

Letter of instruction to a single joint expert to value
a business

1 Introduction

This letter is written as a joint instruction to you as an expert in financial remedy proceedings relating to divorce proceeding between [client's full name] and [spouse's full name]. You are being instructed jointly by [lead firm preparing letter] who act on behalf of [client's full name] and [name and address of spouse's solicitors], [telephone number and email of spouse's solicitors] on behalf of [spouse's full name], but on the basis that you will provide an expert opinion independent of each of them.

At the First Appointment on [date of first appointment], District Judge [name] sitting at the Family Court at [location] made the following order [insert exact wording from order].

The parties have agreed that you should be instructed on a joint basis as the single joint expert.

Your scope of instructions is as set out in the order dated [date of first appointment order] and in this letter.

2 Arrangements for preparing the report

Should you need to discuss the report, either on a preliminary basis or on a more extended basis, please contact both solicitors by joint [email OR letter].

Please do not discuss any issues direct with either party. Please note that you should not take into account in your report any direct or indirect communication you have with either party, although you should keep records of these communications. Please direct any queries you may have to both parties' solicitors.

3 Background information

[Insert relevant background information, eg as to the history and future of the business].

4 Documents

Please find enclosed the following documents:

- 4.1 a copy of the order dated [date of first appointment order]
- 4.2 relevant extracts from our client's Form E (and documents in support)
- 4.3 relevant extracts from other party's Form E (and documents in support)
- 4.4 relevant extracts from our client's replies to questionnaire (and documents in support)
- 4.5 relevant extracts from other party's replies to questionnaire (and documents in support)
- 4.6 [schedule of assets]
- 4.7 relevant shareholder agreements
- 4.8 relevant partnership agreements
- 4.9 relevant option agreements

- 4.10 relevant pre-emption agreements
- 4.11 additional company accounts/draft accounts]
- 4.12 details of accountants
- 4.13 copy of Family Procedure Rules 2010, Pt 25 and copy Practice Directions 25B, 25D and 25E

5 Valuation

You are asked to address the following issues in your report:

- 5.1 the value of the [*party's*] shareholding in [*name of company*] please state whether you believe it is appropriate to value [*name of company*] on a net asset basis or on an earnings basis, giving reasons in support of your answer
- 5.2 whether you believe it will be possible for [*party*] to extract cash from [*name of company*] in order to fund a financial settlement and, if so, how much; please give reasons in support of your answer
- 5.3 any tax implications there may be in relation to [*party's*] ability to raise funds through [*name of company*] either by way of sale shares or by any other means, and
- 5.4 the level of reasonable remuneration [*party*] can expect to receive from [*name of company*] in the foreseeable future, linking this with the existing policy of [*name of company*]

You should have regard to the market place in which [*name of company*] operates and seek to factor in all of the known risks including those of a specific nature (solvency, competition etc) and those of a general nature (patterns of demand and supply, the economic outlook as a whole etc).

6 Form of report

Your report must be prepared in accordance with Family Procedure Rules 2010, Pt 25 and Practice Directions 25B, 25D and 25E. We would draw your attention in particular to paragraph 9.1 of PD 25B which deals with the contents of the report. The report must contain, for example, the following:

- 6.1 details of your qualifications and experience
- 6.2 a statement identifying the document(s) containing the material instructions and the substance of any oral instructions and, as far as necessary to explain any opinions or conclusions expressed in the report, summarising the facts and instructions which are material to the conclusions and opinions expressed
- 6.3 details of who carried out any test, examination or interview to which you have referred in your report to include the qualifications of that person and confirming whether or not the test, examination or interview has been carried out under your supervision
- 6.4 when expressing an opinion, all material facts should be considered and the facts, literature and other material relied upon in forming your opinion should be identified

- 6.5 a description of your own professional risk assessment process and process of differential diagnosis, highlighting factual assumptions, deductions from the factual assumptions and any unusual, contradictory or inconsistent features of the case
- 6.6 a statement indicating whether your opinion is provisional (or qualified, as the case may be) stating the qualification and the reason for it and identifying what further information is required to give an opinion without qualification, and
- 6.7 where there is a range of opinion, please:
- 6.7.1 summarise the range of opinion
- 6.7.2 identify and explain, within the range of opinions, any 'unknown cause', whether arising from the facts of the case or from limited experience or lack of research, peer review or support in the relevant field of expertise
- 6.7.3 give reasons for any opinion expressed. The use of a balance sheet approach to factors that support or undermine an opinion can be of great assistance to the court
- 6.8 a summary of your conclusions and opinions
- 6.9 you must include a statement in your report that you:
- 6.9.1 understand your duty to the court and that you have complied with that duty
- 6.9.2 are aware of the requirements of the Family Procedure Rules 2010, Pt 25 and Practice Directions 25B, 25D and 25E, and
- 6.9.3 have no conflict of interest of any kind, other than as disclosed in your report, and that you do not consider any interest disclosed as affecting your suitability as an expert witness on any issue on which you have given evidence and that you will advise the parties if, between the date of your report and the final hearing, there is any change in circumstances in relation to the issue of conflict of interest
- 6.10 the report must be verified by the following statement of truth:

'I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer'.

If you knowingly sign a statement of truth that is untrue, you may be held in contempt of court and liable to imprisonment.

Your report should be addressed to [*name and address of court*] and not to the parties or their solicitors; however, one copy of your report should be sent simultaneously to each of our respective firms.

Within ten days of receipt of your report, either party or their solicitors may put questions in writing to you for the purpose only of clarification of your report. Your answers will be treated as part of your report. If you do not reply to these questions, the court may direct that your evidence cannot be relied on.

If required, you may apply to the court for directions to assist you in carrying out your instructions.

We wish to stress that you should regard yourself as an expert of the court and that, as such, your duty is to the court and not to either of the parties. This duty overrides any obligation to the parties or their solicitors. Each party's solicitors should be consulted in relation to any further enquiries which may arise in relation to the preparation of your report.

7 Costs of your report

You have confirmed that your fee for carrying out this work will be [fee] plus VAT. If it becomes clear that you are likely to exceed this fee, please contact both solicitors as soon as possible with your revised estimate.

Please note that both parties will be responsible for your fees and you should invoice them directly. Your fee is to be met equally by the parties. Please provide each party with an invoice for one-half of your total fee. Each party will also be responsible for one-half of your reasonable costs incurred in answering questions on your report.

8 Confirmation

We would be grateful if you would confirm that:

- 8.1 you have no conflict of interest of any kind
- 8.2 the matter is within your range of expertise
- 8.3 you are available to provide the report within the timescale ordered by the court. If you anticipate difficulties in complying with this timescale, please contact both solicitors as soon as possible
- 8.4 [your fee will be that already agreed and set out in your letter dated [date] OR your likely fee of providing your report including VAT and disbursements so that this may be approved in advance by the parties], and
- 8.5 you do not require any further information or documents in order to carry out these instructions. If any further information or documents are required, please supply a list of the material required

If this matter is not resolved by negotiation, it is possible that you may be required to give evidence at court. We will discuss the necessity for this with you in due course, ascertaining your availability.

We look forward to hearing from you as soon as possible that you can deal with these instructions.

Yours faithfully

[Name of firm]	[Name of firm]
Solicitors for [name of client]	Solicitors for [spouse's name]