

Explanatory notes for draft letter of instruction

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 have an effect on the cost of the report and possibly the length of time to produce the report.

Retirement age

When an 'equalisation of incomes' report is to be produced it is important that careful thought is given to the date towards which the expert is being invited to target his calculations. Although the Pensions on Divorce Expert (PODE) may be able to provide some comments on the choice of date (for example, if it is a date prior to relevant benefits being payable without discount from a particular scheme), the choice of date is primarily for the selection of the parties, possibly with the assistance of a shadow PODE or financial adviser. The choice of this date will depend on issues such as the normal retirement date 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 target date, which is often the normal retirement date 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 target dates. 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 dates, although sometimes a limited range of target dates and thus possible outcomes can be useful.

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 of the report of the Pensions Advisory Group on offsetting issues. For example, 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.

Lifetime Allowance/Tax Implications

The expert(s) can be asked to comment on the extent to which the Lifetime Allowance 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.

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 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. An alternative method is the 'Deferred Pension' method, sometimes called 'salary-related apportionment' which specifically takes account of a member's salary, service and accrued pension at the start and the end of the marital period. This method does however require more complicated calculations and additional data at past dates which may not be readily available. This method is therefore often more costly to perform when instructing the PODE to carry out apportionment calculations. See Appendix S of the Pension Advisory Group report "A Guide to the Treatment of Pensions on Divorce" for further information on apportionment in defined benefit pension schemes.