

Pension Advisory Group – Valuation and Expert issues: Draft guidance for consultation April 2018

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Questions for Consultation

Please use the pro forma provided for your response.

Page 5, paragraph (2)	Question 1: Do consultees agree that these are important aims to achieve? Are there other objectives that the PAG should pursue?
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Page 13, paragraph (27)	Question 10. Do consultees agree that the document at Appendix 5 would be useful and how do they suggest it might regularly be updated?
Page 13, paragraph (28)	Question 11. Do consultees think it should be a competency requirement for PODEs to be aware of Appendices 3 and 4?
Page 14, paragraph (34)	Question 12. Do consultees agree that the approaches in Paragraph (34)(b)(i) – (iv) represent the range of acceptable ways of dealing with expected starting ages for pensions?
Page 15, paragraph (35)	Question 13. Do consultees agree that the features in Paragraph (35) need to be taken into account? Are there any features that ought to be listed here that have been omitted?
Page 17, paragraph (42)	Question 14. Is there any other information that consultees think should always be included in PODE reports on capital and/or income equalisation?
Page 19, paragraph (48)	Question 15. Do consultees agree that this is a reasonable way to go about valuing pensions for offsetting purposes?
Page 23, paragraph (65) to (71)	Question 16. Consultee comments on the ‘tax and utility’ section on adjustments to pension valuations in offsetting cases as set out in Paragraphs (65) to (71) are invited.
Page 27, paragraph (85)	Question 17: Do consultees think that it is important that PODEs should

	be members of an appropriate professional body? If so, do they agree that these are the relevant professional bodies? Are there any other professional bodies that should be considered appropriate?
Page 28, paragraph (89)	Question 18: Do consultees think that PODEs should have undertaken any education or training or obtained any qualifications? If so, what training and/or qualifications would be desirable?
Page 28, paragraph (90)a	Question 19: (1) Do consultees agree that these are the appropriate competencies required of an expert producing a PODE report in divorce cases? If not, what set of competencies would they suggest? (2) Do consultees think that this requirement represents a barrier to experts entering this market? (3) Do consultees consider that this requirement is set at an appropriate and proportionate level to protect professional standards in divorce cases? (4) Do consultees consider that this requirement is in the public interest? Could professional standards be upheld with lesser requirements in any respects? (5) If so, what lesser set of competencies would they suggest? (6) Do consultees consider that this list of competencies reveals a need for training or that training would be required to enable more experts to enter this market of providing PODE report in divorce cases? What training do consultees think is required, either on a one-off or continuing basis?
Page 29, paragraph (92)	Question 20. We welcome suggestions and comments from consultees as to whether this is something that should be explored or not, and if so, how this might work.
Page 20, paragraph (53)	Question 21. Do consultees agree that the options set out in Paragraph (53) represent the range of reasonable options for applying investment assumptions to discount the flow of future benefits back to a present lump sum? Are there any other options that should reasonably be represented here?
Page 23, paragraph (57) to (64)	Question 22. We welcome consultee comments on the potential for using Ogden or Ogden-style tables in the valuation of pensions for offsetting purposes. Do consultees think that a bespoke set of tables to encourage consistency in pension valuations would be of use to the profession?
Page 31, paragraph (95) to (100)	Question 23. Consultee comments on the observations about 'fees and costs' made in this report in Paragraphs (95) to (100) are invited.
Page 31	Question 24. Do consultees have any other comments or observations on the matters in this report pertaining to experts and valuations in pensions matters in divorce cases?

Introduction

- 1) The purpose of this report is to consider best practice in respect of the treatment of pensions in divorce proceedings, and to report on any consensus reached among a wide range of experts and lawyers as to how the valuation of pensions in divorce cases should be approached. The aim of this section of the PAG report is to enable a more standardised approach across experts and cases, ensuring better consistency in outcomes for divorcing parties and making these more predictable for individuals, lawyers, experts and judges. The report also considers the circumstances in which it might be beneficial to engage the services of Pensions on Divorce Experts (PODEs). *These reports were finalised shortly before the Court of Appeal decision in [Waggott v Waggott \[2018\] EWCA Civ 727](#), and so we have not been able to deal with that decision in the discussion that follows.*
- 2) The PAG seeks to ensure that, so far as possible:
 - a) there is consistency of information across cases;
 - b) parties, lawyers and judges always have the information that the PAG considers essential, and do not pre-judge cases without sufficient information; and
 - c) one party/lawyer/expert cannot gain an unfair advantage over the other by limiting or prescribing the information sought.

Question 1: Do consultees agree that these are important aims to achieve? Are there other objectives that the PAG should pursue?

- 3) The report is structured as follows:
 - a) Minimum necessary data and validation
 - b) Valuation methods and assumptions:-
 - i) Equalisation of income
 - ii) Equalisation of capital
 - iii) Offsetting
 - c) Some issues arising in valuing pensions for the purposes of divorce
 - d) The circumstances in which it may be necessary to engage an expert, and who can act as an expert in a case requiring pension valuation
 - e) Format and content of PODE reports
 - f) Fees and costs
- 4) The role of solicitors and practice and procedural issues relating to instructing the expert in cases involving pensions is discussed in Part 8 of the Legal Working Group report.
- 5) The issue of when a PODE should be instructed is covered in the Legal Working Group report at Paragraph 4.7.

Minimum necessary data validation and verification

- 6) In all cases, the minimum data and verification needed is:

- a) an up-to-date benefit statement of anticipated pensions for each pension that any party has, including current, paid up and deferred pensions;
- b) the current CE value of each pension as given by the pension trustees;

In Defined Benefit Occupational Schemes:

- c) checking dates of membership versus an employment history;
 - d) checking reasonableness of accrued pension versus membership dates, salary history and scheme benefits.
- 7) In all cases, it is advisable to check the reasonableness of CE based on the accrued pension information and CE calculation basis.
- 8) The PAG recognises that someone who is not an expert and/or not familiar with pension values may not be able to undertake the sense-checking exercises in (6)(d) and (17) in which case they should consider whether an expert ought to be instructed in the case. See the Legal Working Group Part 4, Paragraph 4.7 for a discussion of when to instruct a PODE.

Question 2. Do consultees agree that these are desirable minimum data validation checks? Are there any other checks that consultees consider necessary as a minimum?

- 9) The remaining paragraphs in this section refer to cases where a PODE is instructed.
- 10) Instructed PODEs will need to satisfy themselves that they have obtained sufficient material to enable them to give an accurate and reliable expert opinion and have identified all information necessary to achieve that aim. The PAG recommends that data collection and asking for appropriately detailed data from scheme administrators at the start will enable efficient completion of reports.
- 11) The lists below identify the sorts of information that a PODE should consider obtaining as a helpful starting point which may be subject to variation in appropriate cases. The information sought will depend on whether the pension is Defined Benefit (DB) and if so, final salary or career average, Defined Contribution (DC) or hybrid, or whether there is an annuity in payment.
- 12) In a DB Scheme case the following information is likely to be important:-

- (i) Accrued pension (and automatic lump sum) or pension in payment including Guaranteed Minimum Pensions (GMPs)
- (ii) Accruing pension for an active member
- (iii) Current CE and date of CE
- (iv) Calculation basis for CE, in so far as this is available
- (v) Events which may materially change the CE
- (vi) Scheme Retirement Age
- (vii) Member specific and Scheme-specific Early Retirement terms
- (viii) Late Retirement terms
- (ix) Commutation factors for taking cash in place of the pension
- (x) Increases in deferment
- (xi) Is the pension defined at leaving or revalued to date

- (xii) If revalued to date, has the GMP been revalued?
- (xiii) Is GMP revalued by Fixed Rate, S21 or Limited Rate
- (xiv) Increases in retirement
- (xv) Adjustments to pension at State Pension Age or other age
- (xvi) Factors affecting future benefit (pensionable salary restrictions)
- (xvii) Options available for Pension Sharing (internal / external)
- (xviii) If internal, the terms of the internal option offer
- (xix) Fees for Pension Sharing and whether it can be taken from the pension rights
- (xx) Whether Scheme has made a statement about underfunding
- (xxi) Any material announcements to members
- (xxii) Service dates including part time history
- (xxiii) Pensionable salaries at significant dates
- (xxiv) Accrual rates throughout service
- (xxv) Any AVC scheme and, if so, whether there is a requirement for the AVC to be shared identically to main scheme

Question 3. Do consultees agree with this list? Are there any elements missing from it?

13) In a DC Scheme case the following information is likely to be important:-

- (i) Current CE and date of CE
- (ii) Market Value Adjustment (MVA) / Allowance for Bonus and how this might change in future (e.g. date when no MVA can apply)
- (iii) Penalties for Withdrawal
- (iv) Contributions made
- (v) All inward and outward transactions
- (vi) For unit linked cases, history of unit prices
- (vii) Defined benefit for Retirement Annuity Contract
- (viii) Guaranteed Annuities Rates
- (ix) GMPs for S226 and S32 Contracts
- (x) Fees for Pension Sharing and whether these can be taken from the pension rights
- (xi) Any Additional Voluntary Contribution (AVC) scheme and, if so, whether there is a requirement for the AVC to be shared identically to main scheme

Question 4. Do consultees agree with this list? Are there any elements missing from it?

14) If there is an annuity in payment the following information is likely to be important:-

- (i) Whether there is a second annuitant
- (ii) Whether the second annuitant would remain following a divorce

(iii) Whether, and if so on what terms, the annuity choice is reversible

Question 5. Do consultees agree with this list? Are there any elements missing from it?

- 15) Although in specific cases it might be important and justifiable, a PODE will not ordinarily be expected to conduct an overall review of the scheme rules or of the funding position of the scheme.
- 16) While administrators should always be asked to provide additional information or clarification where this is needed to complete the report, the PAG acknowledges that they can be slow to respond. In appropriate cases, taking a reasonable view about what the likely information might be in the absence of actual information might be sensible and proportionate. This will be a matter of judgment for the PODE and should depend upon materiality. Any missing data and such assumptions made should be clearly set out in the expert report together with details of the sensitivity of the assumptions to reasonable variation.
- 17) The PAG noted the following about current practices relating to Form P:
- a) Although it is regarded as best practice to obtain a Form P in relation to every pension under consideration¹, and that Form P may be very useful in some cases, the Sub-Group noted that this best practice is widely ignored by practitioners and courts.
 - b) The PAG also recommends that in every case, an up to date benefit statement for every pension under consideration is necessary and should be obtained but this is not required on Form P;
 - c) An instructed PODE is likely to need additional information as set out above;
 - d) The PAG recommends that the FPR Rules Committee and/or the MoJ should be invited to review the Pensions on Divorce etc (Provision of Information) Regulations 2000 SI 1048/2000 and Form P in recognition of the above.

Valuation methods and assumptions

- 18) There are many ways of thinking about how to divide pensions on divorce, but the three most common are: equalisation of income; equalisation of capital; and offsetting the value of the pension against other assets. The three approaches are set out at paragraph (30) to (64) below, together with the PAG's recommendations for approaching valuations in each case. In many cases it may be acceptable to use the CE, but in those cases where it is appropriate to go beyond the CE it will usually be necessary to instruct an expert. This issue is further discussed in the Legal Working Group report, April 2018, Paragraphs 4.6 – 4.7. The PAG notes that each is likely to result in a different value for pensions under consideration.
- 19) The appropriate way to proceed in a case is a matter for judicial discretion, and the case law on this issue is still evolving. Equalisation of income basis and equalisation of capital basis valuations may be sought to assist the court in making a PSO or pension attachment order (PAO), or an offsetting valuation may be sought to assist the court in deciding on a division of

¹ See Thorpe LJ in *Martin-Dye v Martin-Dye* [2006] EWCA Civ 681

assets and income that reflects that one or both parties will retain some or all their pensions. The role of the expert is to provide valuations and expert opinion that will assist the parties and the court in making these decisions; it is not the expert's role to determine which method or what apportionment is appropriate in the case. Furthermore, in some cases other valuation bases may be requested, e.g. to take into account of the fact that a significant part of a relevant pension accrued before the parties met or co-habited.

20) The PAG notes that as the law currently stands (as to which, see the Legal Working Group report):

a) In many cases where a PODE is involved an equalisation of incomes approach is likely to be the preferred way forward,² though in bigger money cases especially where a pension fund can be converted into cash or be the subject of drawdown, the pension may simply fall to be treated in the same way as other capital assets, without the need for any expert input.

b) The PAG endorses the views expressed by the FJC Needs Guidance Report:-

“In bigger money cases, where needs are comfortably met, the courts are now likely to be less interested in drawing a distinction between pension and non-pension assets than hitherto. This is partly because other assets will also be deployed for income production so the distinction is less obvious, but more because the “pension freedoms” introduced by Taxation of Pensions Act 2014, as a result of which those aged 55 or above have the option of cashing in some categories of pension scheme, have blurred the dividing line between cash and pensions and in such cases the trend is now to treat pensions as disposable cash assets, thus disregarding their income producing qualities: see *SJ v RA* [2014] EWHC 4054 (Fam) and *JL v SL* [2015] EWHC 555.

In small to medium money cases, however, where needs are very much in issue, a more careful examination of the income producing qualities of a pension may well be required in the context of assessing how a particular order can meet need. The need to avoid the possibly punitive tax consequences of cashing in a pension may be more important in these cases and the mathematical consequences of making a pension sharing order (for example because of an external transfer from a defined benefit scheme to a defined contribution scheme or the loss of a guaranteed annuity rate) can be unexpected and often justify expert actuarial assistance: see *B v B* [2012] 2 FLR 22. In cases where state pension income is an important component of

² Although an alternative view was robustly put by Mostyn J in an extra-judicial capacity in his 2013 foreword to Hay, Hess & Lockett's *Pensions on Divorce* (2nd edition) as follows: “*I have read with great interest the discussion at 12-007 et seq about the tension between equality of division and equality of outcome when making a sharing order. For my part I am firmly in the former camp as the latter exercise must surely bring into account the inestimable benefit of being actually alive when the other party is dead! In my book it is an equal outcome for the husband to receive £20,000 annually for 10 years and for his younger wife to receive £10,000 for 20 years. But I acknowledge that my view is not shared by all and we may have to await a decision from a higher court to resolve the issue*”. The period since 2013 has not yet produced such a decision.

meeting need, the complicated changes introduced in April 2016 provide additional justification for expert pension evidence.

Whatever the size of the case, any legal practitioner or judge dealing with this area needs to have firmly in mind the inherent limitations in the use of CE figures. Even where a defined contribution scheme (e.g. a money purchase scheme) and a defined benefit scheme (e.g. a final salary scheme) have a similar CE value, their real value (e.g. in terms of what the benefits might cost to replace) can be very different indeed. Where this issue arises, expert evidence is likely to play an important role in identifying how this difference needs to be handled to produce a fair result.”

- c) for the purposes of valuing the pensions, pension rights accrued to date are the most relevant, and it would rarely be justified to seek to value purported rights to be accrued in the future; however, it is important to look at parties’ future income needs which will include their likely ability to meet their own retirement needs – for a discussion, see Paragraph 4.6 of the Legal Working Group report;
- d) in needs cases, the fact that one party has pension rights resulting from pre-marital or post-separation accrual will often not carry much weight, since the needs of the other may carry greater weight than the source of the rights, but this will not always be the case and this will be very much a matter for judicial discretion; in cases where assets exceed needs, pre-marital or post-separation accrual may be relevant – see below Paragraphs (72) to (75) for a discussion of valuation of apportionment in these cases

Some issues to note about providing a consistent basis of valuation for DB pensions

21) The CE of a simple Defined Contribution scheme with no in-built guarantees may often be a reliable basis for valuing a pension, but practitioners need to be more wary when considering DB pensions. The CE of a Defined Benefit scheme however might not be a reliable indication of pension rights for the purposes of divorce and often represents an inappropriate valuation of its true capital value for this purpose, primarily because the cost of securing similar benefits on the open market may be far higher than the provided CE. CEs of DC and DB schemes are very often not comparable. An example follows:

- a) W, aged 55 has NHS pension [DB], CE £156,354. Preserved pension of £7,496 pa and lump sum of £22,490. Payable at age 60.
- b) H aged 58, has a SIPP [DC], CE £198,640.
- c) If CEs are used as basis for offsetting, H has CEs £42,286 more valuable than W, therefore it seems some adjustment should be made for pensions by PSO or offsetting.
- d) But if H takes a lump sum of £22,490 from his pension to match that of W, H’s index linked pension at age 60 will be £5,183 pa, compared with W £7,496 pa.

➔ The CE has provided a misleading basis of valuation, as it will in many DB cases. The use of CEs not only leads to a wrong quantum of settlement, but also on occasions the wrong direction for a settlement.

22) The CE provided by the DB pension scheme is a leaving-service calculation. It assumes the member will leave at the date of the CE calculation and values the accrued pension allowing for any increases between leaving and retirement that would be granted to a deferred (i.e. leaver)

member. Typically, this is CPI or RPI on the excess pension and GMP revaluation on any accrued GMP.

23) Active members of a DB scheme generally have different benefits or increases from deferred members, and this will affect the PODE valuation of the scheme. Some instances of this, and reasonable assumptions to act as a starting point, are set out below:

- a) For an active member of a final salary DB type scheme, the final benefit paid on future leaving or retirement will be linked to the salary at future leaving or retirement. Future increases in salary therefore make the **current pension** more valuable than that valued in the CE; there is potential future salary growth on the accrued pension. A cap on pensionable salary increases can have the opposite effect and make the final benefit less valuable than that valued in the CE. Further background on this is given in Appendix 2.
- b) There was broad consensus that the starting point for a PODE report for an active member of a scheme would be to assume increases before retirement in line with CPI inflation; any other assumptions considered by the PODE to be appropriate should be disclosed with reasons in the report.
- c) The PAG agreed that future promotional or real salary increases should not be assumed unless there are specific instructions to do so or better information available justifying such an approach. In cases where it is agreed future promotional or real salary increases should be considered, the PODE report should clearly explain the approach taken and the effect on the calculations.
- d) For an active member of a career average DB scheme, the benefit for accrued service paid on future leaving or retirement will typically be based on a higher revaluation rate than that applied for a deferred member. It was agreed that the starting point for a PODE report would be to assume increases in line with CPI inflation; any other assumptions considered by the PODE to be appropriate should be disclosed with reasons in the report.

Question 6. Do consultees agree that Paragraph (23) (b) – (d) above represent reasonable starting points in pension valuation for divorce cases, while accepting that specific facts in a particular case may warrant other assumptions?

- e) In some DB schemes there is a significant difference between the retirement age options for active members and deferred members. For example, the right of some police, firefighters and armed forces scheme members to an immediate pension if they stay in service up to their 25-year (policemen), 30-year (firefighters) or 22-year (armed forces) point. These are specialist cases where a PODE is expected to provide a range of figures looking at the different options based on the member remaining active as well as leaving. The calculations provided will depend on the individual circumstances of the case. The reasoning and approach taken should be clearly explained.

Seeking a consistent basis of valuation: demographic, economic and financial assumptions

24) The PAG noted disagreement among experts as to appropriate financial, economic and demographic assumptions to be used in the preparation of PODE reports. In addition to these investment assumptions PODEs must also cater for different pension features, for example pension increases, commutation, the effect on accrued benefits for active members of staying in service, and the effect of drawing benefits earlier or later than the Normal Retirement Age (NRA). Differences in assumptions and approaches lead to a lack of consistency for clients and potential 'expert shopping'. However, the PAG notes that assumptions considered appropriate in the opinion of a competent PODE would meet the requirements of FPR 2010 Part 25, even if these varied from PODE to PODE.

Question 7. Do consultees think it is feasible for experts to agree a common set of assumptions, and if so, how might this be achieved in practice?

25) The PAG nevertheless recommends a number of ways to achieve greater consistency of expert reports. Two useful sets of valuation methods and assumptions for both equality of income and capital are set out in Appendices 3 and 4. The consensus view is that either of these, combined as appropriate with market annuity rates, are a reasonable starting point for pension valuations.

Question 8. Do consultees agree that the valuation methods in Appendices 3 and 4 combined with consideration as appropriate of market annuity rates are reasonable starting points for pension valuations?

26) Within these approaches, some consensus was reached for some appropriate assumptions to use in pension valuations:

- a) That an external source that had high credibility and that was frequently updated should be used for the financial, economic and demographic assumptions when determining equality of income and equality of capital value. The methods set out in Appendices 3 and 4 both suggest these, from sources that are also likely to be updated in future. Even so, PODEs should take into account when the basis was last updated in considering the basis appropriate for any particular report (for example, the change in market annuity and interest rates since the last basis change would typically be relevant).
- b) That the pension sharing report should use discount rate assumptions based on the most recent FCA prescribed rates of return (September 2017) as they are from an independent source and have been independently peer reviewed. PODEs would use, as a starting point, the mid-rate asset class assumptions for a 50/50 portfolio where 50% is invested in stable assets and 50% in volatile assets. They may choose to adopt higher risk assumptions for longer term investment time horizons, and lower for short term.

Question 9. Do consultees agree that the approaches in Paragraph (26)(a) and (b) represent a reasonable way to approach assumptions in pension cases?

27) Members of the PAG agreed that if a document could be agreed that described a consensus view of a set of reasonable assumptions for use by PODEs, this would be a large step forward in promoting more consistency between expert reports. We attach a draft such document in Appendix 5. We propose that PAG expert members might make a commitment to update this document annually. There would need to be a process to do that update and to publish it.

Question 10. Do consultees agree that the document at Appendix 5 would be useful and how do they suggest it might regularly be updated?

28) The PAG suggests that it could be a competency requirement for PODEs to be aware of Appendices 3 and 4.

Question 11. Do consultees think it should be a competency requirement for PODEs to be aware of Appendices 3 and 4?

29) Experts should state in their report their opinion that the methods and assumptions they have used in their calculations have been determined as appropriate after taking into account the range of methods and assumptions shown in this document, with reasons. They should also show how they have addressed issues such as commutation (where not allowing for this can overstate the value of a DB pension relative to DC sharing), allowing for personal pension flexibilities and possible market distortions in certain sorts of annuity price (where assuming a pension share is used to buy an inflation-protected annuity may not realistically represent the income obtained from that share).

Valuation for Pension Sharing and Attachment Orders: Equalisation of Income & Equalisation of Capital

30) This section is concerned with the valuation of pensions when a Pension Share might be an option. As noted in Paragraph (20) above, whether equalisation of incomes approach is appropriate is a matter for judicial discretion having regard to the circumstances of each case. The difficult issue will usually be to consider how the pension asset can realistically meet financial needs in the future.

Equalisation of Income

31) The PAG accepted that there is a range of methods and assumptions that may be reasonable for an equality of income calculation. In all cases, an expert report should set out clearly the method and assumptions used in the calculations and explain the reasoning behind the approach adopted, in sufficient detail for another expert to understand and broadly check the results.

- 32) The PAG considered the range of acceptable approaches to these calculations set out in Appendix 6 on Page (43) below. An expert report should show awareness of that range, should clearly explain, with reasons, the approach adopted, and should show some analysis of the effects for both parties if other acceptable approaches had been adopted. For ease of reference, some proposed acceptable approaches to equality of income calculations are included in Appendix 6.
- 33) In equalisation of income reports the date to which calculations are targeted must be specified in the letter of instruction. An array of dates is discouraged. Choice of date may depend on NRA in a relevant scheme, ages of the parties and age differences, income gap issues, and the stated future work intentions of both parties. If the parties do not agree on a date, the PODE can be asked to provide calculations for more than one date (noting that this will increase costs). The PODE should, pursuant to their overriding duty to the court, comment on the choice of date if she or he feels this is warranted, for example if it is a date prior to relevant benefits being payable without discount, or if the choice of date seems to be advantaging one or other party inappropriately.
- 34) Equal income sharing calculations need to take account of the following factors:-
- a) Pensions increase provisions on the various pensions in retirement. The PAG considered it would be appropriate to adjust pensions to a single pension increase provision standard. Alternative methods might include giving enough information about the provisions, and the effect of the different provisions on the value of the pension, for the parties to understand any difference in value of the two parties' pensions after the equal income sharing calculated in the report.
 - b) The PODE will need to consider the expected starting age for the pensions if different from the age specified. This could be done in a few acceptable ways:
 - i) Calculate sharing for equal income at the age the last pension comes into payment (e.g. SPA) and provide information sufficient for the parties to understand the value of any pensions and pension differences at earlier ages. Where a pension (e.g. a Police or Armed Forces pension) is expected to be in payment before the equality age specified, one method agreed to be appropriate is to describe, and provide a calculation of the value of, the "pre-retirement" pension to accompany the sharing calculation.
 - ii) Recommend lump sum or periodical payments orders to compensate where significant differences arise as to the date when different pensions will be in payment.
 - iii) Assume the pension payments before the age specified are reinvested with the fund at retirement converted into extra retirement income, but beware of triggering the Money Purchase Annual Allowance (MPAA).
 - iv) Adjust the value of the pension to a pension equivalent starting at the age specified. For example, reducing the value of state pensions starting at State Pension Age (SPA) to an

income equivalent starting at an earlier retirement age. In such cases the report should make clear the income available to the parties at each age and whether in practice the parties can achieve level retirement income such as by drawing on personal pensions at

Question 12. Do consultees agree that the approaches in Paragraph (34)(b)(i) – (iv) represent the range of acceptable ways of dealing with expected starting ages for pensions?

a higher level before SPA, which may not be available to a party with an occupational DB pension.

35) The PODE will need to consider several possible features of the pension schemes:

- a) Pension revaluation before retirement. Any differences in revaluation (for DB pensions, different from the standard of CPI/5% or CPI/2.5% revaluation) should be taken into account in the calculation (e.g. a pension with RPI inflation linking in deferment, or a GMP with fixed or earnings-related revaluation up to GMP age, should be taken into account as a higher “real” income at retirement). Where there is a final-salary link, an appropriate assumption needs to be made about revaluation dependent on continuing service in the pension scheme, or likely/possible promotions (see above Paragraph (23)), and disclosed in the report with reasons.
- b) Changes in the pension after retirement, such as GMP step-ups at GMP age, or cessation of temporary pensions, or cumulative inflation increase at age 55 with restoration of resettlement commutation for Armed Forces pensions. One method agreed to be appropriate is to take such changes into account by adjusting the pension amount at retirement to allow for the value of the changes.
- c) Lump sums and commutation. Any difference in terms, such as below-actuarial-value commutation rates for DB pensions compared to taking more favourable lump sums up to 25% of the fund from DC pensions, needs to be allowed for in the calculations based on an appropriate assumption about the lump sums likely to be taken. Assumptions need to be disclosed in the report, with reasons.
- d) Value-significant features of DC pensions (such as annuity rate guarantees, or annuity re-profiling).
- e) Adjusting pensions with different pension increase provisions, e.g. comparing DB pensions with Limited Price Index (LPI) increases, discretionary increases, and other types of increase.

Question 13. Do consultees agree that the features in Paragraph (35) need to be taken into account? Are there any features that ought to be listed here that have been omitted?

Equalisation of capital

- 36) In some cases a calculation may be requested of a PODE for equalisation of 'true capital value', also sometime called 'fair value', 'realistic value', 'open market value' and 'consistent capital value'. For many pensions, mostly DB pensions but also some DC pensions, experts do not consider that the CE provides a true capital value. Some experts feel that asking a PODE to use CEs may conflict with their professional obligations.³
- 37) In the event of equalisation of capital valuations, some significant complications potentially arise and this will not always be a simple option. SIPPs may have complications related assets that cannot easily be extracted or transferred, for example a SIPP may own the commercial premises from which the pension holder conducts his or her business
- 38) The PAG recognises that placing a capital value on a DB pension scheme is not the same as seeking the retail cost of providing an equivalent benefit from a market-purchased annuity product. Such products do not generally exist; they cannot be adjusted for sex-differentials in life expectancy; and mortality assumptions of retailers are not known. They also cannot take into account the many characteristics of DB schemes.
- 39) As with equalisation of income reports, the PAG notes that experts disagree about the most appropriate method and assumptions for valuations. PODE reports must clearly set out the method and assumptions used in their calculations, with reasons, in sufficient detail for another PODE to be able to understand and broadly check the results.
- 40) Where a PODE is instructed to carry out calculations based on true capital value the following issues arise:-
- a) The PODE will need to consider the likely retirement ages for each party from each pension, which can substantially affect the value of some pensions, both for preserved DB pensions where early and late retirement terms are significantly different from normal actuarial terms, and for active members of DB schemes where the age at which the member leaves service and/or retires can significantly affect value.
 - b) The PODE will need to take account of the following factors, some beyond the likely retirement/leaving age, similarly to the factors covered above for equal income calculations, namely:-
 - i) Pensions increase provisions on the various pensions in retirement.
 - ii) Pension revaluation before retirement. Where there is a final-salary link, revaluation dependent on continuing service in the pension scheme, or likely/possible promotion, an appropriate assumption needs to be made about that and disclosed in the report with reasons.

³ In particular Financial Reporting Council, Technical Actuarial Standard 100 ('TAS 100')

- iii) Changes in the pension after retirement, such as GMP step-ups at GMP age, or cessation of temporary pensions, or cumulative inflation increase at age 55 with restoration of resettlement commutation for Armed Forces pensions.
- iv) Lump sums and commutation terms need to be allowed for in the calculations based on an appropriate assumption about the lump sums likely to be taken, with the assumption and reasons disclosed in the report.
- v) Value-significant features of DC pensions.
- vi) The value of the pension credits from sharing consistently with the value of the pensions before sharing. For example, flexibilities available on external sharing into DC funds from DB pensions, changes in annuities in payment after divorce and internal DB pension credits if available.

41) Reports should normally identify and comment on loss of value from sharing in terms of the difference in value between pension debits and pension credits and/or loss of value to both parties. These can be significant.

42) A PODE report on capital equalisation should always include the following:-⁴

<p>An explanation of valuation methodology which should include the following features:-</p> <ul style="list-style-type: none"> (i) a valuation basis which is fair and neutral without bias towards either party; (ii) a valuation basis consistent pension-to-pension based on the individual benefits and features of each pension; (iii) calculated values to include allowance for any discretionary benefits, allowance for salary linking (where there is an active member of the scheme), allowance for the probable mortality of the parties considering any known health issues; (iv) economic data and assumptions utilised including for indexations, tax rates, pre-retirement investment return, demographic assumptions, mortality tables used (including improvements applied), how gender differences are taken into account pre-retirement and post retirement; (v) in relation to personal pensions, assumptions about expenses, new contributions and existing arrangements; (vi) in relation to annuity rates, information about the rates' source, the date sourced/captured, annuity features (i.e. assumed age at an annuitisation, escalation rate, guaranteed period, spouses' benefits, frequency and whether rates used are best available, average of available rates or modified average of available rates); and (vii) in relation to mortality assumptions, how these are derived; assessment if less than average for age and gender; basis of assessment.
<p>A recital of information which should include the following features:-</p> <ul style="list-style-type: none"> (i) calculated capital value for each pension with applicable retirement pension; (ii) names/identities of pensions to be shared to achieve objective; (iii) percentage of each pension share required to achieve objective; (iv) total pre-pension-share capital values of each parties' pensions; (v) post-pension-share capital values of each parties' pensions; (vi) increase or reduction in total capital value because of pension sharing; (vii) as-at-date of the valuations and report, for each pension:- <ul style="list-style-type: none"> (1) name of pension

⁴ A similar table, appropriately adapted, could be included for income equalisation reports.

- (2) type of pension
- (3) normal pension age
- (4) automatic pension commencement lump sum
- (5) revaluation rates (in deferment and payment)
- (6) annual pension on retirement, accrued to date
- (7) spouse's benefits
- (8) death benefit post retirement
- (9) pensionable salary (if active)
- (10) accrual rate (if active)
- (11) assumed date of leaving (if active)
- (12) assumed increases in pensionable salary (if active)
- (13) approach adopted to deciding which pension(s) to share to meet objective
- (14) known or foreseeable events which could affect the valuation (e.g. pensionable service milestones, imminent retirement foreseeable etc.)

Question 14. Is there any other information that consultees think should always be included in PODE reports on capital and/or income equalisation?

Offsetting cases

Introduction to offsetting

43) Offsetting is a common method for resolving pension issues in financial remedy applications. It is not legally defined anywhere and is not referred to in any statute. However, it has come to be recognised as a useful process by which the right to receive a present or future pension benefit (which will usually include a tax-free lump sum and then a taxed income stream for life) is traded for present capital or "money now." Offsetting typically combines an evaluative exercise in placing a value today on a present or future pension benefit, with the exercise of discretion by the courts or parties. It is often used, for example, where one party gives up an interest in a home and the other gives up an interest in that party's pension. The PAG considers that it is important for people engaged in such a process to know the value that they might be losing, retaining or acquiring.

44) To ensure fairness a PSO may be more appropriate. However, there are some cases where a PSO may be less appropriate and offsetting may be the only option. Examples include situations where:-

- a) one party wishes to retain a capital asset (such as the matrimonial home) the value of which exceeds half the non-pension capital assets;
- b) the value of the pension is reduced by sharing;
- c) one party wishes to retain their pension, perhaps because it is invested in commercial property or because that party is close to retirement while the other party is not, or for some other reason;
- d) the cost of pension sharing is excessive given the value of the pensions;
- e) the relevant pensions are overseas pensions or are not capable of being shared for other reasons; or
- f) the divorce petition was issued before 1st December 2000.

45) Valuations for offsetting purposes are also complex. There are two main stages. First, a true and consistent valuation basis must be applied to the pension or pensions in each case. As noted above in Paragraph (21), the CE of a Defined Contribution scheme may be a reliable value in some cases, whereas the CE of a Defined Benefit scheme often is not. Second, an assessment must be made as to whether the value needs to be adjusted for tax, since part of a pension will be taxed at the pension holder's marginal rate. A third stage has in some cases involved an adjustment for the perceived benefit of receiving a liquid capital sum now rather than at some point in the future. This is sometimes referred to as the "utility adjustment" or "utility discount." We discuss the appropriateness of this in depth below in Paragraphs (65) to (71).

46) See Paragraph 4.7 of the Legal Working Group report for a discussion of when a PODE should be instructed. For simple Defined Contribution schemes, simply constituted SIPPs containing straightforward assets, small pensions or pensions in big money cases, it may be sufficient to proceed without expert assistance using up-to-date statements of benefits for each pension and the CE values. However, even here, some care is required to ensure that there are no features (particularly to older policies) such as a guaranteed annuity rates or defined benefit underpins (e.g. GMP), which may render the CE in this context as misleading as it is in the Defined Benefit context. See Section 4 of the Legal Working Group report for a full discussion of these issues.

Terminology

47) Terminology in this context can be confusing. The actuarial exercise of valuing the present capital value of a future income stream requires the expert to select an appropriate rate of "discount" to reflect the investment assumptions that will elicit a present capital sum. This technical use of the word "discount" is not to be confused with the same word when used in the context of making an adjustment or discount for tax or utility. To avoid confusion, we consider that it is more helpful to refer to "adjustments" for tax and utility.

48) A consistent basis of valuation of a pension is variously sometimes referred to as a "true" value or "fair" value, but the PAG noted (and see above discussions of valuations for capital and income equalisation) that there is no standard definition of the value of a DB pension. The approach that the PAG felt would be most useful in offsetting cases is considering a "DC fund equivalent" (DCFE), where a DCFE is the value of DC fund a spouse would need to match a member's DB pension. The DCFE is therefore the gross replacement value of a DB pension using the same assumptions the expert would use to determine the estimated income from a DC scheme for equality of income pension sharing calculations. Another way of thinking about this is the value such that no further sharing would be needed to leave each party with an equivalent income stream in retirement. The PAG considered that in the offsetting context, it would be fair to base this on an assumption that an annuity would be purchased to match the pension member's income.

Question 15. Do consultees agree that this is a reasonable way to go about valuing pensions for offsetting purposes?

Simple cases⁵

49) In straightforward cases involving only Defined Contribution schemes with no implicit guarantees or underpins, where no expert advice is given, the CE is likely to be the starting point for any offsetting settlement. Any tax notionally payable by the pension holder should be taken into account. An adjustment for utility might, in some cases, be considered appropriate, as to which see below, Paragraph (65) to (71).

More complex cases

50) In complex cases, where an expert should be involved, there are three options for considering the value of a pension for offsetting purposes:

- a) The CE.
- b) A figure based on equality calculations (whether of capital or income) produced to consider whether a PSO is appropriate, as to which see above, Paragraphs (31) to (42).
- c) The value of the pension holder's retained present or future benefits assuming no pension share has been implemented.

51) The PAG considers that option (c) is likely to be the fairest method in most cases. The CE may not capture all benefits in a DB pension. Option (b) assumes a PSO, which can sometimes be destructive of value. Option (c) will value the pension benefits without any destruction of value which may be brought about by a PSO.

52) It will also need to be determined whether the offset is conducted taking into account the pension value to the pension holder or the value it would cost the other party to replace the pension rights she or he is not receiving because of the divorce. In many cases the figure may be the same, but in some cases the figures will be very different. Valuing the loss of pension rights to the other party is significantly more complex and it is therefore our view that the default approach, particularly without the benefit of an expert, should be to adopt the value to the pension holder as in (50)(c) above. This would be a more reliable basis than using the CE valuation, which has probably been the default approach hitherto. However, it is accepted that may not always be the right approach, especially where there is a material difference in ages or in cases where both parties are already retired where such an approach may be unfair or misleading. In such cases an expert will be required to present the figures for competing arguments.

How can you value a future benefit at today's date?

53) The PAG considered the valuation methodology that the PODE should consider adopting when applying investment assumptions to discount the flow of future benefits back to a present lump sum. There are the following possibilities (though this is not necessarily an exhaustive list):-

- a) The Defined Contribution Fund Equivalent as we define it in Paragraph (48) above
- b) Realisable value: if the Pension Holder is over 55, what capital would be available, perhaps after the tax-free lump sum is taken, drawdown has been exercised and tax paid
- c) Fund account value/Cashflow modelling which involves a bespoke analysis of parties' capacity for risk.
- d) Actuarial value: similar to DCFE but with the PODE making certain adjustments to reflect that an annuity is unlikely to be purchased.

⁵ See also Legal Working Group paper addressing the question as to when it may be acceptable to rely upon a pension CE in Part 4.

- e) Duxbury or similar (see below for a discussion): based on amortising a lump sum to zero on median expected life expectancy, which assumes a high level of risk for the claimant.

Question 16. Do consultees agree that the options set out in Paragraph (53) represent the range of reasonable options for applying investment assumptions to discount the flow of future benefits back to a present lump sum? Are there any other options that should reasonably be represented here?

- 54) The PAG considers that values (a), (b) and (d) are likely to be the appropriate methods in most cases. Option (c) requires detailed consideration of a party's individual circumstances and may not be practicable other than by a Financial Planner.
- 55) The Duxbury tables have become well established as a method of capitalising a spouse's income claim. However, these tables involve a degree of risk which the PAG regards as often being unacceptable in the context of pensions if the other spouse is, or will become, the beneficiary of a guaranteed benefit. The capitalisation of maintenance is almost always assessed against an earned income, the acquisition of which includes endeavour and risk, which is then reflected in the payee's investment assumptions. In contrast, a pension asset is already acquired and payable for life, not just to median life expectancy. Also, the Duxbury tables in *At A Glance*⁶ assume the recipient receives the 'full' State Pension, meaning that this amount would need to be added to the amount to be offset if the tables are to be used. However, even this adjustment is a crude one if the state pension age is some years off. The standard Duxbury tables cater for a present income stream, whereas in the pension offsetting context the parties may wish to consider a deferred income i.e. payable in the future (e.g. the right to £10,000 p.a. starting in 17 years' time). For these reasons in the pension context, option (e) does not enable a comparable outcome.
- 56) We consider that a helpful methodology would be for a PODE to select two or three of the options suggested above and set out the calculations flowing from each option. The PODE would highlight any caveats and perceived advantages or disadvantages of a particular option and state their preferred option on the facts of the information before them. The role of the PODE is not to recommend an answer, which is for the parties, or ultimately the court. We note here that FPR PD25B 9.1(g) enjoins experts to state the range of opinion.

Ogden or Ogden for family lawyers?

- 57) The PAG has considered whether Ogden tables may have a use here, noting that they have not been conventionally adopted in family cases.⁷ However, they do benefit from pension specific tables which take into account an income in deferment. They also have a range of discounting options which would allow for the adoption of a more suitable discount rate (as considered by the PODEs on the PAG) in the pension context. The PAG considers that as the holder of pension rights has a guaranteed right to receive income which is not subject to life's vicissitudes, the rate applicable to discounting for an offset against such an asset should be lower than the real rate of 3.75% suggested by Duxbury. Ogden also does not include state pension receipt, which makes it

⁶ It is possible to disapply the state pension assumption in *Capitalise* (the electronic version of *Duxbury*)

⁷ See paragraphs 6-031 to 6-042 of *Ross on Inheritance Act Claims*, 4th Edition, Sweet & Maxwell for an interesting history of this debate.

easier for a “clean” capital value of a pension arrived at without the adjustment required if undertaking the same exercise with Duxbury.

58) The PAG notes that while not directly comparable and there are many arguable points of difference, in the Presidential Guidance for Employment Tribunals: Principles for Compensating for Pension Loss (August 2017),⁸ a seven step process is described for valuing pensions using Ogden Tables. The process is noted not to have the force of law if parties wish to advance an argument for alternative calculations, but Tribunals are expected to have regard to the Principles when calculating compensation for pension loss. The noted advantages of using this kind of guidance is that it may be cheaper than instructing an expert (although this will depend), but also that:

If the parties were unable or unwilling to fund expert evidence, the tribunal would have to do its best with the available material using the broader brush of the Ogden Tables. This would produce a figure which while less precise, should still be just and proportionate.

59) While the PAG notes that employment and family cases are not comparable proceedings, with different parameters, different considerations, and different law, it considers that the principle is worth exploring as to whether there might be some suitable way, using Ogden-style tables, of reaching a better and more appropriate value than provided by the CE, in cases where parties will not instruct an expert.

60) We offer an illustration. Take W’s pension as in Paragraph 21 above. W, aged 55 has NHS pension, CE £156,354. Preserved pension of £7,496 pa and lump sum of £22,490. Payable at age 60. Using Ogden⁹:

- a) Table 20 (Multipliers for loss of pension commencing at age 60 (females)), using a reasonable discount rate of say 0.5%, the factor is 25.82.
- b) Therefore, the capitalised value of the pension is £7,496 x 25.82 = £193,546.
- c) Turn to table 27 to find a discount rate for the lump sum of 0.9754 (0.5% discount again with a 5-year term) and say the lump sum of £22,490 has a value of £21,936.
- d) Thus, the total capitalised value of this pension, according to Ogden, is £215,482.

61) Remember, the CE of W’s pension was £156,354, and for H was £198,640, and therefore according to CEs, the direction of travel of any PSO / Offsetting was from H to W, whereas this valuation suggests it should be from W to H.

62) There are some drawbacks to the use of Ogden. Most of these are to do with the refinement of capitalised values. For example, Ogden does not cater for distinction between a level (non-increasing pension), a CPI pension and an RPI pension. Ogden does not cater for retirement ages of 66, 67, and 68, which are becoming more prevalent, although presumably interpolation can be used.

63) We think that “Ogden-style” tables could be reduced in size and more appropriately adapted for the divorce pension context. These, in our view would be usefully devised by the PAG applying

⁸ <https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf>

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245859/ogden_tables_7th_edition.pdf

the assumption of an annuity purchase so that the offsetting lump sum could be calibrated to track the receipt of pension income from the pension. We are interested to hear whether a bespoke set of tables to encourage consistency in pension valuations would be of use to the profession (this would not cater for tax and utility adjustments, for which see above).

- 64) We include at Appendix 7 a discussion and example of how this could work in the context of a family law case.

Question 17. We welcome consultee comments on the potential for using Ogden or Ogden-style tables in the valuation of pensions for offsetting purposes. Do consultees think that a bespoke set of tables to encourage consistency in pension valuations would be of use to the profession?

Adjustments for tax and utility.

- 65) We note that the Family Justice Council Needs paper for LIPs states that once a proper valuation of the pension has been arrived at, adjustments for tax and “utility” may result in a figure of between 20% and 40% being taken off the pension valuation figure.¹⁰ We do not understand this figure to have any formal mathematical grounding, rather it is the typical range into which, anecdotally, offsetting solutions tend to fall. The suggested parameters of 20% and 40% are not intended in any way to be a straightjacket to judicial discretion, but may often assist in reaching an outcome in the appropriate parish. For the reasons set out below, we suggest a refinement to these figures for the purposes of pensions guidance to suggest that:

- a) For tax, an adjustment might be between 15% and 30%, depending on whether it is anticipated that the pension holder will be a basic rate taxpayer in retirement or a higher rate taxpayer.
- b) For ‘utility’ it may be appropriate to make no further adjustment (see discussion below). If justified in a particular case, the PAG suggests a range of 0% to 25% might be appropriate,

Tax adjustment

- 66) A pension will conventionally have a tax-free lump sum of 25% of its value, with the balance drawn as income and taxed at the pension holder’s marginal rate of income tax. If the 75% is subject to basic rate income tax at 20% the overall adjustment to the gross value of the pension is a 15% deduction (100% less 25% tax free leaving 75% x 20% = 15%).¹¹
- 67) If the pension holder will be a higher rate tax payer when in retirement, a higher adjustment for tax would be appropriate up to a maximum of 30% (100% less 25% tax free leaving 75% x 40% = 30%).
- 68) In cases where there is no compelling argument for a utility adjustment (see below) we suggest (for the purposes of this report) a refinement to the Family Justice Council suggested range of 20% to 40%. If 15% (see above) has been applied to adjust for basic rate tax, then no further adjustment would be appropriate. We suggest that the Family Justice Council range, if no utility adjustment is to be applied, should be between 15% and 30%, depending on whether it is

¹⁰ <https://www.judiciary.gov.uk/wp-content/uploads/2016/04/fjc-financial-needs-april-16-final.pdf> at page 46

¹¹ The tax treatment of pensions is a complex subject and further detail is not discussed here beyond noting that breach of Lifetime Allowance Limits or the Money Purchase Annual Allowance may result in additional tax liabilities over and above what is posited here.

anticipated that the pension holder will be a basic rate taxpayer in retirement or a higher rate taxpayer.

Utility adjustment

- 69) Considerable thought has gone into whether it is possible to come up with some “rule of thumb” formula which may assist parties with how a utility adjustment may be applied. The PAG considered that this is not possible, and much will depend on the facts of the case. The PAG agreed that it is for experts to advise on the DCFE and tax adjustments. Any further adjustment for utility is not a matter for experts, but rather a matter for judicial discretion in arriving at a fair and pragmatic overall settlement.
- 70) The following observations are not considered to be exhaustive or a checklist, but may assist the court or parties when considering how a utility adjustment may be factored in:
- a) With the advent of pension freedoms, it is arguable that the utility adjustment has lost its usefulness when considering many Defined Contribution pensions. This is because when pension holders reach 55 they are often able to liquidate their pension funds, subject to tax, converting the fund to cash. A similar argument could also be made in respect of Defined Benefit pensions, which, following professional advice and except for public service schemes, can be transferred to a Defined Contribution scheme and liquidated in the same way. That said, it will not be appropriate in all cases to simply trade pension capital with current capital on a pound for pound basis. Further, it must be remembered that the CE of a Defined Benefit scheme is rarely a reliable valuation to use for the reasons stated elsewhere in this document.
 - b) In ‘needs’ cases it may be harder to see justifications for a ‘utility adjustment’. If the assets are larger and the non-pension holder has income and/or capital beyond their needs, then consideration of what utility adjustment may be appropriate may be more readily defensible.
 - c) If the pension holder is subject to an offset which results in the permanent loss of owner-occupied accommodation, this might justify the application of a utility adjustment.
 - d) Conversely, if the pension claimant requires present capital to meet a basic housing need for themselves or minor dependents this would point against any utility adjustment.
 - e) The closer the parties are to their NRA, the more the justification for a utility adjustment diminishes.
 - f) Our anecdotal observation is that in many cases pensions appear to have been excessively adjusted for perceived utility.
 - g) There is an argument that the recipient of an offset is at a long-term disadvantage to the pension member, rather than an advantage, by not having the equivalent amount of pension fund.
 - h) None of the forgoing considerations should operate to prevent fair and pragmatic overall settlements being arrived at.
- 71) Dependent on the facts of each case the PAG considered that a range of 0% - 25% could potentially be argued to be appropriate as a further adjustment to pension values for offsetting purposes where the application of a utility adjustment is considered justified on the facts of the case.

Question 18. Consultee comments on the ‘tax and utility’ section on adjustments to pension valuations in offsetting cases as set out in Paragraphs (65) to (71) are invited.

Some issues arising in valuing pensions for the purposes of divorce

Apportionment for period of relationship

72) Whether pensions should be apportioned for a period of the relationship is a matter of judicial discretion.

73) In these cases, the PODE will need clear information about the relevant career and contributions history and will require instructions on whether the calculations should assume a straight timeline discount of the pre-marital or post-separation accruals or whether a different calculation might be fairer:

- a) The deferred pension method apportions by identifying the pension rights accrued to the date of marriage and then allowing for any increases that would have been made to a deferred pension during the period to the present date. This figure is then compared with the value of the accrued pension at the present date to identify the proportion of the pension rights to be excluded. This allows for what could be termed as the “passive growth” of the pre-accrued pension rights. This allows the assets applied to the marriage to include, for example, the effect of any promotions earned during the marriage, which may more fairly reflect the respective contributions (in Matrimonial Causes Act 1973 terms) of the parties to the pension and involve less discrimination between the earner and the home-maker. This requires details of the pension accrued as at the date of marriage. This information should be available if requested. If for any reason it is not available, it will be possible for the parties to obtain gross income figures from HMRC so that a reasonable approximation can be made.
- b) The CE method apportions by taking the CE as at the date of marriage with no adjustment and comparing that with the CE now. This will, in many cases, lead to a relatively small proportion of the pension fund being excluded from consideration, but can often be objectively fairer. Although providers are expected to be able to provide historic CEs (as they are required in Scottish cases) these may be difficult to obtain and possibly costly. Alternatively, a PODE could carry out a notional calculation.
- c) The straight timeline method apportions on the basis that the benefits are simply divided up assuming they have all accrued evenly over the period. Thus, if the member has 30 years’ service and 10 of those are prior to the marriage, then a simple 20/30ths of the total benefits is included in the calculations. The straight timeline method apportions promotional salary increases granted during the marriage on pensionable service before the marriage to the pre-marriage element

An explanation of the different methods is given in Appendix 8.

74) Sufficient data is not always available to calculate either the deferred pension method or the “CE” Method and, in some cases, the straight-line method is the only practical approach.

75) DC or money purchase schemes cause difficulties due to lack of availability of contribution and fund return data. The PAG agrees that if a premium history is available, but no fund return information, a notional fund return approach on a proportionate basis is an acceptable method.

State Pensions

76) State pension information should be obtained in all cases. The details can and should be obtained as a matter of right from the DWP, and at no cost to the applicant. State pensions should be taken into account in the calculations where they are of importance and of relevance to the case. The report should state clearly whether state pensions are included or not in the calculations and the reasons for the approach taken.

Parties' Health Status

77) The PAG considered that where there is a clearly diagnosed medical condition with a substantial probability of impaired life expectancy, this should be reflected in the calculations. Overall however, most members of the PAG felt that less obvious conditions more subject to change (such as smoker, drinker, overweight) should not be considered as this would bring too great a level of complexity to the considerations and would be substantially at odds with the Overriding Objective.

78) A PODE report should clearly state any assumption made about health and where allowance has been made, the approach taken and the effect of any adjustments on the calculations.

Which pensions to share

79) The PODE must consider in all cases whether it matters which pension(s) are shared. The PODE must also clearly state whether there is any potential loss of value on a PSO.

80) The PAG noted that, generally speaking, a Pension Share from a DC scheme would be the first to consider. However, in some cases, it is not straightforward. For example, where the CE of a DB scheme is very high, the calculations can show a higher income for both parties if the DB scheme is shared first. In such cases, alternative methods should be demonstrated with the outcome and any advantages and disadvantages clearly explained.

81) In cases where there is a loss of value due to pension sharing this should be highlighted and explained together with an explanation of the alternative options for dealing with the pension assets.

Lifetime Allowance

82) A summary of the Lifetime Allowance and the issues it may raise for pensions on divorce is given in Appendix 9. The PAG acknowledges that with the reduction in the Lifetime Allowance, more cases are likely to be affected by Lifetime Allowance issues. Where relevant, the potential issues raised by the Lifetime Allowance must be detailed in an expert report. If requested, additional calculations allowing for the Lifetime Allowance at the current rate should be provided. However, it should be made clear that appropriate specialist advice should be taken with respect to the Lifetime Allowance and financial planning. Sometimes, divorce will offer an opportunity to rebuild a pension if a party transfers pension rights but has income from which to rebuild.

Who can be instructed as a PODE

- 83) The PAG noted that there is currently no professional qualification or regulatory system for PODEs and makes the following recommendations regarding regulation, indemnity insurance, standards and competencies.
- 84) PODEs come from a range of professional backgrounds and have varying professional affiliations. These include:-
- Actuaries who are members of and are regulated by the Institute and Faculty of Actuaries (“IFoA”).
 - Actuaries who are not members of the (IFoA) and who therefore fall outside their regulatory system¹².
 - Independent Financial Advisers who are regulated by the Chartered Insurance Institute and/or the Chartered Institute for Securities Investment.
 - Financial Planners who are not regulated by the FCA.
 - Managers of regulated or unregulated actuaries, not themselves actuaries.
 - Members of the Academy of Experts or the Expert Witness Institute, which are not professional bodies but have codes of practice and complaints procedures.
 - Others who do not fall into any of the above categories, but hold themselves out as having, possibly with good justification, the necessary knowledge and expertise to carry out PODE work.
- 85) The PAG was divided as to whether best practice would suggest that PODEs should be members of an appropriate professional body. The Institute of Actuaries, the Chartered Insurance Institute and the Chartered Institute for Securities Investment were identified as the three relevant professional bodies. It was noted that the calculations provided by an IFA may not fall into the scope of ‘regulated advice’ and that this should be noted by the PODE if it is the case.

Question 19: Do consultees think that it is important that PODEs should be members of an appropriate professional body? If so, do they agree that these are the relevant professional bodies? Are there any other professional bodies that should be considered appropriate?

- 86) The advantages of belonging to a professional body include:-
- Being recognised by peers as competent to carry out actuarial work/financial advisory work
 - Being subject to rules of professional conduct
 - Being subject to disciplinary proceedings for breach of those rules
 - Being insured in respect of a professional negligence claim that might arise.
- 87) The disadvantages of requiring belonging to a professional body include:-
- Not necessarily relevant to the work being carried out
 - A concern that such a requirement could exclude competent experts in a context where there are not many experts available

¹² The Sub-Group note that the description “actuary” is not a reserved title and may be used by those actuaries who are not members of the IFoA.

- c) Such a requirement would increase the costs of expert reporting without necessarily ensuring sufficient compensating benefits in expertise

88) It was noted that such membership could not be a legal or mandatory requirement if an appointed expert was nevertheless able to demonstrate their expertise to the satisfaction of the court.

89) The PAG considered whether it should be a mandatory requirement that PODEs should have undertaken any education or training or obtained any qualifications. This would be a difficult requirement to impose in view of the range of existing PODE categories identified above. Further, the qualifications on offer are not especially relevant to PODE work and no education, training or qualifications are available which focus on the necessary skills and expertise of a PODE. Accordingly, the PAG concluded that it would not be possible or desirable to impose such a mandatory requirement and that the best mechanisms for ensuring good standards lie as set out below.

Question 20: Do consultees think that PODEs should have undertaken any education or training or obtained any qualifications? If so, what training and/or qualifications would be desirable?

90) The PAG recommends that as a matter of good practice, any PODE producing a report should self-certify, endorsed with a Statement of Truth, the following matters:-

- a) That the reporting PODE believes that the reporting individual or organisation has the core competencies for producing PODE reports. The details of these core competencies are set out in a Table in Appendix 1. The PAG recommends that these competencies are set out as an annex to all letters of instruction to PODEs.

Question 21:

- (1) Do consultees agree that these are the appropriate competencies required of an expert producing a PODE report in divorce cases? If not, what set of competencies would they suggest?
- (2) Do consultees think that this requirement represents a barrier to experts entering this market?
- (3) Do consultees consider that this requirement is set at an appropriate and proportionate level to protect professional standards in divorce cases?
- (4) Do consultees consider that this requirement is in the public interest? Could professional standards be upheld with lesser requirements in any respects?
- (5) If so, what lesser set of competencies would they suggest?
- (6) Do consultees consider that this list of competencies reveals a need for training or that training would be required to enable more experts to enter this market of providing PODE report in divorce cases? What training do consultees think is required, either on a one-off or continuing basis?

- b) That the reporting PODE has a meaningful and operational complaints system in place. Sufficient details of how and where to apply should be included on the face of the report.
 - c) If the PODE is not a member of a recognised professional body, this should be made clear on the face of the report.
 - d) That the reporting PODE has in place Professional Indemnity Insurance covering the nature and size of the relevant work. A concern has been raised that some insurers might object to the specific inclusion of such a statement, which might make this requirement impractical, but the PAGs view is that it would be unreasonable for an insurer to take such a view and that further investigation should be made of this possible problem to see whether it can be resolved.
 - e) That the reporting PODE has a policy for peer review. Some details of this policy should be included on the face of the report. In making this recommendation the PAG wishes to make clear that this requirement should not be construed as requiring peer review of every calculation or in relation to every report and that the requirement of peer review should be treated in an appropriately proportionate manner.
 - f) That the reporting PODE engages in appropriate Continuing Professional Development to maintain their competencies. Some details of how the PODE keeps up to date with contemporary issues and changes in the analysis and valuation of pensions should be included on the face of the report.
- 91) Before a PODE is instructed, the person instructing the PODE, whether a solicitor or otherwise, should ensure that a statement to the above effect will form part of the eventual report. That person should also seek important details (for example of qualifications and the membership of professional bodies) to place before the court, prior to the court granting a Part 25 application for the instruction of a single joint expert.
- 92) The PAG considered whether it might be feasible for an existing institution or newly created specialist PODE institution to be responsible for running an accreditation system and/or a unified PODEs complaint system. While it was felt this would be a good idea, no obvious way forward could be identified. There is no funding mechanism, and given the relatively small number of PODEs, creation of a new scheme would not be practical or economical.

Question 22. We welcome suggestions and comments from consultees as to whether this is something that should be explored or not, and if so, how this might work.

Format and content of PODE reports

- 93) The PAG considered that some standardisation of the content and format of PODE reports would be helpful for parties, lawyers, and judges. All reports need to be compliant with paragraph 9.1 of Family Procedure Rules, Practice Direction 25B.
- 94) The suggested content and structure of a PODE report is as follows:-
- a) An introduction setting out the detail of the instruction and some basic background information including the parties' ages;
 - b) An executive summary which should be included after the introductory paragraphs;
 - c) A detailed description of the disclosed pension benefits including Cash Equivalents, dates of membership, accrued pensions (or any underlying guarantees), retirement ages (including any early/late retirement terms), pension increases, options, and any adjustments or assumptions regarding the pension benefits made in the calculations;
 - d) Tabular summary of CEs and income;
 - e) Pension Sharing (and Pension Attachment if relevant) information including case specific issues, options for the ex-spouse and charges;
 - f) Calculation results including an explanation of how they are reached and illustrations of the expected outcome of any Pension Share for both parties.
 - g) Where a conclusion or opinion as to which of the different options or methods used appears more favourable in this case is expressed, it is important for the expert to report issues of fact and calculation rather than purporting to determine the appropriate outcome in the case.
 - h) Appendices to include key data, key information used together with the sources, CV for the expert.

Fees and Costs

- 95) The provision of Pension on Divorce expert reports is market-driven, where fees, speed of work, qualifications, reputation, and scope and depth of work all play a part in selection of experts by clients. Fees are determined by market forces.
- 96) The PAG makes the following observations about fees and costs for expert reports.
- 97) As a matter of good practice PODEs should not accept an instruction and a fee unless they genuinely believe they can add value to assist the parties.
- 98) It was observed that in the current market, fixed fees tend to be preferred by clients. In providing a fixed fee quotation, the PAG recognised that PODEs should not be expected to give an estimate until they have had the opportunity to consider the complexity of the instructions and the likely work required. This means that solicitors or parties in person need to carry out all the steps required by FPR 2010, PD25D well in advance of any court hearing likely to direct the obtaining of a PODE report.
- 99) As a matter of good practice clear questions should be addressed to the PODE and the PODE should ensure they are clearly answered in the report. A draft letter of instruction is annexed to the Legal Working Group Report.

- 100) It is appropriate for a PODE, in assessing the case and preparing to provide a fee for quotation, to consider the following factors:
- a) A standard report might involve basic equality of income calculations arising out of one or two DC or DB pension schemes and will include an assessment of state pension entitlements and a full explanation of relevant matters
 - b) There was consensus that the following factors will generally make a case more complex:
 - i) The existence of a larger number of schemes, particularly if they are DB schemes
 - ii) The requirement of an additional apportionment calculation (e.g. one excluding pre-marital pensions), save (possibly) if it is to be carried out by straight timeline discounting
 - iii) The requirement of an additional calculation for offsetting if full calculations are required (i.e. the recommended best practice)
 - iv) If a report involves considering a PSO of state pension entitlements
 - v) If a specific analysis is required of the effect on pension sharing of a party's health issues
 - vi) Where an equalisation of income calculation is required at two or more different age combinations
 - vii) The answering of post-report additional questions where it is reasonable that these were not addressed in the initial report

Question 23. Consultee comments on the observations about 'fees and costs' made in this report in Paragraphs (95) to (100) are invited.

Question 24. Do consultees have any other comments or observations on the matters in this report pertaining to experts and valuations in pensions matters in divorce cases?

Appendices

APPENDIX 1: Self-Certification of Expertise

The PAG recommends that all PODEs self-certify as follows, and endorse with a Statement of Truth:

A reporting PODE should self-certify, and endorse with a statement of truth, that the individual or organisation producing the PODE report has the following competencies: -

1. An understanding of the information needed on the pensions involved in order to provide the required analysis, including awareness of the limitations of information supplied by scheme administrators and consultants when providing such information.
2. The ability to analyse the accrued pension rights of DB scheme members, taking account of the many different arrangements in DB schemes including for (1) normal retirement age; (2) revaluation of the different pension elements between leaving and retirement; (3) provisions for increases on the different pension elements in retirement, including arrangements which are discretionary but where there is an established practice; (4) provisions for spouses pensions; (5) provisions for GMPs in revaluation before retirement, between retirement and GMP age, in step-ups and step-downs at GMP age, and in retirement after GMP age; (6) provisions for commuting pension into retirement lump sums; (7) provisions for early and late retirement, including arrangements which are discretionary but where there is an established practice; (8) provisions for temporary payments between retirement and state pension age – with the ability to specify the correct equations and parameters for pension valuation according to established current actuarial methods
3. The ability to analyse the accrued pension rights of active DB scheme members taking account (in addition to the factors in a above) of (1) accrued pension revaluation different from that applying to leaver pensions during continuing service; (2) the effect of known or likely promotions or future pay movements (such as pensionable pay caps); (3) the effect of continuing service on retirement and early retirement (particularly important in the uniformed services); and (4) the effect of any early retirement and other terms which are dependent on employer consent but where there is an established practice of giving that consent for members in service with significant effect on the value of the pension.
4. The ability to analyse the accrued pension rights of DC and hybrid DB/DC pensions, taking account of annuity rate and other guarantees and underpins (such as GMP underpins in s32 policies, and such as the various points in a and b above relating to the DB element of hybrid DB/DC pensions).
5. The ability to analyse and estimate projection over short periods (up to one year) of, the calculation of CEs for DB pensions, including understanding the variety of market practices, how this takes account of changing financial market conditions, how this takes account of the financial position of the fund and the employer, and the framework for the calculation for public service pensions.
6. The ability to analyse the benefit debits and credits from sharing the various pensions,

including an understanding of how to consider the loss of value if pensions are shared, and how to analyse and report on the relative merits of sharing each pension.

7. The ability to analyse pension sharing credit options where available of internal (actuarial equivalent) and external (money-purchase) sharing.
8. The ability to analyse DB pensions (1) at risk of; (2) under assessment for; and (3) entering or already entered into the Pension Protection Fund, including how CEs are calculated and how pension sharing debits and credits are calculated.
9. The ability to analyse aspects where DB pensions and DC pensions (including external sharing of DB pensions) are qualitatively different, including (1) choices and flexibilities of DC pensions not available with DB pensions, including the ability to draw cash (2) different lump sum commutation terms, (3) uncertainties of DB pension payment due to underfunding, employer default, entering PPF, or with established employer discretionary benefits possibly being withdrawn, and (4) DB early and late retirement terms sometimes significantly different in value to the early and late retirement effect on DC pensions.
10. The ability to analyse and take into account different ways of comparing the value of pensions with fixed and with inflation-linked increases where the gap in market annuity rates is arguably higher than the real relative value due to market distortions.
11. The ability to analyse the various aspects of State Pension benefits, including how they can be shared or otherwise affected by divorce.
12. An understanding of how health impacts on retirement income from the various types of pension scheme and expertise sufficient to identify when specialist health or impaired life underwriting/annuity advice should be taken.
13. An understanding of the tax regimes , in particular Lifetime Allowance tax, applicable to the pension benefits in the case, an understanding of how tax efficient solutions might be arrived at in the case, and expertise sufficient to identify when specialist tax advice should be taken.
14. An understanding of how investments, such as property investments in SIPP and SSASs, can impact on pension and pension sharing benefits, and expertise sufficient to identify when specialist advice should be taken.
15. An understanding of the sensitivity of valuations to assumptions, and how an independent value might vary according to variation in those assumptions. The assumptions include both assumptions about the parties' circumstances and behaviour, and assumptions about the parameters used in the valuation.
16. An understanding of the wider regulatory environment for pension benefits
17. An understanding of the operation of family law in ancillary relief on divorce and the procedures followed in family courts for the resolution of financial cases on divorce
18. An understanding of FPR 2010 Part 25, including writing reports and the role of Single Joint

Expert.

19. An understanding (and proportionate recognition of) APS X2 from the Institute and Faculty of Actuaries; in particular the requirement of peer review.
20. An understanding (and proportionate recognition of) APS X3 from the Institute and Faculty of Actuaries; in particular the requirement in paragraphs 2.2 to 2.3 that actuaries cannot accept work unless they are satisfied that they have the necessary level of relevant knowledge and skill.
21. An understanding (and proportionate recognition of) TAS 100 (July 2017 standard for actuaries doing actuarial work); in particular the requirement that reports should contain sufficient detail for a technically competent person to understand the matters involved and assess the judgements and calculation results made. In the context of PODE reports it is noted that the predecessor to this clause was worded "... contains sufficient detail so that someone with the same experience and expertise can satisfy themselves that the calculations appear not to be inaccurate. The expert is encouraged to assist users subsequently in understanding how the figures are derived" and a PODE report should understand and acknowledge the need for parties to understand the matters involved, as far as is practicable.

Appendix 2: Defined Benefit Scheme with Final Salary Linking or Revaluation Above Inflation for Active Members

The traditional defined benefit Final Salary scheme provides benefits which are based on the pensionable service completed and the salary paid at retirement or earlier leaving service. The newer defined benefit Career Average scheme provides benefits based on the actual salary earned over the pensionable service plus revaluation at a rate typically in excess of inflation between the date of the earnings and retirement.

The CE is calculated using benefits based on pensionable service up to the date of the CE and the salary at the date of the CE with statutory revaluation only (broadly inflation) between the date of the CE and the date of retirement.

Hence the CE for an active (contributing) member of a final salary or career average scheme only allows for inflation increases between the date of CE and retirement whereas in practice, if the member remains in service, the accrued pension will actually be higher.

The approach used for pension on divorce calculations differs between PODEs. Some use the benefits valued in the CE unadjusted and some make an allowance for the future promotional salary growth (Final Salary Scheme) or additional revaluation (Career Average Scheme) between the date of the CE and retirement age.

One way of determining which approach to use for a Final Salary Scheme with promotional salary increases is to consider whether future promotional salary increases should be apportioned to the marriage or not. For example:

- Using the accrued pension from the CE with inflationary increases only effectively gives the **future** promotional salary increases on **pension accrued during the marriage** to the **member** (ie the husband in most cases).
- Making an adjustment for future promotional salary growth effectively apportions some or all of the **future** promotional salary increases on **pension accrued during the marriage** to the marriage to be **split between the parties**.

If allowance is to be made for future promotional salary increases or for additional revaluation in a Career Average Scheme then assumptions regarding future membership and the level of additional increases have to be made.

Which approach is used and the assumptions made can have a significant effect on the calculations.

Appendix 3: FCA Guidance on Pension Transfers

One potential set of assumptions for equality of income pension sharing calculations and DCFE is to broadly follow the FCA guidance on pension transfers. Some background information and a summary of our understanding of some of the assumptions is detailed below. Please note the information given below is a broad summary and will not be updated; if this approach is used, an expert would be expected to refer to the appropriate website and documents for full details of the most recent assumptions and method.

Background

Since 1985 pension scheme members have had a statutory right to transfer their pensions from one pension arrangement to another pension arrangement unless the pension is in payment or within one year of being put into payment. The value put on the pension for transfer to another pension arrangement is the Cash Equivalent Transfer Value or CETV.

Following the introduction of personal pensions in 1988, many members of DB schemes were ill advised to transfer their DB pension into a DC arrangement (usually known as a personal pension). This led to the mis-selling of personal pensions review in the 1990s. Following the review, advising on pension transfer has been a heavily regulated activity and the advisor has to prove the transfer is in the client's best interest. One element of the mandatory advice is a Transfer Value Analysis (TVA) report. Broadly the TVA calculates the investment return that would be needed if the CETV is transferred to a DC arrangement to provide equivalent benefits to those being given up by the DB scheme. This investment return is called the "Critical Yield"

When pension sharing was introduced in 2000, the regulations stipulated the CETV should be the value used when implementing a Pension Share. However, a TVA does not have to be carried out when a pension share is implemented. This is because advice is not being given over whether the transfer should take place or not. The only advice given is where the monies from the share should be placed. Note – for pension sharing the CETV is now called the Cash Equivalent or CE.

Until fairly recently, the Critical Yield produced by a TVA on a CETV has been relatively high making the voluntary transfer of a DB pension rarely in a client's best interest. However, more recently CETVs have increased (due to changes in economic conditions and reviews of scheme transfer value bases) which has meant the Critical Yield produced by the TVA is now lower.

The FCA has recognised that with the new pension freedoms introduced in April 2015 and because CETVs have increased, the transfer of DB pension rights has become more attractive and there has been an increased demand for pension transfer advice. In response, the FCA has produced a consultation paper in June 2017 "Advising on Pension Transfers". The link to the paper is:

<https://www.fca.org.uk/publications/consultation-papers/cp17-16-advising-pension-transfers>

The paper includes many recommendations but for the purposes of this document we are focussing on a proposed change to replace the current TVA with a requirement to undertake appropriate analysis of the client's options (to be known as appropriate pension transfer analysis or APTA) in Chapter 4. Part of the process will be the inclusion of a prescribed CETV comparator indicating the value of the benefits being given up - the transfer value comparator or TVC.

Transfer Value Comparator (TVC)

The TVC is a discounted value of the benefits being given up in a DB scheme assuming the benefits are provided by annuity purchase at retirement. The FCA document recognises that for pension scheme members within 12 months of normal retirement age or with deferred benefits, it may not be possible to purchase the precise benefits of the scheme with an annuity available on the open market. In those circumstances, the FCA are proposing a proportionate approach which ratios the value of the benefits on the TVC assumptions to the market price of the closest shape of available annuity, which will typically be an index linked annuity.

Bearing in mind the purpose of the TVC is to ensure individuals are given good advice regarding whether to voluntary transfer or not there are many aspects of the TVC which are not particularly relevant to divorce work. We have set out what we believe are the relevant assumptions that have been proposed for the TVC below together with some notes:

Variable	Recommended FCA Assumption	Note
Pre retirement mortality	No guidance given	1
Retail Prices Index:	2.5% pa	
Consumer Prices Index:	2.0% pa	2
Pre retirement limited price indexation revaluation rate	For benefits linked to RPI = 2.5% pa For benefits linked to CPI = 2.0% pa	
Pre retirement discount rate	No fixed rate is given. The proposal is that the discount rate should be appropriate for each client based on their attitude to risk. Rate should be no higher than the intermediate rate of growth shown on a corresponding Key Features and Information for the receiving scheme.	3
Pre retirement expenses	Expected charges must be allowed for	4
Post retirement mortality:	Based on year of birth rate derived from the IFoA Continuous Mortality Investigation tables PFA08 and PMA08 and including mortality improvements derived from each of the male and female annual mortality projection models in equal parts. Details of the mortality improvements are set out in the assumptions appendix.	5

Post retirement interest rate to be used in calculating the annuity rate	Currently a rolling annuity interest rate averaged over 12 months. Proposal is to use an interest rate on a single recent monthly yield. Y is defined as 50% of the sum of the FTSE Actuaries Government Securities Index-Linked Real Yields over	
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	<p>5 years assuming:</p> <ul style="list-style-type: none"> • 5% inflation; and • 0% inflation <p>Minus 0.5%</p> <p>Where the pension does not increase in payment or increases at a fixed rate, annuity interest rate is Y plus 3.5%.</p> <p>Where the pension increases in payment at RPI, annuity interest rate is Y</p> <p>Where the pension increases in payment at CPI, annuity interest rate is Y plus 0.5%</p> <p>There are also procedures laid down for Limited Price Indexation (LPI) and cases where there are minimum and maximum rates – for example:</p> <p>Where the pension increases in payment at LPI based on RPI with maximum pension increases less than or equal to 3.5% or with minimum pension increases more than or equal to 3.5%, annuity interest rate is Y allowing for the maximum pension increases.</p> <p>Where the pension increases in payment at CPI with maximum pension increases less than or equal to 3.0% or with minimum pension increases more than or equal to 3.5%, annuity interest rate is Y allowing for the maximum pension increases. Where the minimum pension increases are more than equal to 3.0% but less than 3.5% the annuity interest rate is Y allowing for increases at the minimum rate of pension increase.</p>	
Post retirement expenses	4% annuity expenses	

Notes:

1. There appears to be no reference to pre-retirement mortality in the FCA basis. It is suggested pre-retirement mortality is ignored and assumed to be nil.
2. Although the current difference between RPI and CPI is set at 0.5%, the FCA are seeking views on whether the gap should be increased to 1%.¹³

¹³ Note also the Office of Budget Responsibility forecasts available at <http://budgetresponsibility.org.uk/forecasts-in-depth/the-economy-forecast/inflation/>

3. The guidance suggested for the pre-retirement discount rate (ie the Key Features and Information for the receiving scheme) is unlikely to be available for PODEs. It is suggested that the discount rate is based on the findings of the FCA document “Rates of Return for FCA prescribed projections” dated September 2017 which can be found at <https://www.fca.org.uk/publication/research/rates-return-fca-prescribed-projections.pdf>.
4. Where expected future charges are unknown, it is suggested a rate of between 1% and 2% pa is used.
5. It is suggested any reasonable post retirement mortality basis is acceptable for PODE reports.
6. It is agreed that the starting point for any PODE report is that no allowance should be made for any spouse’s pension.

Appendix 4: FOS Guidance on Pension Mis-Sale Redress

To note: new guidance dated September 2017 has only recently been issued. The link is: <https://www.fca.org.uk/publication/finalised-guidance/fq17-9.pdf>. The appendix will be updated in line with the new guidance when we have analysed the changes

- 101) A second potential set of assumptions for equality of income pension sharing calculations and DCFE is to broadly follow the FOS Guidance on pension mis-sale redress. Some background information and a brief summary of our understanding of some of the assumptions is detailed below. Please note the information given below is a broad summary and will not be updated; if this approach is used, an expert would be expected to refer to the appropriate website and documents for full details of the most recent assumptions.
- 102) As an alternative to a calculated annuity using the FOS basis, for pension sharing calculations, it is acceptable to use a market annuity rate. Whatever basis is adopted, clear explanation of the reasons behind the assumptions used should be given in the expert report.

Background

103) Following the introduction of personal pensions in 1988, many members of DB schemes were ill advised to transfer their DB pension into a DC arrangement (usually known as a personal pension). This led to the FSA mis-selling of personal pensions review in the 1990s, with the FSA regularly publishing the financial assumptions which should be used to assess loss, and therefore compensation. Since October 2005, the Financial Ombudsman Service (FOS) has dealt with complaints about pensions sales outside the Pension Review period, and regularly reviews and publishes the financial assumptions to be used in assessing such complaints, together with a supporting analysis and review recommendations from their consultants PwC. The last review in July 2016 was at: http://www.financial-ombudsman.org.uk/publications/guidance/pension_assumptions.htm and the main assumptions are summarised below (the PwC analysis showed an underlying assumption of 8.0% a year investment return on equities and 2.25% a year return on bonds). In July 2017, FOS announced that a review together with FCA was under way.

July 2016 FOS Assumptions

Retail Prices Index:	3.25% pa
Consumer Prices Index:	2.25% pa
Pre retirement limited price indexation revaluation rate	For benefits linked to RPI = 3.25% pa For benefits linked to CPI = 2.25% pa
Pre retirement discount rate	A range depending on term to retirement of 2.25% to 4.7% pa (4.5% for 20 years to retirement)
Post retirement mortality:	S1NMA males S1NFA females with CMI_2012 1.25% pa improvement males or 1.0% pa females
Post retirement interest rate to be used in calculating the annuity rate	2.25% pa
Post retirement expenses	4% annuity expenses

Appendix 5: Developing Consensus on Assumptions

An example of a document that could be used to reflect a consensus view of a set of reasonable assumptions for use by PODEs:

The following table provides an anonymised summary of the results of a basic case study given to acknowledged experts in the field of pensions on divorce. Each expert has used their current calculation basis which would be set out in the expert report. It is agreed that all the calculation bases have been well considered and are within a reasonable range. Hence, the results below show a range of results that may be reasonably expected from different experts given the same case.

Case Study:

Male age 55

DB scheme with an accrued pension of £40,000 pa payable from age 65, revalued at CPI (max 5% pa) in deferment and increased at RPI (max 5% pa) in payment. Can commute 25% of pension at rate £15 per £1pa pension.

CE = £800,000

DB scheme offers the external option only to a DC scheme

Wife is also age 55

State pensions are equal and can be ignored. There are no other pensions to take into account.

	Net interest rate in deferment (after inflation and expenses)	Annuity rate to value pension in payment (including expenses)	% Pension Share to achieve Equality of Income assuming retirement at age 65
Expert 1			
Expert 2			
Expert 3			
Expert 4			
Expert 5			
Expert 6			
Expert 7			

Appendix 6: Range of Methods for Pension Sharing Equality of Income

It is recognised that there are several different reasonable approaches for the calculation method to achieve equality of income. Some accepted methods are set out below. The PODE report should make clear what method is used and the implications for each party if a different method were adopted.

- Calculate sharing for equal income at the age the last pension actually comes into payment (eg. SPA) and provide information sufficient for the parties to understand the value of any pensions and pension differences at earlier ages. Where a pension (eg a Police or Armed Forces pension) is expected to be in payment before the equality age specified, one method agreed to be appropriate is to describe and provide a calculation of the value of the “pre-retirement” pension to accompany the sharing calculation.
- In conjunction with the method above, recommend lump sum or periodical payment orders to compensate where significant differences arise as to the date when different pensions will be in payment.
- Allow for the actual retirement age of the different pensions but assume the pension payments before the equality age specified are reinvested with the fund at the equality retirement age converted into extra retirement income. However, beware of the Money Purchase Annual Allowance (MPAA) if this has been triggered.
- Adjust the value of the pension to a pension equivalent starting at the age specified. For example, reducing the value of state pensions starting at State pension Age (SPA) to an income equivalent starting at an earlier retirement age. In such cases the report should make clear the income actually available to the parties at each age and whether in practice the parties can actually achieve level retirement income such as by drawing on personal pensions at a higher level before SPA, which may not be available to a party with an occupational DB pension.

Appendix 7: Ogden Style Tables

This Appendix explores the potential for Ogden-style tables for use in pension on divorce cases by reflecting on the potential composition, underpinning assumptions, ownership, method of delivery, and format of the input data (details of the current preserved pension) which will need to be gathered by the solicitor / LIP to enable a value to be cast.

The goal is to find an approach to pension valuation which will be more robust than reliance on the CE, but has the capacity to be used and therefore improve fairness of outcomes in the vast majority of cases where currently experts are not involved.

In its simplest form, the tables could be very similar to Ogden in terms of presentation, see Ogden, Tables 20 and 27.¹⁴

If we revert to the example in Paragraph 30 of this report, from Ogden Table 20, the factor we need to convert a pension of £x pa for a female aged 55, with retirement age of 60, and assuming a discount rate of 0.5% is 25.82; and likewise from Table 27, we can see that to convert a lump sum payable at age 60 of £y , a factor of 0.9754 is required.

These Ogden tables are simple in that there is no option to vary the factors, dependent upon whether the pension will increase by RPI / CPI (with or without caps) a fixed rate, or not at all. There is clearly a trade-off to be had between accuracy of outcome of tables and simplicity of use. On the one hand we want tables which are going to be easy to use for most lawyers, but on the other hand, we need the tables to produce relatively accurate outcome.

There are currently 13 Ogden tables for producing capitalised values of pensions:

- Assuming retirement at age 50, x 2 (one for male and one for female)
- Assuming retirement at age 55, x 2 (one for male and one for female)
- Assuming retirement at age 60, x 2 (one for male and one for female)
- Assuming retirement at age 65, x 2 (one for male and one for female)
- Assuming retirement at age 70, x 2 (one for male and one for female)
- Assuming retirement at age 75, x 2 (one for male and one for female)
- Plus a table for discounting any automatic lump sums.

These tables cater for one type of pension in terms of rate of increase. If we were to adopt the Ogden layout, and also seek to refine the accuracy of the capitalised values to cater for level, fixed rate, CPI, RPI rates of return (with possible variations on each) , we would have at least 3 more variants to the above tables, taking us up to 37 tables. If we then recognise within the most common pensions dealt with (Public Sector) retirement ages of 66, 67, and 68, were becoming more prevalent (and we want to avoid people having to interpolate factors (to reduce complexity of use)), we could very soon be up to a most unwieldy set of tables, in excess of 50 pages.

The challenge is to produce a set of tables, with (i) the ability to cater for pensions increasing at different rates (ii) the ability to cope with 5 different retirement ages (60, 65, 66, 67, 68 would cover most defined benefit schemes) and yet not produce an unwieldy and off-putting tome. This will require a fundamentally different approach to that adopted by Ogden.

¹⁴

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245859/ogden_tables_7th_edition.pdf

There is an issue as to whether there should be separate tables for men and women, or whether the tables should be unisex. Unisex tables would halve the number of tables.

The second major change from Ogden would be across the “x” axis:

- Ogden has one page for each assumed retirement age. On the “y” axis, we have the current age of the member. On the “x” axis we have the discount rate to be used. The discount rate was set in 2001 at +2.5%, changed in 2017 to -0.75%, and will probably change again in 2018 to c. 0% to +1%. It is relatively stable, and if a discount rate could be generally agreed, then the x-axis could be used for another variable.
- Along the “x” axis of the proposed tables, we could therefore change the variable from discount rate to rate of pension increase in retirement. In so doing, it is accepted that as and when the discount rate does change, a new set of tables will need to be released, but this should be a relatively straightforward exercise.

So in its simplest format, the tables may comprise something like the following:

Table 1	Unisex, retirement age 60
Table 2	Unisex, retirement age 65
Table 3	Unisex, retirement age 66
Table 4	Unisex, retirement age 67
Table 5	Unisex, retirement age 68
Table 6	Discount for automatic lump sum

To show a worked example, taking the suggested Table 1, it could look something like the following. The factors chosen here are just for illustration and for showing the format of the Table - **the assumptions underpinning the tables would need to be agreed:**

Multipliers for pensions payable at age 60

Current age of Member	How the pension increases in payment					
	Level	3% pa fixed	CPI max 3%	CPI max 5%	RPI max 3%	RPI max 5%
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
41						
42						
43						
44						
45						
46						
47						
48						
49						
50						
51						
52						
53						
54						
55	19.688	29.532	30.551	32.217	32.814	35.439
56						
57						
58						
59						
60						

Using this example, if someone aged 55 had a preserved pension of £10,000 pa, of which £1,000 pa would not increase, £2,000 pay would increase by CPI max 3%, and the balance, £7,000 pa would increase by CPI max 5%, the calculation would be:

$$(\text{£}1,000 \times 19.688) + (\text{£}2,000 \times 30.551) + (\text{£}7,000 \times 32.217) = \text{£}306,310$$

This would be the gross capitalised value of the pension which then needs to be adjusted for tax and, if thought appropriate, utility.

In summary, such a portfolio of 6 tables would:

- Produce a consistent valuation for all DB pensions (remember if scheme (a) and scheme (b) have a liability to pay an identical pension of say £10,000 pa each at age 60, whilst the value of the pension to the member is identical, the CEs (upon which currently everyone relies) could differ by as much as £100,000, dependent upon the assumption of each scheme actuary.
- Produce a value for all DB pensions which can be compared to DC fund.
- Cater for pensions increasing at different rates.
- Cater for current prevalent retirement ages.
- Be capable of use by the most if not all family lawyers.
- Be capable of revision from time to time for changes in assumptions.
- Produce a gross value, leaving the adjustment for tax / utility within the preserve of s.25 factors for the court.
- Be capable of being issue in electronic format, if felt appropriate, with on line functionality to ensure most recent assumptions being incorporated.
- In essence, be significantly more accurate than CEs (which currently is the only resource available in vast majority of cases) but without significantly increasing the costs or complexity.

There would potentially be other factors to consider:

- How do we adjust for GMP issues?
- What happens if the scheme only issues pension at date of leaving, not revalued?
- If valuation of deferred pension is issued, how do we cater for different approaches of schemes, with say scheme 1 revaluing GMP as excess and scheme 2 providing interim revaluation of GMP based on fixed rate?
- Temporary / state pension reductions.

There is always going to be a fine line to be struck between refinement of calculations and ease of use, and the output of the tables will only be as good as the input (making sure the right preserved pension is input). But if the alternative is continued reliance on CEs by parties who do not instruct experts, which as shown in the report will not only get the quantum wrong, but also potentially the direction of flow wrong. This means that tables such as these are worth exploring as scalable solution to some of the problems of valuing pensions on divorce.

Appendix 8: Apportionment of Final Salary Pension Rights

There are a number of ways to deal with pension rights accrued prior to the marriage or co-habitation and four are set out here although it is essential to remember that this is a matter of judicial discretion.

No apportionment

The first method is to assume that all pension rights are included in the calculations and make no apportionment at all.

This is believed to be the most appropriate for cases to be decided based on needs in retirement and for long marriages.

“Deferred Pension” Method

The second method would be to consider the pension rights that had been accrued to the date of either cohabitation or marriage (or whatever date is chosen for the starting point) and allow for increases that would have been made to a deferred pension during the period to the present date (the practitioner might exclude the difference of increases between GMP and inflationary revaluation). This would then be compared to the accrued pension at present and that proportion of the pension rights would be excluded. This allows for what could be termed as the “passive growth” of the pension rights accrued prior to the relationship. This allows the assets applied to the marriage to include, for example, the effect of any promotions earned during the marriage on the pension rights accrued at the start of the relationship.

This requires details of the pension accrued as at the date of marriage, but this information is usually available if requested and if for any reason it is not available, it will be possible for the parties to obtain their gross income from the Inland Revenue so that a reasonable approximation can be made.

The effect of this is that items such as promotions during the marriage which increase the whole pension are deemed to be placed within the marital assets.

The rationale behind this is that sometimes the non-member spouse will say that during the marriage, they did the school runs, the shopping, washing, ironing and household chores and maintenance, paid the bills and ran the house so that the member spouse was able to be out between 7am and 9pm, for example, concentrating on the career to earn those promotions. The non-member spouse may have sacrificed their career to do this.

In such cases, it is a “marriage of equals” and the non-member spouse has not been able to demonstrate achieving “similar success as the home maker” but this method allows for the effect of the promotions to be kept within the marriage assets. Thus, if the marriage has been successful in creating security in retirement and procreation, those successes are reflected in the settlement.

CE Method

This method takes the Cash Equivalent as at the date of marriage with no adjustment and compares that with the Cash Equivalent now and simply allocates that proportion of the benefits to the member with the pre-accrued rights and defines the rest according to whatever decision is made. This is what was done in the *Martin-Dye* case.

This will, in many cases, lead to a very small amount of assets being allocated in respect of the pre-marital period but it is never the less a possibility.

Although providers are expected to be able to provide historic CEs (as they are required in Scottish cases) these may be difficult to obtain and possibly costly. In *Martin-Dye*, the Court accepted the evidence of an actuary tasked with giving his estimate of what it would be.

Straightline Method

This is where the benefits are simply divided up assuming they all accrue evenly over the period. Therefore, if the member has 30 years' service and ten of those are pre-marriage, then a simple 20/30ths of the total benefits would be included in the calculations. This is an easier calculation to do than many of the other methods.

It will usually be the method that favours the member spouse most.

Appendix 9: Lifetime Allowance

The Finance Act 2004 contained legislation that led to major changes in the taxation of UK registered pension schemes. New regulations were implemented with effect from 6 April 2006 and such regulations affect all members of UK registered pension schemes.

Under the post 6 April 2006 regulations, there is a maximum amount that can be accumulated in a registered UK pension fund. The maximum amount is known as the “Lifetime Allowance”. Some features of the Lifetime Allowance are as follows:

- The value of a member’s benefits is only tested against the Lifetime Allowance when a “Benefit Crystallisation Event” occurs. The main Benefit Crystallisation Events are when a member retires and puts the benefits into payment or when the member dies.
- If at the point of crystallization, the member (or dependants) receives benefits that have a value in excess of the Lifetime Allowance, a tax charge is payable known as the Lifetime Allowance Charge. If the excess funds are taken as a lump sum, the current Lifetime Allowance Charge is 55% of amount of the fund value in excess of the Lifetime Allowance. If the excess funds are taken as a pension, the excess pension is taxed at 25% (in addition to the normal taxation of pensions).
- The majority of people are subject to the Standard Lifetime Allowance. The Standard Lifetime Allowance for Benefit Crystallisation Events between 6 April 2006 and 5 April 2007 was £1,500,000. The Standard Lifetime Allowance then increased each year to £1,800,000 for Benefit Crystallisation Events between 6 April 2010 and 5 April 2012. However, since 6 April 2012 the Standard Lifetime Allowance has been reducing; from 6 April 2014 the Standard Lifetime Allowance was reduced to £1,250,000 and from 6 April 2016 the Standard Lifetime Allowance was reduced further to £1,000,000. From 6 April 2018, the Government intends to index the Standard Lifetime Allowance in line with the Consumer Prices Index (CPI).
- The value of pension benefits in a UK registered pension scheme for testing against the Lifetime Allowance is not necessarily the same as the Cash Equivalent. For a defined contribution arrangement, the value is the fund value at retirement which will broadly be the same as the Cash Equivalent. However, for a defined benefit scheme, the current method of estimating the value of a defined benefit pension for testing against the Lifetime Allowance is to take 20 times the pension payable plus any additional Cash Lump Sum payable under the rules (typical in some of the older public sector schemes). This value will not be the same as the Cash Equivalent.
- All individuals have a Lifetime Allowance. If, following divorce, a pension share is implemented from a husband to a wife, then the amount of fund transferred to the former wife forms part of her Lifetime Allowance. The husband’s remaining funds to be tested against his own Lifetime Allowance are reduced by the amount transferred.
- Some individuals have an individual Lifetime Allowance which is higher than the Standard Lifetime Allowance. This is usually when a member has chosen to protect existing funds which are already in excess of the Standard Lifetime Allowance. At different times there have been various options which a member could take to protect his or her benefits. However, in order to be granted an individual Lifetime Allowance which is higher than the

Standard Lifetime Allowance, the individual is subject to certain restrictions over future investment and may not be able to make any further contributions into a registered pension arrangement. It is important to enquire whether the pension member (spouse) has elected to protect his or her Lifetime Allowance.

Appendix 10: Glossary

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
Additional State Pension	ASP	The part of the Old State Pension originally known as SERPS and, later, S2P that provided an earnings-related tier of State Pension. ASP rights can be subject to PSOs but where the pension holder reaches SPA post 6 April 2016 a PSO is only available in certain circumstances.
Annual Allowance	AA	The total of contributions or benefit accrual which an individual can make to pension schemes in any tax year before incurring a tax charge. The current (2017-18) limit is £40,000 per annum or 100% of earnings if less, although there are circumstances in which it could be significantly less for higher earners. See, also, Tapered Annual Allowance and Money Purchase Annual Allowance.
Annuity		An insurance-based income received on a regular basis, most commonly for life or for a contractually determined period. Income can be guaranteed or investment linked, level or increasing, and may or may not continue to a surviving spouse or dependent after death.
Auto Enrolment		A method of compulsion of employers by government to provide pension schemes for employees to which both employers and employees pay.
Basic State Pension		The basic part of the Old State Pension related to a person's National Insurance contribution record accrued prior to 6 April 2016.
Buy Out Plan (s.32 contract)	S.32	Insurance based annuity contract introduced by Finance Act 1981, section 32 to transfer the liability from an Occupational Pension Scheme to the insurer of an individual pension arrangement.
Capped drawdown		See Drawdown
Career Average Revalued Earnings (CARE) scheme	CARE	A type of DB scheme under which the benefit earned in any one year is calculated as a specified fraction of that year's pensionable

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		pay. That year's pension accrual is then 'revalued' every year up until retirement, usually in line with inflation subject to a predetermined ceiling, to ensure it maintains its value in real terms. The pension at retirement is then the sum of all the years' accruals and therefore reflects the member's career average earnings rather than their final earnings (as occurs with a 'final salary' type scheme).
Cash Equivalent	CE	A term meaning the capitalised value of pension benefits. Sometimes referred to as the Cash Equivalent Value (CEV), Cash Equivalent Transfer Value (CETV) or Cash Equivalent of Benefits (CEB), they are all essentially the same. For a Defined Benefit pension scheme the CE is the value placed on the member's benefits by the scheme actuary, using assumptions such as future investment returns, inflation and life expectancies. In the case of an active scheme member, the calculation assumes they left service on the date of the CE. For a Defined Contribution pension scheme the CE is usually the fund value, but this may be adjusted, for example, because of an insurance company's transfer penalty charges or, in the case of a 'with profits' fund, market value reductions or additional final bonuses.
Clawback		Repayment requirements for over paid pension income falling on the pension holder due to the delay between a PSO taking effect and the date it is actually implemented.
Commutation		See Pension commutation
Consumer Price Index	CPI	The measure of inflation most commonly used now by DB pension schemes where pensions are fully or partially protected against inflation.
Contracted-out		A Contracted-out pension scheme is one that enables the scheme member to be (or previously have been) contracted out of SERPS or its successor, S2P. The Contracted-out

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		<p>member will have paid reduced rate National Insurance contributions (or had them rebated in the case of a DC pension) and will have nil or reduced entitlement to Additional State Pension. A Contracted-out pension scheme has to meet certain provisions or provide certain minimum benefits, e.g. Guaranteed Minimum Pension (GMP) in the case of DB schemes or 'Protected Rights' in the case of DC schemes, to which certain rules apply.</p> <p>Contracting-out ended in April 2016 and DC Protected Rights was abolished in April 2012, when Protected Rights benefits were converted into normal DC or money purchase benefits.</p> <p>GMP benefits continue to apply for those DB scheme members who were Contracted-out prior to April 1997.</p>
Crystallisation		The commencement of pension benefits payments from all or part of a pension scheme, either as pension income and/or lump sum. At any point in time pension savings are either 'uncrystallised', 'crystallised' or 'partially crystallised'. Crystallising DC funds can often trigger the Money Purchase Annual Allowance.
Deferred member		A member of an Occupational Pension Scheme who has left service with deferred pension benefits i.e. no immediate pension rights, and has not yet reached the scheme pension age nor (if permitted) begun to take the pension under the scheme's early retirement provisions.
Defined Benefit scheme	DB	A pension scheme where the pension rights are related to a formula at retirement, usually related to the final salary or the career average salary of the pension holder.
Defined Contribution scheme	DC	A pension scheme where the pension rights are related to the amount of money contributed to the scheme and any investment return. Sometimes also called a money purchase

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		scheme.
Defined Contribution Fund Equivalent	DCFE	The value of a DC fund a spouse would need, to match a member's DB pension. Sometimes also referred to as a gross replacement value. Figure based upon assumption that DC fund would be used to purchase annuity to provide the same security of income as the DB holder.
Destination Pension Scheme		The pension scheme utilised by the pension claimant and to which the Pension Credit from the PSO is transferred. This may be the same scheme as the one from which the pension share is derived, or another scheme (new or existing) set up for the former spouse.
Discount/Deferment rate		The % discount rate (per annum) used by actuaries and financial experts to calculate the present value of an asset which will not be realised until some date in the future.
Drawdown		<p>Generic term to describe the taking of 'income', normally from a Personal Pension Plan/SIPP and often by making regular withdrawals from the fund. Regulations applicable to Drawdown depend on which of the following classifications it falls into:</p> <p>'Flexi-access Drawdown', introduced from 6 April 2015, allows individuals the freedom to take any amount they wish from their pension plan (providing the plan's rules so permit).</p> <p>'Flexible Drawdown', available prior to April 2015, allowed individuals who satisfied a minimum income requirement from other sources, to draw down unlimited amounts from their pension plan.</p> <p>'Capped Drawdown' commonly known prior to April 2015 as 'Income Drawdown', was the only drawdown option available before April 2015 for individuals who did not meet the minimum income requirement. It continues to be an option for those who were in income</p>

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		drawdown prior to 6 April 2015. The maximum income that can be drawn down is capped at 150% of the notional income calculated using the relevant annuity rate set by the Government Actuary's Department (GAD).
Earmarking		See Pension Attachment Order.
Enhanced Protection		See Lifetime Allowance
External Transfer		A PSO implemented by transferring rights to a Destination Pension Scheme that is not the same as the scheme from which the Pension Credit is derived (see also Internal Transfer).
Family Procedure Rules 2010	FPR	Rules governing procedures in the family courts in England in Wales. Particular FPR rules or Practice Directions are referred to in this paper as, for example, FPR r 25.1 or FPR PD 25D.
Final Salary scheme		A type of DB scheme under which the pension at retirement is defined by a formula related to salary at or near retirement (or earlier death) and length of pensionable service with the employer e.g. 1/60 th of Final Pensionable Salary for each year (or part year) of service.
Financial Conduct Authority	FCA	Regulator for financial services firms and markets in the UK.
Financial Ombudsman Service	FOS	Resolves complaints against financial services providers and advisers in the UK.
Fixed Protection 2012, 2014 and 2016		See Lifetime Allowance
Flexi-access drawdown	FAD	See Drawdown
Flexible annuity		An annuity, the income payments from which may increase or decrease in value over the term of the annuity.
Flexible drawdown		See Drawdown
Government Actuary's Department	GAD	Department of government providing actuarial services across government, including public service pensions.
Graduated Retirement		An earnings related way of accruing. State

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
Benefit		Pension rights between 1961 and 1975.
Guaranteed Minimum Pension	GMP	Between April 1978 and April 1997, a DB scheme had to provide a pension at least equal to the (revalued) GMP in order to be 'Contracted-out of SERPS/S2P. If a member left Contracted-out employment the GMP had to be 'revalued' (i.e. increased each year up to State Pension Age) on one of a choice of bases such as fixed rate revaluation (the fixed rate depends on the date of leaving service) or in line with Statutory Orders (in effect in line with National Average Earnings). Changes to the Contracting-out legislation were made from April 1988. Any GMP earned prior to that date did not have to include pension increases after retirement. GMPs earned after that date had to provide increases to the pension in payment in line with RPI capped at 3% each year.
Individual Pension plans		Pension schemes in which an individual has contractual rights to benefits. These include Stakeholder schemes, Retirement Annuity Contracts, Personal Pension Plans and SIPPs.
Individual Protection 2014 and 2016		See Lifetime Allowance
Institute and Faculty of Actuaries	IFoA	Professional body which regulates actuaries who subscribe to its code of conduct.
Internal Transfer		A PSO implemented by the pension claimant being awarded rights as a Pension Credit Member within the existing pension scheme. (see also External Transfer)
Level Annuity		An annuity (policy) under which the income will never increase (and hence will be eroded by inflation over time).
Lifetime Allowance	LTA	Introduced in April 2006 it is the total capital value (as calculated in accordance with regulations) of benefits which an individual can accrue in all UK regulated pension schemes during their lifetime without incurring additional tax charges. The limit was originally

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		£1.5m, which rose over a period of years to £1.8m and has since been reduced in stages to £1m (2017/18). Various protection regimes exist for those who are able to benefit from a previous, higher Lifetime Allowance (Fixed Protection 2012, 2014 and 2016 as well as Individual Protection 2014 and 2016), or, where appropriate, the often more generous limits that applied under earlier legislation before April 2006 (Primary Protection and Enhanced Protection).
Lifetime annuity		An annuity (policy) that will pay an income, normally guaranteed, for the duration of the life of the annuitant(s).
Limited Price Indexation	LPI	A legal requirement to increase pensions in payment under a DB scheme by a minimum amount each year. The minimum is in line with the Consumer Price Index (CPI) or, if lower, 5% (for benefits accrued between April 1997 and April 2005) and 2.5% for benefits accrued after April 2005.
Money Purchase scheme		See Defined Contribution scheme.
Money Purchase Annual Allowance	MPAA	The reduced tax relievable contributions which may be made to any DC scheme after certain Crystallisation events have taken place in one of those schemes. From 6 April 2017 the figure was reduced to £4,000 per annum.
New State Pension		State pension entitlements for those reaching State Pension Age on or after 6 April 2016. Previously referred to as 'the single tier state pension'.
Normal Retirement Age	NRA	The age defined in the pension scheme rules which is normally the earliest age at which DB pension rights can be taken without reduction for early retirement.
Occupational Pension Scheme		Pension scheme related to a particular employment and established under a trust arrangement for the benefit of the scheme members (employees).

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
Offsetting		The process by which the right to receive a present or future pension benefit is exchanged for present capital within divorce or dissolution proceedings.
Old State Pension		State pension entitlements for those reaching State Pension Age on or before 5 April 2016.
Pension Attachment Order	PAO	Court order (formerly called Earmarking) that redirects all or part of a person's pension benefits to a former spouse or spouse separated by an order of the court.
Pension Claimant		The divorcing spouse seeking pension rights by way of court intervention. The terms 'non-member spouse' or 'transferee' are also used for this party in some contexts.
Pension Commencement Lump Sum	PCLS	A lump sum drawn from a pension scheme (up to 25% of the CE in many cases but can occasionally be greater) which may be drawn down tax free.
Pension Commutation		This relates to DB schemes only and refers to the option usually (but not necessarily) available to the member to exchange (commute) part of their future pension income for a tax free lump sum (PCLS) at retirement.
Pension Compensation Attachment Order	PCAO	The equivalent of a PAO made in relation to a scheme within the PPF.
Pension Compensation Sharing Order	PCSO	The equivalent of a PSO made in relation to a scheme within the PPF.
Pension Credit		The amount of benefit rights that the pension claimant becomes entitled to in the destination pension scheme following a PSO.
Pension Credit Member		A pension claimant who has Pension Credit rights under the Destination Pension Scheme. Sometimes referred to as 'shadow member' of the scheme, particularly when the Pension Credit arose through an Internal Transfer.
Pension Debit		The amount of benefit rights given up by a scheme member when a PSO has been made against the scheme.

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
Pension Freedoms		Flexibility in the way that DC scheme benefits can be taken which mostly derive from the Taxation of Pensions Act 2014.
Pension Holder		The divorcing spouse who holds the pension being considered for court intervention by way of PSO, PAO, Off-setting or otherwise. The terms 'member spouse' or 'scheme member' or 'the party with pension rights' or 'transferor' are also used for this party in some contexts.
Pension Protection Fund	PPF	The statutory scheme for administering an Occupational Pension Schemes that is unable to meet its future liabilities where the sponsoring employer has become insolvent.
Pension Provider		The trustees, insurance company, SIPP provider or other institution providing and/or managing the pension fund. The term 'person responsible for a pension arrangement' is used in some contexts and defined in s.46(2) of WRPA 1999.
Pension Scheme		A generic term for one of a range of occupational pension rights, personal pension rights, policies, contracts, annuities or state pension rights.
Pension Sharing		Introduced by WRPA 1999 to enable a percentage of the pension rights of one party to be transferred to a pension scheme of their spouse upon divorce by order of the court. Effective for divorce petitions issued on or after 1 December 2000.
Pension Sharing Order	PSO	Court order stating the percentage of the CE of an individual's pension scheme benefit rights to be transferred from their pension scheme to a Destination Pension Scheme for the benefit of their former spouse.
Pensions on Divorce Expert	PODE	Actuaries or other financial experts who specialise in this field.
Personal Pension Scheme		A type of Individual Pension plan which includes SIPPs.
Primary Protection		See Lifetime Allowance

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
Protected Payment		Where a person's pre 6 April 2016 Additional State Pension entitlement takes their total State Pension entitlement to a figure higher than the single tier base figure as at 6 April 2016 the difference will be designated as a 'protected payment' and this may be subject to a PSO.
Protection (Primary, Enhanced, Fixed and Individual)		There are a variety of forms of protection against the Lifetime Allowance Charge which have been available to allow those who would have been adversely by changes to the LTA rules since they were introduced in 2006 to protect themselves against the charge, either in whole or in part. See Lifetime Allowance.
Purchased Life Annuity	PLA	A non-pension annuity purchased from already taxed personal funds. The income from a PLA is taxed more favourably than that from an annuity purchased with pension savings because the latter will have previously benefited from tax reliefs.
Retail Price Index	RPI	The measure of inflation commonly used by most DB pension schemes prior to 2011 where pensions were fully or partially protected against inflation. Still used by some schemes.
Retirement Annuity Contract or Section 226 policy	RAC (s.226)	Insurance based annuity contract, a type of Individual Pension Plan introduced by Finance Act 1956 Part III for the self-employed and those in non-pensionable employment, subsequently governed by Income and Corporation Taxes Act 1970, section 226 and replaced by Personal Pension Plans in July 1988.
Self Invested Personal Pension	SIPP	A Personal Pension Plan where the pension holder can make their own investment decisions using the full range of investments approved by HMRC.
Shadow / Primary membership Shadow membership		A person who is a member of a pension scheme by virtue of a pension credit is referred to as a shadow member, in contrast to the original member, who is referred to as a primary

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		member. See Pension Credit member
Shadow PODE		A shadow PODE is a Pension on Divorce Expert instructed by one party to advise that party on questions to ask the SJE PODE.
Single Joint Expert PODE	SJE PODE	A PODE instructed on a Single Joint Expert basis.
Small pots lump sum		Ability to draw small sums (up to £10,000 in no more than 3 pensions) from pension schemes rather than purchase an annuity. The limit of 3 schemes does not apply to unrelated Occupational Pension schemes.
Small Self-Administered Pension Scheme	SSAS	A form of Occupational Pension Scheme typically set up for key employees or directors of a company with a maximum 11 members typically.
Stakeholder Pension Scheme		A type of Individual Pension Plan that satisfies certain government criteria for a cap on charges, no exit penalties and low minimum contributions. Introduced in April 2001 as a result of the WRPA 1999.
State Earnings Related Pension Scheme	SERPS	Additional State Pension accrued by employees who were not Contracted-out between April 1978 and April 2002.
State Pension Age	SPA	The age at which an individual is entitled to receive their State Pension. The SPA may be subject to ongoing changes.
State Second Pension Scheme	S2P	Additional State Pension accrued by employees who were not Contracted-out between April 2002 and April 2016.
Substitution or Basic State Pension substitution		Where, on divorce, the spouse with the worst National Insurance contribution record substitutes this for the better National Insurance contribution record of the other spouse to increase their Basic State Pension. This is no longer available for claimant ex-spouses who reach State Pension Age after 5.4.2016. For claimant ex-spouses who

Common pension terms and terms used in this report	Abbreviation Used in this paper	Meaning/Comment
		reached State Pension Age prior to 6.4.2016, it is only the NI contribution record of the other spouse up to 5.4.2016 that can be substituted.
Tapered Annual Allowance		The progressive loss of the Annual Allowance for those whose adjusted income (income + pension contributions) exceeds £150,000. The Annual Allowance is reduced to £10,000 p.a. when earnings exceed £210,000.
The Pensions Advisory Service	TPAS	Guidance service relating to pensions and workplace pensions.
The Pensions Ombudsman	TPO	An independent organisation with legal powers to resolve complaints about pension scheme administration that cannot be resolved by other means. A decision of the Pensions Ombudsman is final, legally binding and enforceable in court. From 1 April 2018 the dispute resolution team at TPAS is to be transferred to TPO providing an end to end dispute resolution service.
Uncrystallised funds pension lump sum	UFPLS	Lump sums paid from uncrystallised funds. Can be used to cash out a DC scheme pot in part or in full without entering drawdown.
Utility discount		A notional adjustment sometimes applied in the pension on divorce offsetting process to reflect the perceived advantages of holding cash now rather than pension benefits later.
Welfare Reform and Pensions Act 1999	WRPA 1999	Act of Parliament introducing Pension Sharing and Stakeholder Pension Schemes

Appendix 11: List of PAG members and acknowledgements

Mr Justice Francis, Co-Chair of PAG and Chair of Valuation Working Group

HHJ Edward Hess, Co-Chair of PAG and Chair of Expert Working Group

David Salter, Chair of Legal Working Group

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