Considering pensions and protection when a relationship ends

25 April 2024

Speakers: Shelley Read and Justin Corliss

Learning objectives

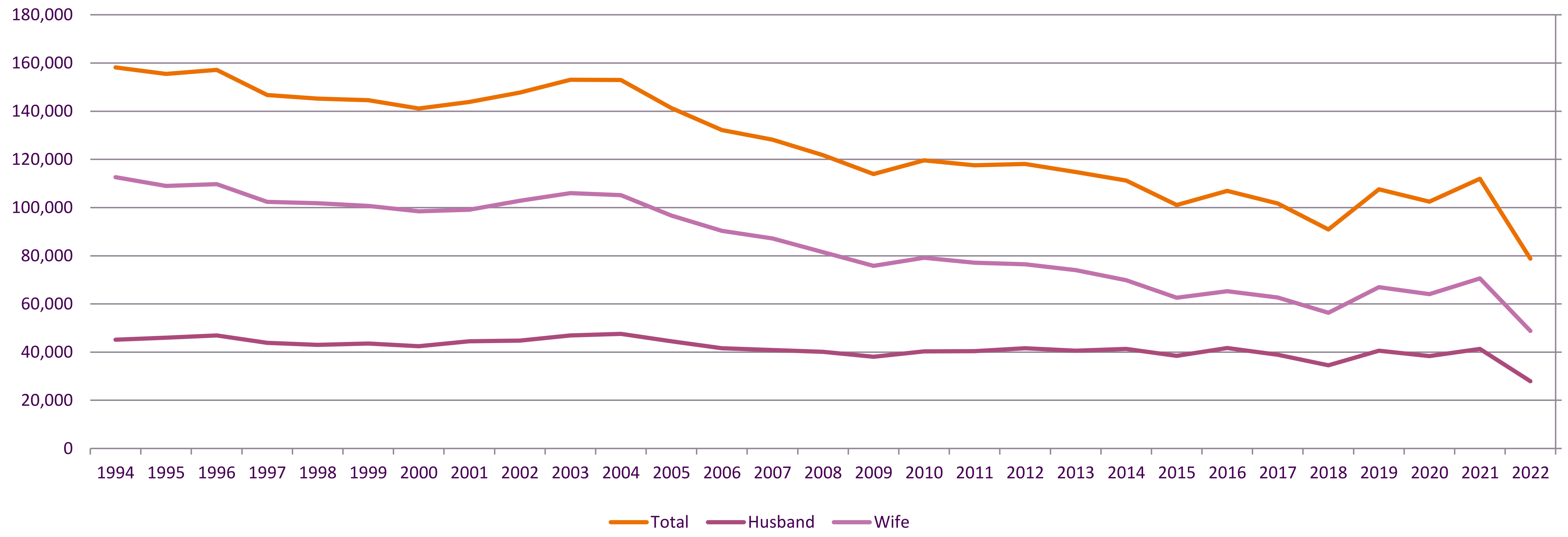
By the end of this session, you will be able to:

- Outline the financial implications of relationships ending.
- Understand the importance of policy ownership and the role protection can play post-divorce.
- Describe the options available for pensions in a divorce settlement.

Background

Background

Number of opposite sex couples divorcing: On petition of/Party to whom granted, all decrees



Source: ONS, Divorces in England and Wales, 22 February 2024

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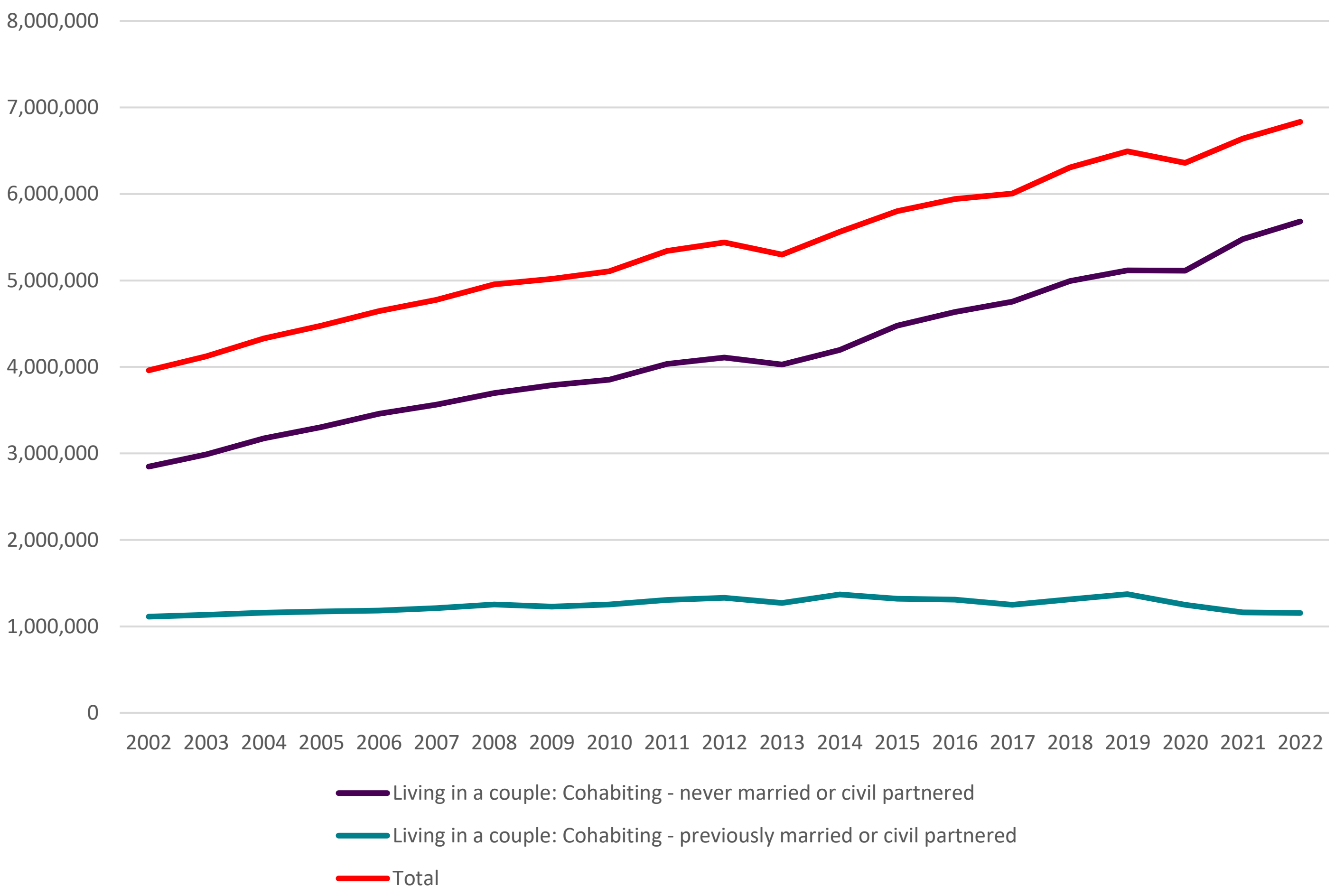
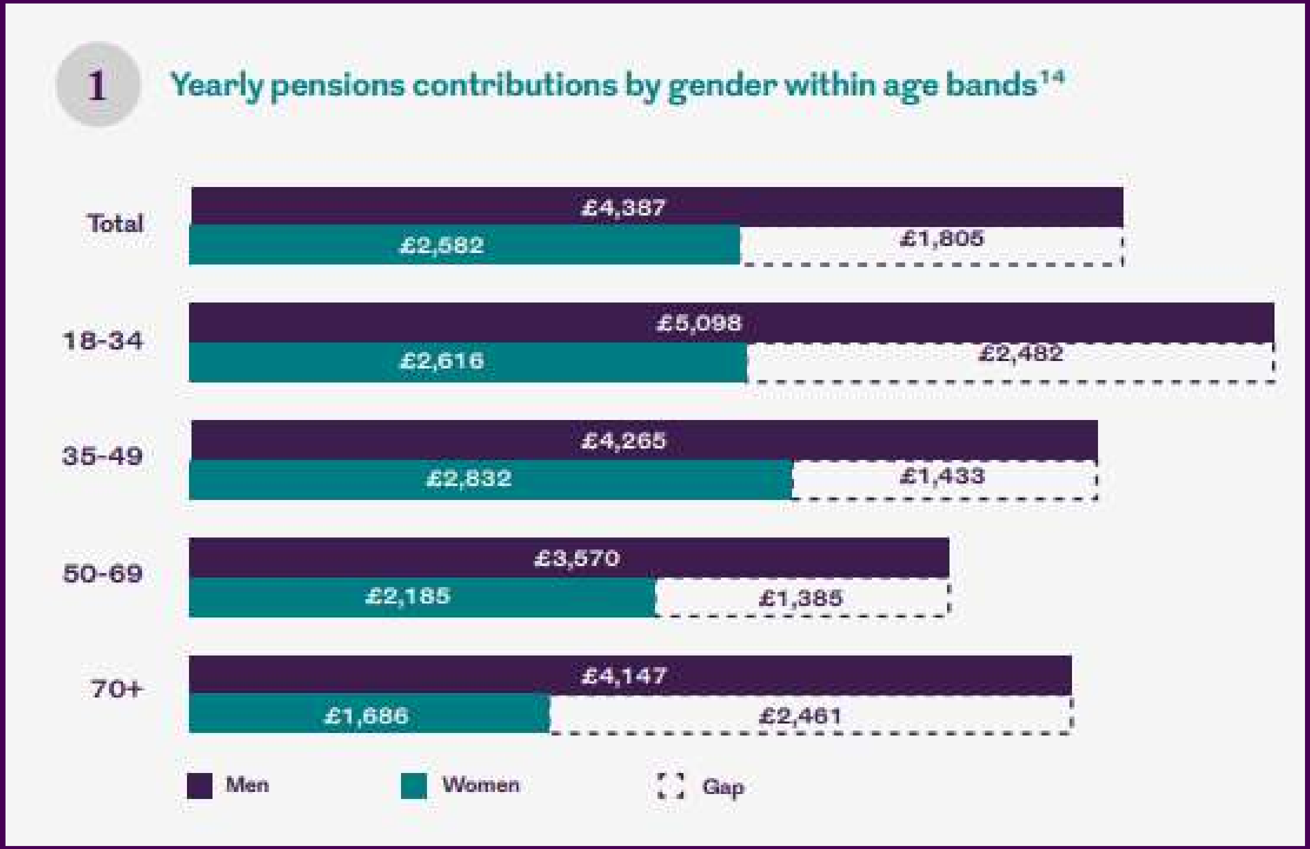
Cohabitees

- Estimated 6.8m people in cohabiting couples in the UK.
- Steady increase since 2002.
- Over 1m have previously been married or in a civil partnership.



Source: ONS Population estimates by marital status and living arrangements, England and Wales, 2002 to 2022. Jan 2024

Cohabitees



Source: Tackling the gender pension and wealth gap 2024

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Impact of reducing pension contributions

Ravi and Jill are married teachers and members of TPS. They both begin work at age 22. At age 30, they have a child and Jill reduces her working hours to 60% FTE for 16 years. After 16 years, Jill resumes full time employment.

What impact does this have on their pension accounts at age 60?

Ravi aged 60	Jill aged 60	Difference
£73,164	£60,513	£12,651

Assumptions: Starting salary £30,000. CPI – 2.5%. Pay growth – 3%. 2015 scheme. No PCLS.

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Impact of pausing pension contributions

Ravi and Jill are married teachers and members of TPS. They both begin work at age 22. At age 30, they have a child and Jill stops working for 16 years. After 16 years, Jill resumes full time employment.

What impact does this have on their pension accounts at age 60?

Ravi aged 60	Jill aged 60	Difference
£73,164	£36,718	£36,446

Assumptions: Starting salary £30,000. CPI – 2.5%. Pay growth – 3%. 2015 scheme. No PCLS.

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Background

Separation, divorce and remarriage (and possibly repeat …)

Protection Insurance after a divorce

The definition of a vulnerable customer

The Financial Conduct Authority (FCA) define a vulnerable customer as:

"Someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care."

Something to watch out for …

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Review of firms' treatment of customers in vulnerable circumstances

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Under the Consumer Duty, firms should act to deliver good outcomes for all customers, including those with characteristics of vulnerability.

We will conduct a review into how firms are acting to understand and respond to the needs of customers in vulnerable circumstances, and share our findings by the end of 2024. This is in line with our 2021 commitment.

Our review will look at firms' understanding of consumer needs, the skills and capability of staff, product and service design, communications and customer service, and whether these support the fair treatment of customers in vulnerable circumstances.

We'll also look at the outcomes consumers in vulnerable circumstances receive and whether they're as good as the outcomes of other consumers.

We'll conduct consumer research as well as gather information from firms and consumer representatives to make this assessment.

Rather than conduct a separate piece of work focussed solely on age related issues, as we indicated we would in 2017, the review will look more broadly at how firms treat customers, including older customers, in vulnerable circumstances.

This will enable us to understand whether those consumers most susceptible to harm are receiving good outcomes.

For more information on what we expect from firms, read our Guidance for firms on the fair treatment of vulnerable customers and our Consumer Duty.

More information

- Consumer Duty
- Treating vulnerable consumers fairly
- Ensuring the fair treatment of customers in vulnerable circumstances

Divorce and Protection?

Flexibility	Support Services
Maintenance Payments	Professional Connections

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Flexibility

Flexibility

What happens to a policy on divorce?

- Single policy v Joint Life / Dual Life.
- Trust / Beneficiary Nomination.
- Guaranteed Insurability Options (GIO).

Flexibility

What happens to a policy on divorce?

Joint Life / Dual Life

- Joint life separation
- Conditions ….
- New Single Life Cover

Single Life policies

- Menu plan

Cancellation

- Consider age, health and term

Flexibility

What happens to a policy on divorce?

- Writing a plan in Trust
- Beneficiary Nomination

Flexibility

What happens to a policy on divorce?

Guaranteed Insurability Options (GIO)

The maximum amount you can increase your cover by is the lowest of:

- Half your original amount of cover;
- £200,000 for cover payable as a lump sum, or
- £10,000 a year for cover payable as regular payments.

Support Services

Divorce support and added value services

Legal Advice	Recruitment support	Emotional counselling	Children's support
Mental Health Support	State Benefit Advice	Budgeting advice	Wills & Guardianship

Protecting Maintenance Payments

Divorced clients

- Jenny (29) and Mike (29) have recently got divorced.
- They have two dependent children (3 and 4).
- As part of their divorce, Mike will be paying child maintenance to Jenny for the value of £630pm (£7,560pa).
- The payments will be made until the youngest child turns 20 (17 years).

What are their objectives?

What if Mike dies or became ill?

 I The example above is a fictional and not based on a real customer

Divorced clients

- Could a family income benefit policy be used to replicate their maintenance agreement?
    - Mike is the life assured
    - Sum assured £7,560pa
    - Index linked
    - 16-year term

- Is there insurable interest?

- Write the policy into trust or nominate beneficiaries?

- Who should pay the premiums?

Professional Connections

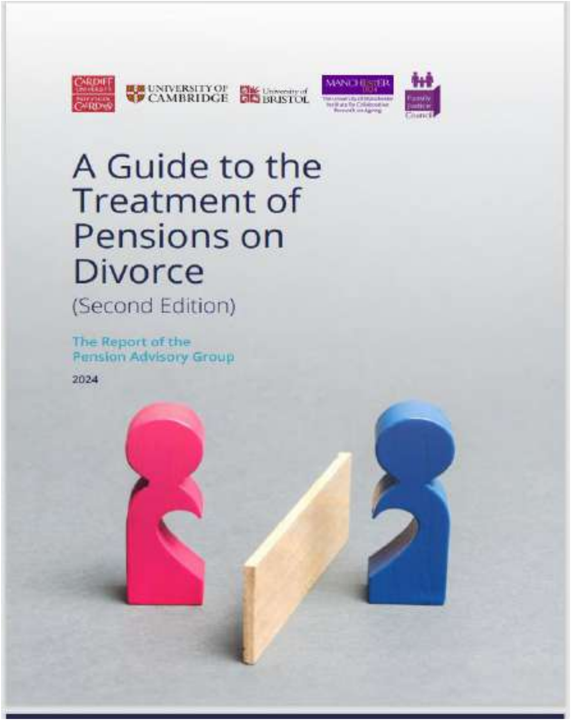
A world of opportunity

Family Lawyers	Conveyancers	Letting & Estate Agents	Estate planning
Social Media	Network Groups	Friends & Family	Website

Pensions

Pensions advisory group (PAG)

A guide to the treatment of pensions on divorce



The Pension Advisory Group was set up in mutual recognition of the urgent need for interdisciplinary discussion between lawyers, actuaries and financial advisers to achieve better common understanding and consistency in cases involving pensions on divorce.

 Source: https://www.nuffieldfoundation.org/wp-content/uploads/2023/A-guide-to-the-treatment-of-pensions-on-divorce-2nd-edition.pdf

The role of the financial adviser

The role of the financial adviser

"Remember, lawyers are not regulated, qualified or insured to give financial advice."

- Establish income needs.
- Identify vulnerability.
- Identify when a PODE is required.
- Identify suitable destination product.
- Major advice need point.

Source: A guide to the treatment of pensions on divorce – second edition. 2024

What is a PODE?

- Pension on Divorce Expert (PODE).
- Normally instructed by both parties as a single joint expert.
- Appendix D. Self-certification of expertise.
- Defined benefit pension valuation.
- Taxation.
- Actuarial standards.

 Source: A guide to the treatment of pensions on divorce – second edition. 2024

When a PODE is likely to be required?

- Uniformed service public sector DB schemes.
- Even in sharing cases where pension exceeds LTA.
- Pensions < £100k but with guarantees.
- DB CE’s exceed £100K.
- Public sector only but has complexities, offsetting considered, age difference.
- Serious medical condition.
- Individual pensions with implicit guarantees.
- S32 buy out policies.
- Older occupational pension schemes.
- Where assets of the pension fund are difficult to liquidate i.e. SIPP or SSaS.

 Source: A guide to the treatment of pensions on divorce – second edition. 2024

When a PODE is unlikely to be required?

- All DC pensions with no guarantees and parties of similar age.
- Younger parties (generally under 40).
- Sharing cases where pension is relatively modest portion of overall assets.
- Where pensions are *de minimis* – i.e. combined pension assets are < £100,000, PODE input generally doesn't provide good value.
- Where only pension is non-uniform unfunded public sector scheme and:
    - PSO not offsetting
    - No obvious complexity
    - No significant age difference between parties
    - Benefits to claimant are same as to holder

 Source: A guide to the treatment of pensions on divorce – second edition. 2024

The legal process

No fault divorce – why change?

- Partly due to case of Tini Owens.
- Key policy objective.

“Opportunity for reconciliation and to reduce family conflict, where divorce is inevitable.”

One criteria = Irretrievable breakdown

The legal process

Dissolution

- Court order.
- Collaborative Law.
- Mediation.
- Online – does NOT include financial remedy!

Financial remedy

- Kids' needs comes first.
- Clean break, 50/50 split preferred.

Pension options on divorce

Decide if / how to “share” it

3 options

- **Offsetting:** the only option pre-1995
- **Attachment:** under the Pensions Act 1995*
- **Sharing:** under the WRPA 1999

*Can’t be used for pension payments in Scotland.

Offsetting

- The matrimonial assets are listed and valued
- One party retains / receives the (full) pension asset.
- The other party retains / receives financial assets of equivalent value.

Offsetting

- Cheaper
- Taxation
- How to value pension vs. other assets
- Complaints
- Primary carer
- Equity release

Attachment

The order can be made on one or more of:

- Lump sum death benefit.
- Lump sum when benefits taken (PCLS).
- Pension payments.

COBS 19.2.4
A firm should take into account the existence of any attachment (or earmarking) orders in respect of a client's personal pension scheme or stakeholder pension scheme.

 Source: https://www.handbook.fca.org.uk/handbook/COBS/19/2.html

Attachment – when to use it

- Member already beyond or close to retirement.

- Younger spouse
  - Providing you can be sure the member will retire!

- To provide life cover
  - Attach the lump sum death benefit only.
  - Does not require underwriting.

To provide a better pension for the spouse!

Pension sharing

Pension sharing

- Allows the physical split of pensions benefits.
- Public sector schemes invariably offer scheme membership.

- Order will specify % of value:
  - Pension credit is now owned by the ex-spouse.
  - Member gets a corresponding pension debit.

Pensions sharing – when to use it

Pension asset too large to offset

- Allows clean break.
- Spouse owns pension credit in her own right.
- Member gets corresponding debit.

To prevent sale of treasured assets

- Most people would rather give away the pension than their treasured possessions!

Spouse has limited pension provision

- May be difficult to fund on his / her own behalf.
- Especially if on low income.

Pension sharing

Types of schemes which can be shared:

- Personal Pension Plans.
- Retirement annuity contracts.
- Final salary and money purchase occupational pension schemes.
- SSASs.
- SIPPs.
- Services pension schemes.
- FURBS.
- Contracted out benefits, S2P, SERPs, Protected Payments.
- Pensions and annuities in payment (but not widows’ pensions).
- Income Drawdown.
- AVCs/FSAVCs.
- S32s.
- Pension Protection Fund.

Pension sharing

Types of scheme which cannot be made subject to a sharing order:

- State Graduated Pension Scheme benefits and Equivalent Pension Benefit accrued between 1966 and 1975.
- Any widows', widowers' and dependants' pensions in payment, including inherited drawdown.
- Any lump sum payable on death in service.
- Pension rights paid in respect of disablement or death following an accident suffered during pensionable service.
- Basic state pension.
- New State Pension.
- Overseas pension schemes.
- FAS.

New State Pension

Old State Pension
Divorce pre 6.4.2016

May be shared
Basic State Pension £169.50 per week

New State Pension (nSP)
Divorce post 6.4.2016

May be shared
New State Pension £221.20 per week

Planning points

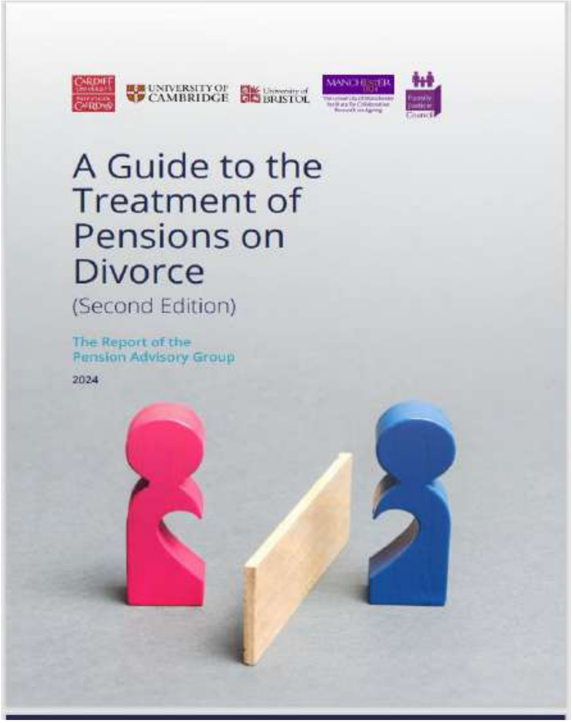
Discuss with family lawyers where you can add value

Review protection needs regularly

Consider opportunities ….
&
Look at segmenting client bank

Identify when a PODE or equivalent may be required

Further reading



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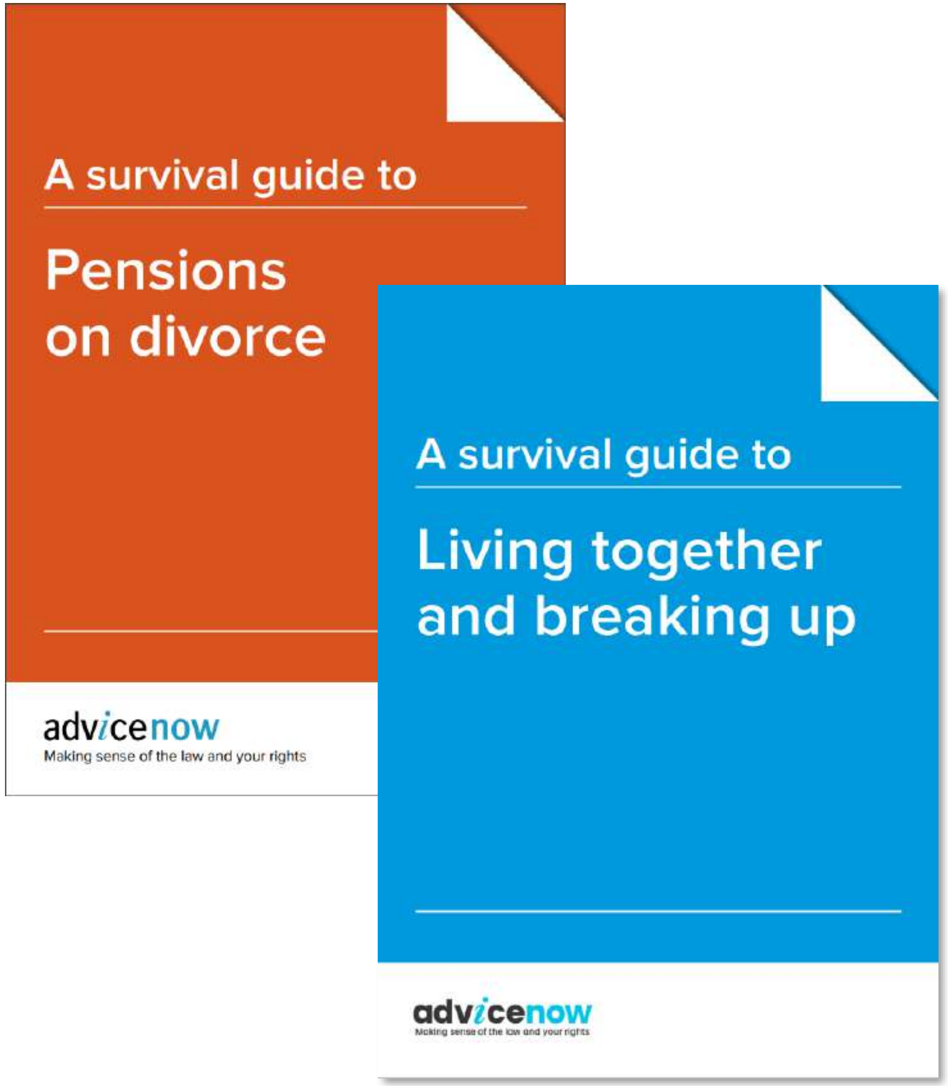

Sources: https://www.advicenow.org.uk/guides/survival-guide-pensions-divorce
A survival guide to living together and breaking up | Advicenow

Learning outcomes

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