

Appendix E

Specimen letter of instruction to Single Joint Expert (SJE)/ Pension on Divorce Expert (PODE)

Please read the explanatory notes to this template letter which are cross-referenced to the relevant paragraphs by notes E1 to E9. They offer important

guidance on the options to be included, which may have a significant impact on the report you receive and the cost of it to your client.

[Mr Smith
Smith's Pension Consultants
1 High Street
Uptown
UP1 3YH]

PODE Details

Dear Sir/Madam

Pension Report for the Purposes of Family Proceedings - Mr and Mrs Jones

This letter is written on the joint instruction of Mr and Mrs Jones, who are involved in divorce and *[associated financial proceedings]* in the Family Court sitting at [] – Reference VVF17XXXXXXX.

Mr Jones is represented by Mr White of A Firm LLP (*Telephone number XXXX Email Address: XXX Ref XXX*) and Mrs Jones is represented by Ms Green of B Firm LLP of XXX (*Telephone number XXXX Email Address: XXX Ref XXX*).

[It has been agreed] / [An order has been made] by District Judge Brown in the Family Court sitting at [] on [] that a report should be prepared by a single joint expert about *[Mr Jones][Mrs Jones] [the parties]' pension provision and pension sharing [or attachment orders]. [A copy of the order is enclosed.]*

The purpose of this letter is to set out your formal instructions to act as the Single Joint Expert in this matter.

Overall the aim of the instruction is for the court and parties to understand *[insert brief details as to what the parties and court need to understand]*

Background

Mr Jones' date of birth is [] and he works as a [].

Mrs Jones' date of birth is [] and she works as a [].

You may ask such questions about the parties' health as you think relevant.

The parties' respective pension resources and Cash Equivalents (CEs) are summarised in the table below:

Pensions	Mr Jones (CE) £	Mrs Jones (CE) £
Pension 1		
Pension 2		
Pension 3		
Total CEs		

We enclose the following documentary evidence: [E1]

- Paragraph 2.13 from each party's Form E and supporting documents, including evidence of CEs; [E2]
- Form P for each policy and the response from the pension provider;
- State Pension forecasts for each party.

We anticipate that you will need to obtain additional information. Letters of authority from both parties to enable you to obtain that information directly from the pension providers are also enclosed.

Nature of instructions [E3]

You are therefore instructed, as a single joint expert, to provide a report advising on:

- the Pension Sharing Order or orders that would achieve equalisation of pension benefits in retirement, both in respect of income and lump sum (where possible), based on the current benefits of the parties' pensions; *and/or*
- the Pension Sharing Order or orders that would be required to achieve capital equalisation of the parties' pensions based on an assessment of the capital value of the parties' respective pensions; *and/or*
- *[If offsetting is required]* Please set out the offsetting valuation options available and an analysis of them; [Note here that clarification should be provided as to whether the parties require:
 - *an offset valuation of each pension arrangement for placing in a Schedule of Assets for settlement purposes,*
 - *a calculation of the amount of capital to be passed between the parties in lieu of a pension share being implemented;*

E.1 Documentary Evidence

- due to the complexity of pension schemes, particularly Defined Benefit schemes which each have their own nuances, detailed information is often required. It is strongly recommended that Form P has been obtained before requesting the pension report from the pension expert;
- the ability to obtain detailed information can lead to extensive delays in preparing pension reports;
- the draft letter of instruction is based on a core standard of information that will be included within a pension report;
- additional instructions can be added to the standard but such additions are likely to affect the cost of the report and possibly the length of time to produce the report.

E.2 Information to be provided

This list is not exhaustive. The expert may have their own list of information that needs to be provided at the outset, but provision of the following information should be considered.

E.3 Nature of Instructions

- consider carefully what the expert is being asked to report on, possibly with the assistance of a shadow PODE or financial adviser. This list is intended to cover common requests but is not exhaustive;
- the questions raised of the expert will need to be carefully considered as it will impact on costs if unnecessary questions are raised. The questions below are intended to be illustrations of possible questions for the expert;
- as a guide, where pensions are all Defined Contribution pensions (e.g. personal pensions, SIPP) with no in-built guarantees and parties are of a similar age, equalisation of benefits by reference to CE is likely to be the correct approach

and can often be calculated by solicitors based on CEs. A pension report may not be needed at all;

- where there is a Defined Benefit pension, whether public or private sector, which may be the subject of a PSO, equalisation of benefits by reference to projected income will in most circumstances be the appropriate approach;
- where there is a Defined Benefit pension, and equalisation of benefits by reference to capital value is thought to be necessary, a report is likely to need to deal with whether or not CEs are suitable for that purpose. Reference may be made to [Part 6](#) for a fuller consideration of these issues.

Apportionment for period of marriage

- if it is a 'needs' case, then it is unlikely that a court will be assisted by the production of calculations which exclude pension rights accruing from pre-marital or post-separation contributions and these should rarely appear in letters of instruction to PODEs;
- in a case where the assets exceed the needs then there might be justification for including separate calculations which exclude pension rights accruing from pre-marital/seamless cohabitation to marriage, or post-separation contributions. The simplest and therefore cheapest methodology for this is for the PODE to apportion the benefits on a straight timeline basis, but this can lead to an unfairness in some circumstances and the PODE might be asked to consider calculations based on other methods, e.g. calculating the CE of the fund at the beginning and end of the marriage. See [Appendix S](#) on apportionment in Defined Benefit final salary schemes.

- *calculation of the amount by which any pension share may be reduced in exchange for a given capital sum being passed between the parties*; [E4]
 - *please consider the issue of how taxes may impact upon the calculation*; [E5]
 - *we do not require you to give any adjustment on account of any perceived 'utility' as that will be a matter for the parties or the court*;
 - *please state the factors for and against any approach to be taken if there is to be some pension sharing and some offsetting*.
- any other issues which you feel are relevant or require consideration by either party.

It should be assumed for the purposes of your report that: [E6]

- the benefits are to be equalised at the following age(s)/date(s) *[include age/date at which benefits should be calculated]*; [E7]
- State Pension entitlements should/should not be taken into account;
- pensions increase in payment at equal rates; [E8]
- there will be no income from other sources (so that income tax treatment will be equal).

As you will be aware, the instruction of experts in family proceedings is set out in Part 25 of the Family Procedure Rules (FPR). Please note in particular Part 25.14, which sets out details of the contents of an expert's report and the statement required at the end of your report under Part 25.14 (2).

We are attaching a copy of Part 25 and of the relevant Practice Directions to Part 25, known as PD 25A, B, D and E.

Please confirm that you are able to sign a statement of truth and self-certify in accordance with the Pension Advisory Group [Appendix D](#) as attached. If you feel unable to sign any element of this statement, because in your view it is inappropriate to this case, please state which of the numbered paragraphs this relates to.

As a jointly instructed expert you should not enter into correspondence or engage in conversations with one party or their advisers without copying it to the other party or their solicitor, as your role in the proceedings is an impartial one.

If there is any aspect of this letter which is unclear, please write to both **A Firm LLP and Firm B Law & Co Solicitors** to raise any issues or questions which may arise, including proportionality, lack of clarity or completeness in the instructions and/or the possible effect on fees of complying with the instructions.

You should be aware that, although it is very unlikely, you may be required to give evidence in person to the Court following your report, by attending a hearing in the case. If this eventuality arises we will contact you further to ascertain your available and non-available dates.

E.4 **Offsetting**

If a request for offsetting calculations is to be included within the letter of instruction, then the parties should give thought to the parameters of this investigation in the context of [Part 7](#) on offsetting issues, e.g. the expert might be asked to provide a range of outcomes for offsetting purposes (e.g. realisable value, replacement value or net actuarial value). The expert will usually be asked to consider taxation issues, but not 'utility' issues.

E.5 **Lifetime Allowance / Tax Implications**

While the LTA is to be abolished from 6 April 2024, there remains the threat of its re-introduction in the future. The expert(s) can be asked to comment on the extent to which the LTA may affect either party. This may include the impact if either party has any form of protection against the Lifetime Allowance and comment on the protections that may be applied for in order to minimise or mitigate the effect of the Lifetime Allowance or which may enhance the maximum tax-free lump sum available. The expert cannot be expected to comment on future policy, which is as yet unknown.

E.6 **Assumptions**

These are just examples of assumptions that may be relevant. Again, it is important that the purpose of the report, and therefore the basis on which it is being requested, is considered carefully in each case. Before committing to a joint report, it may be appropriate to take advice from a shadow pension expert. These assumptions may or may not be relevant and are not exhaustive or in any way standard assumptions.

E.7 **Age at which benefits drawn/retirement age**

When an 'equalisation of incomes' report is to be produced it is important that careful thought is given to the retirement age towards which the expert is being invited to target their calculations. Although the PODE may be able to provide some comments on the choice of retirement age (e.g. if it is an age prior to relevant benefits being payable without discount from a particular scheme), the choice of retirement age is primarily for the selection of the parties, possibly with the assistance of a shadow PODE or financial adviser. The choice of this equalisation retirement age for both parties will depend on issues such as the normal retirement age in relevant pension schemes, State Pension age, the ages of both parties and the difference between these ages, income gap issues and the asserted future work plans of relevant parties. It may be possible for the parties to agree the equalisation retirement age, which is often the normal retirement age of the dominant private pension, but sometimes the parties will differ, seeing some advantage to them in a particular selection. If so, the expert can be invited to provide calculations for two or (exceptionally) more assumed equalised retirement ages. Parties should be made aware that the more calculations the PODE is required to make, the greater will be the cost, and potentially the delay in production, of the report. Accordingly, parties should be firmly cautioned against too great an array of assumed equalisation retirement ages, although sometimes a limited range of assumed equalisation retirement ages and thus possible outcomes can be useful. In some cases an equalisation retirement date rather than an equalisation retirement age may be appropriate to use, e.g. where both parties can retire immediately and it is the intention that incomes be equalised from the present time for their joint lifetime. Care should be exercised however, if specifying different assumed equalisation retirement ages for each party (e.g. husband retires at 60, wife retires at 65 and equalising benefits at these respective ages) as

Timing

[The court has ordered] or [It has been agreed] that this report should be produced by no later than [].

If you believe that you cannot prepare your report within that timescale please let us know as soon as possible and provide an indication of the timescale that you would consider realistic to complete your report.

We will keep you informed of any changes to the court dates.

Your fees [E9]

Mr and Mrs Jones accept that they will each be responsible for 50% of your charges and each solicitor should be invoiced for one half of your fees *[or alternative details as agreed or ordered]*. Separate invoices should be addressed to *[each firm of solicitors] [each client]*.

You have indicated that you envisage your fee will be [*£*] plus VAT for the production of your report *[inclusive or exclusive of expenses/disbursements]*. *[Please do not start work on your report until you have provided us with your costs estimate and that estimate has been accepted by both parties.] [Please advise us if having now received the letter of instruction your fee estimate has changed.]*

Please also indicate what your fees will be for attendance at a hearing, in the unlikely event that this is required.

Firm B Law & Co Solicitors have confirmed their agreement to these instructions by countersigning this letter/writing to you direct.

Could you please send one copy of your report to each solicitor and one additional copy to us for filing at court.

We look forward to hearing from you.

Yours faithfully

A FIRM LLP B LAW & CO SOLICITORS

Dated: []

this could lead to unequal treatment where one is then expected to receive the pension income for longer.

E.8 Increase at equivalent rates

Pensions can often increase at different rates e.g. where there are guaranteed annuity rates attaching to a pension or index-linked pensions, compared to some that may not increase in payment at all. Fairness may be achieved where pensions are assumed to increase at an equivalent rate

E.9 Costs

Consider what the appropriate costs position should be for the costs associated with raising questions after the report. These costs will usually be in addition to the costs of the main report and therefore how they are to be paid should be dealt with at the outset. A request for this to be included in the directions made by the court is suggested, e.g.: if either party raises questions about your report, the party who raises those questions will be responsible for your costs of answering the questions and a separate invoice should be raised for that purpose (or alternative details as agreed or ordered).