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Myerson **Family**

Disagreements regarding expert valuations

0161 941 4000 | myerson.co.uk | lawyers@myerson.co.uk

Welcome

It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser. Everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way, dealing with your matter sensitively and with compassion.

Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



Expert Valuations

What can you do if you disagree on an expert's valuation?

As part of the financial disclosure process during financial remedy proceedings, it will often be necessary to obtain expert valuations to assist the court on the valuation of residential or commercial properties, businesses, pensions, and valuable chattels. Without agreed evidence on valuation, the case is difficult, but not impossible to resolve. For any expert valuations to be put before the family court, the court's permission must first be obtained.

The rules surrounding expert evidence are contained within Part 25 of the Family Procedure Rules 2010, which restricts the use of expert evidence to that which in the opinion of the court is "necessary" to assist the court in resolving the proceedings. Therefore, expert valuations will only usually be necessary on valuations which are not agreed between the parties. The rules governing expert evidence are therefore strict, and failure to follow them can have adverse consequences, including costs orders being made against you.

What is a Single Joint Expert?

A Single Joint Expert (also known as "SJE") means an expert jointly appointed by the parties to provide evidence to the court as to valuation. The Family Court is opposed to each party instructing their own expert. The costs of instructing the SJE are usually borne equally between the parties.



Before appointing an SJE, both parties must identify who is the most appropriate valuer to be appointed.

This decision will be based on an expert's professional experience, charges and timescale for producing the report. If the parties cannot agree on the expert to be instructed, the court will need to determine which expert is to be appointed pursuant to a Part 25 court application.

The SJE has a duty of impartiality, confidentiality, and integrity towards the parties.

The SJE is instructed within an agreed timescale following a joint Letter of Instruction in agreed terms.

All relevant documents and information must be provided to the SJE with the joint Letter of Instruction to enable the SJE to carry out the valuation. The SJE may request further documents or information, as required, and may even ask for a meeting with one or both of the parties or their accountant.

Is so, the parties may attend that meeting, or contemporaneous notes of the meeting must be taken and shared with all parties.

Neither party may correspond or otherwise communicate unilaterally with the SJE during the single joint instruction.

If either party wishes to raise clarification questions once the report has been produced, he may do so in writing within 10 days of receipt of the report at his own expense.

Clarifying questions mean seeking further information about something which may be unclear or unexplained in the report. It does not comprise asking further questions unrelated to the contents of the report.

The SJE report has a major impact on the case and is often determinative. It can be challenging to dispute the evidence of a SJE if it does not support your case. However, it is not impossible to do so.

The owner of a business may have pertinent information available to him that was not shared with the SJE initially, which may affect valuation once this information is made available.



If you disagree with the valuation

The Family Procedure Rules do not make specific provision for instructing a new expert. Where the Family Procedure Rules are silent, the court may have regard to case law under the Civil Procedure Rules.

The leading case on this issue is *Daniels v Walker* [2000] 1 WLR where Lord Woolf stated that if a party, for valid reasons, wishes to obtain further information before deciding whether to challenge a specific part or the entirety of an expert's report, they should be permitted to do so, subject to the court's discretion. Lord Woolf provided the following guidance:

- The instruction of a SJE by the parties should be regarded as the first step in obtaining expert evidence.
- If a party wishes to obtain further information before making a decision as to whether to challenge the report of an SJE, then that party is permitted to obtain that evidence. This is subject to the discretion of the court.
- In many cases, it will not be a sensible approach for the dissatisfied party to ask the court immediately for permission to call a second expert.
- In general terms, where a modest amount is involved, it may be disproportionate to obtain a second report in any circumstances.
- If you do not agree with the conclusions of a SJE report, there are steps that you can take.

1) Ask Clarification Questions of the SJE

A party may ask the SJE questions to obtain clarification of the report. Such questions must be in writing within 10 days of receipt of the report and be only for the purpose of clarification. The SJE will then respond to the questions raised to provide clarification.

All parties must be copied into corresponding raising and responding to clarification questions. The costs of raising the questions is borne by the party raising the questions. The SJE has 10 days to respond to the questions.



2) Either party can instruct their own Shadow Expert

A party may instruct a shadow expert at their own expense to assist with:

- Preparing questions to ask the SJE to clarify their report or to use during cross-examination at a hearing in the Family Court
- Preparing a Form E or raising a Questionnaire seeking financial disclosure

3) Either party may make a court application to appoint to second expert

Either party may make an application to the court to appoint a second expert pursuant to FPR 25.4 FPR 2010.

When considering whether to grant permission to obtain a second expert opinion, the court will consider:

- The nature of the issues.
- The number of issues between the parties
- The reason the new expert is required; is the appointment necessary and proportionate?
- The amount at stake and, if it is not purely money, the nature of the issues at stake and their importance.
- The effect of permitting one party to call further expert evidence on the conduct of the hearing.
- The delay in making the application.
- Any delay that the instructing and calling of the new expert will cause.
- Any other special features of the case.
- The overall justice to the parties in the context of the litigation.



If a party is given permission to reply on the evidence of a second expert, it is usual practice for the court to direct that the second expert and SJE should meet after their reports have been served and that they should prepare a schedule of agreement and disagreement.

If there remains a substantial level of disagreement, oral evidence may be required from both experts.

4) If valuation remains in dispute, call the experts to final hearing with permission from the court pursuant to FPR24.

Either party can call the SJE or second witness to final hearing, provided they have permission to do so. If they do not have permission to do so, they will need to seek permission explaining the reasons why it is necessary to seek to call an expert witness to give evidence at the final hearing.

Calling an expert witness to court is expensive. The person requesting the attendance of the expert at court must pay the expert's wasted costs involved in attending final hearing, which may be considerable.

A party must serve the expert with a witness summons in prescribed format pursuant to FPR 24 in good time before the hearing if he has permission to do so from the court. If not, a specific court application must be made to apply for a witness summons.

Generally, the witness summons must be served at least 7 days prior to the date upon which the expert is required to attend the final hearing unless court permission is otherwise sought.



You're in safe hands!

If you would like further information about how we can help you with your **Expert Valuations**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

Call: 0161 941 4000

Click: myerson.co.uk

Email: lawyers@myerson.co.uk



Myerson Solicitors

Grosvenor House, 20 Barrington Road,
Altrincham, WA14 1HB

Tel: 0161 941 4000 | lawyers@myerson.co.uk
www.myerson.co.uk



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