

England and Wales

Expert Witness and Single Joint Expert Witness Services

2018 edition



Draft

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For use with the RICS Short Form of Consultant's Appointment for Designated Services

Additional notes:

- The RICS Standard Form of Consultant's Services and the RICS Short Form of Consultant's Appointment should **not** be used as a contract when providing Expert Witness Services.
- These Services should be completed by inserting a 'tick' in the box next to the Service to be provided. For further information please refer to the RICS Short Form of Consultant's Appointment for Designated Services explanatory notes.
- Services that have been ticked below shall be deemed to be the Basic Services to be provided by the Consultant under the terms of this Appointment.
- All other Services that are not ticked shall be deemed to be Additional Services under the terms of this Appointment.
- **Note:** The Expert Witness Services is not recommended for use where the Consultant acts as a claims consultant or an expert adviser or in the dual role of surveyor-advocate. The parties are referred to the appropriate RICS Services that applies to the Service provided by the Consultant and the RICS professional statement *Surveyors acting as advocates* 2nd edition, 3rd edition guidance note.
- The Expert Witness Services references the *Civil Procedure Rules* (CPR) to ensure consistency between the Services and the CPR.
- It is recommended that the parties read the RICS practice statement and guidance notes *Surveyor's acting as expert witnesses*, 4th edition and *Independent expert determination*, 1st edition.
- A schedule of 'typical' meetings is included with these Services in Appendix A. Completion of this schedule is also recommended.
- *Surveyors acting as advocates*, 2nd edition professional statement, 3rd edition guidance note includes, in Appendix A, Sample Terms of Engagement, which may be used if the RICS Short Form of Consultant's Appointment for Designated Services is not used.
- Expert Witness appointments must not be undertaken on any form of conditional or other success-based arrangement.
- The Consultant should remind the client (or instructor) that liability will exist for all fees and disbursements, even if the fees and disbursements are reduced under an assessment of costs, or if they are not recovered from the opposing party. (See *Surveyors acting as advocates*, 2nd edition professional statement, 3rd edition guidance note).

For the purposes of these Services the generic term 'tribunal' means any body whose function it is to determine disputes. This therefore includes:

- courts and tribunals (including but not limited to Lands Tribunals and Agricultural Land Tribunals, Leasehold Valuation Tribunals, Residential Property Tribunals, Valuation Tribunals);
- arbitrators/arbiters or arbitral panels/tribunals;
- adjudicators;
- committees (including Rent Assessment Committees and Valuation Appeal Committees);
- inspectors, commissioners and reporters (for example, in planning proceedings, including inquiries, hearings, examinations in public – independent panels; independent examination and proceedings of the Infrastructure Planning Commission, and Planning and Water Appeals Commissions); and
- independent experts.

The Consultant is reminded that its overriding duty is to the tribunal to which expert advice is given. This overrides any contractual duty to the Client.

1 General

- ☐ 1.1 Attend Client, Counsel, Court and other meetings as provided under this Appointment.
- ☐ 1.2 International travel required:
- ☐ once only;
 - ☐ twice only;
 - ☐ weekly; or
 - ☐ monthly.
- ☐ 1.3 International travel required to:
- ☐ Europe;
 - ☐ Russia;
 - ☐ the Middle East;
 - ☐ the Americas (excluding USA);
 - ☐ USA;
 - ☐ Australia;
 - ☐ the Far East (excluding China);
 - ☐ China; and/or
 - ☐ Africa.

- ☐ 2.6 Consider the reports prepared by the other expert witnesses appointed by the Client.
- ☐ 2.7 Consider the statements of witnesses of fact.
- ☐ 2.8 Advise from time to time on the strengths and weaknesses of the Client's case.
- ☐ 2.9 In conjunction with the Client's legal representatives, determine the documents required in disclosure that lie within the Consultant's area of expertise.
- ☐ 2.10 Assist with preparing and reviewing pleadings: particulars of claim, statements of defence, mediation statements, etc.
- ☐ 2.11 Comply with any rules, orders, directions or protocols of the tribunal.
- ☐ 2.12 Attend, with other experts from the parties, meetings with an expert determinator where appropriate.
- ☐ 2.13 Produce an expert report that complies with Practice Direction 35 of the CPRs and the RICS practice statement and guidance note, *Surveyors acting as expert witnesses*, 4th edition. Produce revised expert reports, addenda or memoranda as necessary to take into account any new or amended information made available. Identify any omissions, inaccuracies or change of opinion.
- ☐ 2.14 Consider and comment on reports of experts of the same discipline appointed by the opposing party before attendance at a tribunal.
- ☐ 2.15 Attend the tribunal, including but not limited to, courts, adjudication and arbitration hearings and mediations. Advise on questions for a matching expert's cross-examination.
- ☐ 2.16 Provide oral evidence and undergo cross-examination.

2 Expert Witness Services

- ☐ 2.1 Agree with the Client the amount of material relevant to the case to be reviewed. Check for the availability of material not provided by the Client.
- ☐ 2.2 Review all documents provided and draw up a list of information that cannot be provided.
- ☐ 2.3 Complete inspections on-site or at properties or facilities, including joint inspections with experts appointed by the opposing party.
- ☐ 2.4 Communicate with the other party, including meeting with other expert witnesses of the same discipline to attempt to agree facts and narrow the differences between the parties. Prepare and issue joint statements or reports about what has and has not been agreed.
- ☐ 2.5 Attend meetings with other expert witnesses appointed by the Client. These might include, but not be limited to, architectural and engineering experts, forensic planning experts and forensic accountancy experts.

3 Single Joint Expert Services

The following Services are in addition to those identified above for Expert Witness Services, and where the surveyor is to be appointed as a Single Joint Expert.

- ☐ 3.1 Assist the tribunal by submitting to active case management.
- ☐ 3.2 Advise the parties of their obligations to provide additional information to the Single Joint Expert if directed by the tribunal.
- ☐ 3.3 If necessary, request from the tribunal answers to queries, or additional instructions if these cannot be obtained from the parties.

- ☐ 4.9 Consideration of all evidence, technical analysis and legal analysis relevant to the matter. Prepare reports and answers in accordance with Court or similar directions.
- ☐ 4.10 Prepare and publish the reports and answers to the Court and the parties in accordance with the schedule agreed.

4 Expert Determination

- ☐ 4.1 Agree the Single Joint Expert's terms of reference.
- ☐ 4.2 Prepare directions and/or procedural instructions for communication to both parties.
- ☐ 4.3 Confirm whether or not the matter will be decided using a 'documents only' determination.
- ☐ 4.4 Arrange a preliminary meeting with the parties and their experts to discuss the need for meetings, the timetable for exchange of documents, evidential matters, limits to investigatory powers, etc.
- ☐ 4.5 Check relevant documentation submitted by the parties.
- ☐ 4.6 Arrange a meeting to be attended by the parties to discuss the submissions made.
- ☐ 4.7 Provide technical analysis relevant to the matter by way of the appointment by the Single Joint Expert of a technical expert.
- ☐ 4.8 Provide legal analysis relevant to the matter by way of the appointment by the Single Joint Expert of a legal expert.

Appendix A: Schedule of meetings to be attended by the Consultant

1 Client, solicitor, Counsel or other experts meetings

Attendance:

Partner ☐ Director ☐ Associate ☐ Project surveyor ☐
Other ☐ (please specify) _____

Frequency:

Daily ☐ Weekly ☐ Monthly ☐ Quarterly ☐
No attendance required ☐ Other ☐

Please specify requirements: _____

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Appendix B: Glossary of terms

Expert Determination	A dispute resolution procedure in which an independent expert in the subject matter of the dispute is appointed by the parties to resolve a matter by formulating a binding decision from the evidence.
Expert Witness	A person with specialised knowledge who expresses an independent expert opinion based on the information provided as evidence to a tribunal or court.
Single Joint Expert	An Expert Witness instructed to prepare a report for the Court on behalf of both parties in the proceedings.

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