This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Neutral Citation Number: [2024] EWFC 11

Case No: 1691493145115084

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 January 2024

Before :

MR JUSTICE PEEL

- -

Between :

BR	**Applicant**
- and -	
BR	**Respondent**

- -
- -

Richard Todd KC and **Alexander Laing** (instructed by **Dawson Cornwell LLP**) for the **Applicant**
Harry Oliver KC and **Charlotte Hartley** (instructed by **Payne Hicks Beach LLP**) for the **Respondent**

Hearing date: 17 January 2024

- -

Judgment

This judgment was handed down remotely at 10.30am on 30 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Peel :

Introduction

1. On 17 January 2024, I heard a First Appointment in this case. In their written submissions, sent to me the day before, counsel for both parties informed me of an agreement that the substantial business interests should be valued by two separately instructed sole experts, one for each party. I sent an email to counsel stating my provisional view that I should instead make a direction for the instruction of a Single Joint Expert ("SJE"). By the start of the hearing, the parties had agreed to move forward on the basis of my suggestion for a SJE report. I indicated that I would do a written judgment as one or two points of principle arise.

The background

2. The parties married in 1998 after a period of cohabitation. They separated in 2023, so this was a period of cohabitation/marriage exceeding 25 years. They have two children. During the course of the marriage, the husband ("H") built up a number of highly successful businesses. The wife ("W") was fully supportive in her role within the marriage. There is no dispute that they made equal contributions to the marriage and the family. Further, it is common ground that prima facie this is a case for equal division, subject to potential arguments about liquidity and structure.

3. The ES2 is provisional at this stage, but the total figure, on H's case, is £183m, of which approximately £163m represents his estimate of the business values. W believes the figure for the business assets may be much higher.

The proceedings

4. W's Form A was filed in August 2023. The case was allocated to High Court level, and reserved to me. W's accountants produced a lengthy list of questions/information sought. To that, H replied through solicitors that he would provide disclosure within his finalised Form E.

5. Forms E were exchanged on 27 December 2023. My impression (albeit without having undertaken a minute analysis) is that generally H's Form E is detailed and comprehensive. It did not, however, provide all the information and documents which W had earlier sought.

6. H did not file a questionnaire. W's questionnaire is very long, consisting of 81 pages and over 500 questions; the longest I have ever before encountered. Almost the entirety of the questionnaire is devoted to questions in relation to the businesses. It was prepared with the assistance of W's accountant. It was intended to elicit such information as W's accountants thought necessary to enable them to carry out a valuation.

Single Joint Expert ("SJE"): the rules

7. There is no doubt that in this case expert evidence as to value, tax and liquidity is "necessary to assist the court to resolve the proceedings" and therefore meets the test set out in FPR 25.4(3).

8. By FPR 25.11 (1):

> "Where two or more parties wish to put expert evidence before the court on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert".

9. Para 1.1 of PD25D provides:

> "This Practice Direction applies to financial remedy proceedings and other family proceedings except children proceedings…"

10. Para 2.1 of the PD25D provides:

> "**Wherever possible**, expert evidence should be obtained from a single joint expert instructed by both or all of the parties" [emphasis added].

11. An identical provision in PD25C at para 2.1 applies the same wording of "Wherever possible" to the instruction of experts in children proceedings.

12. It is notable that the words "Wherever possible" do not appear in the equivalent CPR provisions as to expert evidence contained at CPR 35.7 and PD 35.7.

13. It is clear that the rule makers specifically intended to include the words "Wherever possible" for SJE evidence in family proceedings, in contra distinction to the practice in civil procedure.

14. I note that the twelfth edition of the Financial Remedies Practice, in its commentary on FPR Part 25 at pages 554 to 577 under the heading "**Basic rules"**, sets out five basic rules relating to expert evidence of which the "***fifth basic rule"*** (at page 567) reads as follows:

> "25.54 The ***fifth basic rule*** is that wherever possible expert evidence should be obtained from an SJE instructed by both or all of the parties".

15. In **J v J [2014] EWHC 3654 (Fam)** Mostyn J said at para 8:

> "One reason why so much forensic acrimony was generated, with the consequential burgeoning of costs, was that the Deputy District Judge at the first appointment on 9 November 2012 permitted each party to have their own expert to value the husband's business interests, notwithstanding the terms of Part 25 FPR which clearly stated then (and even more strongly states now – see PD 25D para 2.1) that a SJE should be used "wherever possible". Not "ideally" or "generally" but "wherever possible".

16. Although Moor J questioned the use of SJE accountancy evidence at para 69 of **SK v TK [2013] EWHC 834**, he did not refer to PD25D and was not expressing a decided view.

17. I conclude that:

    i) Wherever possible, a SJE should be directed rather than giving permission for two or more experts to be solely instructed. This is the default position.

ii) The bar for departing from the default position is set high. A high degree of justification is required to persuade the court to do so.

18. There are a number of good reasons why the default position should be instruction of a SJE. A non-exhaustive list includes the following:

i) It will usually be cheaper to instruct one, rather than two, experts.

ii) All experts have an overriding duty to the court, expressed at FPR 25.3 as follows:

"(1) It is the duty of experts to help the court on matters within their expertise.

"(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid".

Notwithstanding this clear expression of duty to the court which binds all experts, the SJE has the inestimable advantage over a solely instructed expert of being truly independent. The solely instructed expert may (whether consciously or subconsciously) be partisan to a lesser or greater degree, because they take instructions from one party, are given information by them, build up a relationship with them and are paid by them to prepare reports and give evidence in conflicted litigation. The SJE by contrast is likely to be less susceptible to bias (conscious or subconscious) towards either party.

iii) The SJE prepares a report in accordance with one joint letter of instruction, jointly provided information and one series of joint questions. By contrast, two separate experts, instructed by two different parties, may receive different instructions, different information and different questions. They are subject to less oversight by the court than the SJE whose remit, instructions and provision of information are ultimately to be decided by a judge if the parties do not agree. There is a significant risk that the court will be faced with reports which are not just different in their conclusions, but based on different information, questions and instructions.

iv) Nothing prevents either or both parties from instructing shadow experts to assist in (for example) drafting the joint letter of instruction, or raising questions of the SJE once the report has been received. It is common at trial for the SJE, if required to give evidence, to be cross examined by counsel for one or both parties with the benefit of input from shadow accountants.

v) Questions can be asked of the SJE after provision of the report: FPR 25.10. These give the parties the opportunity to explore areas which they consider have not been properly addressed.

vi) Should either or both parties be dissatisfied with the SJE report, it is open to them to make a **Daniels v Walker** application for permission to adduce their own expert evidence. I appreciate that this may lead to additional expert evidence, but experience suggests that in many cases parties are content, broadly, to accept the SJE's opinion, and those cases where there is a legitimate justification for additional sole expert evidence will be rare. It does not therefore

automatically follow that to instruct a SJE will inevitably lead in due course to three experts (the SJE and two sole experts). Occasionally, one party will seek to rely on the SJE, and the other will reject the SJE's conclusions. In that case, if permission for the dissatisfied party to obtain their own expert is granted, there will be two experts. In those rare cases where both parties secure permission for their own expert, it may nevertheless remain helpful for the court to have the benefit of independent SJE evidence at trial. I am therefore unpersuaded that the court should routinely assume a gloomy prognosis about the future trajectory of expert evidence even before the SJE route has been explored.

vii) Instruction of a SJE will usually enable that expert to decide what documents they need and request them. It is commonplace to include in any court order a direction that the parties cooperate with requests for information made by the SJE. That is usually the most practical way to deal with issues about what is sometimes the vexed issue of company disclosure. Appointing a SJE will therefore usually remove the need for lengthy questionnaires addressed to company matters; these can be left to the SJE.

viii) Finally, whenever the court is considering expert evidence, issues of costs and proportionality arise. These are likely to be particularly pertinent in lower value cases, but even in the so called "big money" cases, the court must keep them in mind.

This case

19. In this case, I am in no doubt that the right course of action is for a SJE instruction. A SJE report is likely to give the parties a more secure evidential foundation for the FDR than two solely instructed reports. W has expressed some suspicion about H's approach to valuing the businesses with his own valuer, believing that he will seek to depreciate their true worth. It seems unlikely to me that W would necessarily be minded to accept what is said by H's instructed expert (and the reverse may also apply), such that attempts to agree valuation figures would in all likelihood be unfruitful. By contrast, both parties should have greater confidence in the SJE. There is no good reason, in my view, to depart from the usual rule that a SJE should be instructed. Both parties will continue to have the aid of their shadow accountants. Further, this course avoids the need to consider the 81-page questionnaire; the SJE can decide what documents and information are needed.

20. Finally, I express my gratitude to the parties and their advisers for their constructive and collaborative approach at the First Appointment.