

SAMPLE LETTER OF INSTRUCTION

Actuaries for Lawyers
24 Victoria Street
Wetherby
LS22 6RE

Dear Sirs,

Pensions on Divorce

This letter is written on the joint instruction of Mr and Mrs X who are involved in divorce and associated financial proceedings in the Family Court sitting at [TOWN] – Case reference XXXXXXX.

Mr X is represented by [acting solicitor] at A Firm LLP at [address, including email address] and Mrs X is represented by [acting solicitor] at B Firm LLP at [address, including email address].

[It has been agreed] / [An order has been made by the Court] that a report should be prepared by a single joint expert regarding the parties' pension provision and pension sharing. [A copy of the order is enclosed for your reference].

The purpose of this letter is to set out your formal instructions to act as a 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

Mrs X's date of birth is <<date>> and <she works as a [current job title]/ she is not working at present/ she is now retired>.

Mr X's date of birth is <<date>> and <he works as a [current job title]/ he is not working at present/ he is now retired>.

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

The parties' respective pension arrangements and Cash Equivalent Values (CEVs) are summarised in the table below.

Pensions	Mr X (CEV) £	Mrs X (CEV) £
Pension 1		
Pension 2		
Pension 3		
Total CEVs		

We enclose the following documentary evidence:

- Paragraph 2.13 from each party's Form E and supporting documents, including evidence of CEVs,
- Form P for each policy and the response from the pension provider,
- [State Pension Statements for each party, if State Pensions are to be included in the report].

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 [Note: Actuaries for Lawyers' standard letter of authority template may be accessed at https://actuariesforlawyers.com/wp-content/uploads/2020/01/Letter_of_Authority_West-Yorkshire.pdf]

Nature of instructions

You are instructed as a single joint expert to report on the pension rights of Mr and Mrs X. We should like you to prepare a report regarding Mr and Mrs X's pension rights and advise on the following: -

1. The pension sharing order or orders that would achieve equalisation of pension benefits in retirement, in respect of income and lump sum (where possible) based on the current benefits of the parties' pensions; and/or
2. 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
3. [Consider whether the report should address offsetting or attachment orders].
4. *If offsetting is required,*
 - a) 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.*
 - *a calculation of the amount by which any pension share may be reduced in exchange for a given capital sum being passed between the parties.]*
 - b) Please consider the issue of how tax may impact upon the calculation.
 - c) 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.
 - d) Please state the factors for and against any approach to be taken if there is to be some pension sharing and some offsetting.
5. Any other issues which you feel are relevant or require consideration by either party.

We should like you to assume that:

- The benefits are to be equalised at the following age(s)/date(s);
- State Pension entitlements will/will not be taken into account;
- Pensions increase in payment at equal rates;
- 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 link to Part 25 http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25 and of the relevant Practice Directions to Part 25, known as PD 25A, B, D and E https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions.

Please confirm that you are able to sign a statement of truth and self-certify in accordance with Appendix D of the Pension Advisory Group report "A Guide to the Treatment of Pensions on Divorce", a copy of which may be found at <https://www.nuffieldfoundation.org/wp-content/uploads/2023/A-guide-to-the-treatment-of-pensions-on-divorce-2nd-edition.pdf>.

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 B Firm LLP 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 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.

Timing

[The Court has ordered] / [It has been agreed] that the report should be produced by no later than <<date>>.

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

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

Your fees

Mr and Mrs X 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].

Please confirm your fee before commencement of work. Please do not commence work on the report until you have provided us with your costs estimate and that estimate has been accepted by both parties.

B Firm LLP have confirmed their agreement to these instructions by countersigning this letter.

Could you please send one copy of the 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
Dated:

.....
B Firm LLP
Dated:

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.
- It may be helpful to consider the discussion in Part 6 of the Pensions Advisory Group report when considering which points would be helpful to have addressed by a Pensions on Divorce Expert. This report may be found at <https://www.nuffieldfoundation.org/wp-content/uploads/2023/A-guide-to-the-treatment-of-pensions-on-divorce-2nd-edition.pdf>
- **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** - While the LTA was abolished on 6 April 2024, maximum tax privileged limits still exist for lump sum benefits paid on retirement or death. There also remains the possibility of the reintroduction of the LTA regime, or something similar to this in the future, particularly if there is a change of Government. The expert 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.
- **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. 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 this could lead to unequal treatment where one is then expected to receive the pension income for longer.