXPERTS**

1. We, the undersigned experts, individually here restate the Expert's Declaration that we understand our overriding duties to the court, have complied with them and will continue so to do.

2. We further confirm that we have neither jointly nor individually been instructed to, nor has it been suggested that we should, avoid or otherwise defer from reaching agreement on any matter within our competence.

Experts' signatures .....

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