



Neutral Citation: [2025] EWHC 2647 (Fam)

Case No: 1725-9621-6114-8336

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London
WC2A 2LL
11 July 2025

Before:

The Hon. MR RICHARD TODD KC
(Sitting as a Deputy High Court Judge)

Between:

H
- and -
M

Applicant

Respondent

MR CHARLES HOWARD KC and MR ALEX TATTON-BENNETT
(instructed by Melius Family Law) for the Applicant
MR MICHAEL HORTON KC and MS RACHEL COOPER
(instructed by LCF Law) for the Respondent

JUDGMENT

JUDGE TODD:

1. I have before me an application seeking clarification or in the alternative an extension of the order which was made after the hearing on the 3 April 2025.
2. I have had the benefit of the application notice (which sets out the grounds in support), a bundle of correspondence and very comprehensive skeleton arguments. I have read these with care and if I do not refer to every point raised in those skeleton arguments, it is not because I have disregarded them.

The Dispute

3. The Husband seeks a direction that:

“1. An order that paragraphs 29 and 30 of the order dated 3 April 2025 of Mr Richard Todd KC (sitting as a Deputy High Court Judge) ('the Order') be varied to provide for one updated and consolidated without prejudice valuation report as recommended by the appointed expert, BDO LLP.

2. In the alternative, confirmation that paragraph 29(b)(i) of the Order means that BDO shall comment and respond to any and all questions and feedback shared by the parties, without restriction.

3. The applicant to pay the respondent's costs.”

4. I will summarise the dispute very shortly – the Husband would like to put new matters before the expert such as up-to-date accounts (which were only considered in draft in the draft report). The Wife would simply like the “draft” watermark removed from the pre-existing report and the parties proceed on the basis of that report. This short statement does not comprehensively summarise the skilful and lengthy arguments which have been put in writing by both sides.
5. This is a case management exercise. I shall therefore not deal with every point that is raised in this application.
6. The provision of the BDO report had one objective; to provide a basis upon which the parties may have a fully effective FDR. That requires the best evidence to be available and the best evidence is often the most recent evidence.

Where there is conflict in respect of the terms of the instruction to a Single Joint Expert

7. Where there is a dispute as to the basis of an instruction to an expert, then the usual approach ought to be that *each* party should be allowed to put their basis for instruction into the letter of instruction. In an extreme case there might even be *two* letters of instruction. If one side's approach is subsequently revealed to have wrongly incurred costs, then the remedy for this is a costs' order at the final hearing. The party who has raised issues or questions which are irrelevant, too far reaching and /or ones which ultimately fail to assist the Court, can expect to have to pay (a) the additional costs incurred by the expert (b) the other side's costs of dealing with such an issue and (c) not be allowed to deduct any money they have spent on their own costs from the totality of the matrimonial assets.

8. That such an approach to letters of instructions is the right approach is found in the seminal case of *Daniels v Walker* [2000] 1 WLR 1382 where Lord Woolf held at 1383H:

"Where the parties have sensibly agreed to instruct an expert, it is obviously preferable that the form of instructions should be agreed if possible. Failing agreement, it is perfectly proper for either separate instructions to be given by one of the parties or for supplementary instructions to be given by one of the parties."

9. Such an approach ends sterile disputes about what exactly an expert should be asked to consider in a letter of instruction. Both parties can put what they seek (but very much as to costs risk if their enquiry is too ambitious). In a case where the ambit of the enquiry of the expert exceeds the overriding objective, then the Court will step in to prevent such a pursuit. But those cases should be rare – especially where, as here, there are extremely experienced leading and junior counsel and specialist solicitors. Parties should be allowed – within reason – to put the case which they want to run, to the single joint expert.

10. Dealing with the specific points raised on behalf of the Wife:

- a. The Wife says it was the parties' intention that the first BDO report of October 2024 be finalised. I agree. But finalisation can include taking into account new matters since that time.
- b. It was hoped the matter could be dealt with very quickly. This was always dependent on the ambit of the questions which I gave permission for. It was fundamental to my order that both parties should be able to comment on the draft and have a more accurate report; one which would best assist an FDR judge.
- c. The Wife complains that the Husband's comments / questions ran to 59 pages. As the report is being consensually marked "without prejudice" (at least until after the FDR) I have not been shown this. I cannot comment on this without

having seen it. If the questions raised prove to have been excessive then there will be a costs' sanction.

- d. It is said that the questions are not FPR 25.10 compliant. Again, I have not seen these but the nature of the permitted exercise was always intended to be wider than just FPR 25.10. The parties were both at liberty to comment generally on the draft report and, if need be, bring it up to date.
 - e. Mr Foottit for BDO has offered to prepare a single consolidated report. He believes this to be the most helpful approach. He said the most cost-effective approach is to prepare one updated valuation report which "*updates the current draft report for the most recent financial information*" "*incorporates the additional entities*" and "*gives due consideration to the points raised by the parties*". My order should be read as requiring such a single report.
 - f. The Wife complains that the Husband is attempting to appeal a case management decision. That is incorrect. He is seeking clarification. Such a procedure was traditionally known as a "construction summons" and is plainly correctly referred back to the original Judge who made the decision.
 - g. It is said there is no prejudice to the Husband in remaining with the Wife's interpretation that the existing report should simply have the "draft" watermark removed. I disagree. The effect of that approach is that the parties will go to the FDR with the Husband contending that there is better evidence which shows a value for the business, which is different from the one which, he will say, is outdated and relies on old material. The parties will be asking the FDR Judge to opine on different cases. That dispute is non-justiciable and will render the FDR non-effective. There is prejudice to both parties in not having an effective FDR.
11. I emphasise again, that each party shall bear (at least initially) the costs incurred by their questions and commentary. BDO will have to indicate how these costs are incurred and how they should be apportioned.
12. For the reasons set out above, I confirm that:
- a. My order permits a single report as per Mr Foottit's original suggestion.
 - b. Paragraph 29(b)(i) of my Order means that BDO shall comment and respond to each party's questions and commentary with each party being individually responsible (in the first instance) for the costs thereby incurred.
13. Costs. The Husband has succeeded in his application. I have not heard argument as to costs and have not seen any correspondence which might affect a determination as to costs. However, I am keen to spare the parties the costs of a battle about costs. I

therefore propose to make an order nisi that the Wife should pay the Husband's costs of this application; such costs to be agreed and if not agreed to be assessed on a standard basis. The Wife shall make an interim payment on account of those costs of £4,166.67 (exclusive of VAT as the Husband is not a VAT-payer). This payment shall be deducted from the interim payment of costs awarded against the Husband on the last occasion.

14. The costs order is an order nisi. As such either party has liberty to apply for an alternative order for costs. That application must be made within 28 days. If either or both parties make such an application, the matter will be determined at the post-FDR hearing listed for the 16 December 2025.
15. It just remains for me to thank leading and junior counsel for their very comprehensive and helpful written advocacy.