

Draft LETTER OF INSTRUCTION for the expert collection and analysis of samples to ascertain drug and alcohol usage

Dear [insert]

[insert case name. LBC v (1) A (2) B (3) C]

- Proceedings before the family court sitting at [insert]
- Case number [ZCXXXX]
- The date by which your report must be lodged is [4pm on xx/xx/xxxx]

Thank you for agreeing to provide an expert report in this matter. You have been instructed to provide an expert report in the case of [insert case name]

The expert evidence you have been instructed to provide is to test, interpret and provide your expert opinion as to whether drugs or alcohol have been consumed by [name of client] and to answer the questions [provided for below/provided for in the attached order]

Parties and their representatives

The applicant is [insert] represented by [insert]

The first respondent is [insert] represented by [insert]

The second respondent is [insert] represented by [insert]

The third respondent is the children (by their guardian) represented by [insert]

Background

Relevant background completed by solicitor.

To include:

- Details of previous testing,

- What the presenting concerns are?
- What relevant allegations the client is facing?
- Any relevant history known to solicitor, such as previous accepted drug use or alcohol use.
- Date of last of accepted use of drugs
- What is Current accepted drug use?
- Results of previous testing etc.
- Any history of exposure to drugs use (partners who use drugs)
- Any colour treatment, type of treatment, when last treatment occurred
- Any heat treatment - use of hair straighteners or other heat treatment

Basis of your instructions

Pursuant to the directions made in the Case Management Order, dated [insert] (a copy of which is enclosed) you are being instructed on the basis that you will provide an expert opinion entirely independent of the parties. I am instructing you as the solicitor for [name party], but this letter of instruction has been agreed between the parties.

Your instructions

Your service is instructed to undertake a forensic investigation to include testing samples taken from [insert name], analysis of the data and interpretation of the results. Please review the questions and in the event you are unable to comment on any matter raised please inform me as soon as possible.

1. Please take samples as are required for your investigation, which will include one or all of the following: scalp hair, body hair, fingernails, toenails, blood and urine (as far as you are able) for forensic analysis. If insufficient head hair is available for the required testing period, please take as much head hair as is available.
2. Please provide photographic evidence to be made available on request covering:

- a. The person providing the sample.
 - b. The hair samples when clamped (immobilised) prior to cutting;
 - c. The hair samples when clamped (immobilised) after cutting from the scalp;
 - d. The site of cutting from the scalp;
 - e. Nail sample collection sites for all finger and toe nails before and after clipping;
 - f. Nail samples when collected, packed sealed and signed, with each nail identified and stored separately.
 - g. Where the test site was located.
 - h. The test site following collection.
3. Please ensure the techniques used must be validated to ensure, where reasonably possible, the alignment of any hair sample is maintained from the point of cutting and packing the sample, during transport to the laboratory and during the handling and segmentation process. It should be made available if required.
4. Please ensure a full chain of custody will be maintained, and compliance documented in the report for all samples taken. Any break in this chain of custody must be notified in the report and opinion provided on the impact this is likely to have on the reliability of the opinions provided in the report.
5. At the time of collection, please collect a full forensic history to establish factors relevant to interpretation such as:
- a. a detailed profile of declared use of drugs, medications, and/or alcohol, with dates, times, frequencies and level,
 - b. a detailed profile of exposure to drugs, with dates, times, frequencies and level,
 - c. a detailed profile of the alcohol use, with dates, times, frequencies and level
 - d. natural hair colour and ethnicity,
 - e. hair grooming profile,
 - f. cosmetic or other treatments of the hair including brands, with frequency, dates and periods of use,
 - g. cosmetic or other treatments of the nails including brands, with frequency, dates and periods of use,
 - h. use of thermal treatments or straighteners to the hair with where on the scalp they were used, how close to the scalp the treatments were frequency, dates and periods of use,

6. Please undertake an investigation of the samples tested to identify the presence of [cocaine / heroin / cannabis / other / alcohol biomarkers] over a [three / six / nine / twelve / other] month period or as close to that period as you are able. Where you are not able to be precise about timings, please explain your reason and provide a range.
7. Please report all your findings irrespective of the concentration of drug and or alcohol biomarkers detected and industry cut off levels.
8. With reference to this forensic history, and any relevant forensic history identified in this letter of instruction or papers provided please provide your analysis and expert opinion as to whether the presence of any drugs or alcohol markers found in the hair are more likely than not to be consistent with:
 - a. Active use of that substance?
 - b. Exposure to that substance that has led to contamination of the hair / nails?
 - c. A combination of these factors
9. Please provide reference to any recent research or other data sources relevant to the interpretation of these results which you have factored into your interpretation.
10. Please provide your expert opinion on the relevance of the levels of any drug or alcohol use over any period testing.
11. What is the pattern of any identified drug use over time?
12. Are there any additional compounds detected in the hair that would suggest further investigation and analysis is required? If so please provide the likely cost of this further investigation? [If any additional compounds are detected in the hair in addition to those instructed, please carry out the further investigation and analysis required and report these drugs along with those instructed, providing interpretation as for the instructed compounds.
13. Is there evidence of degradation of the hair, hair dyes or other compounds which may affect the reliability of testing? If so, please test the appropriate alternative sample (body hair and or nail) and provide an analysis of these findings in line with 3 – 9 above.
14. Is your interpretation of the pattern or use of drugs or alcohol consistent with declared usage?

15. The court has ordered that [name] should not cut or dye their hair or apply nail varnish or acrylic covers to the finger or toe nails before the samples are taken. If the nails already have acrylic covers attached then instruction will be given to be removed prior to the sample collection. Is there evidence that this has not been complied with?
16. What is the impact of any dye or other treatment on the results?
17. In your opinion are additional samples required to be tested? If so, why?
18. In the case of alcohol testing, please take samples as are required for your investigation, which will include one or all of the following; scalp hair, body hair, fingernails, toenails, blood and urine (insofar as you are able) for forensic analysis. If insufficient head hair is available for the required testing period, please take as much head hair as is available.
19. Please carry out all necessary tests required in this case to answer the questions presented, which should include, minimally EtG, EtPa and PEth and when required, the testing may also include, but is not limited to: CDT, MCV LFT's (ALT, AST GGT).
20. Please provide your analysis of whether the results are generally consistent with chronic excessive drinking, social/moderate drinking or support a declaration of abstinence.
21. In the event you need further information or enquires to be undertaken please ensure you keep a note of any conversations held with any party to be made available if you are required to attend court to speak to your report.

Your fees

22. I am the lead solicitor in this instruction but your fees are paid in equal shares by the parties.

Your report

23. Your report must be provided by no later than [insert]. In the event that you are unable to meet this deadline you must notify me in advance so that an extension of time can be requested from the court. Please be aware that failure to report of time may significantly impact the court timetable.
24. In the event that the client does not attend for the purposes of sample collection, please notify us at the earliest opportunity.