PENSIONS & DIVORCE
A PRACTICAL GUIDE

This is for financial adviser use only and shouldn’t be relied upon by any other person.
By the end of this session, attendees will be able to:

• Understand the divorce process and the options available for pensions in a divorce settlement

• Explain the impact of pension freedoms on pensions and divorce

• Consider the issues facing clients and solicitor connections in relation to pensions and divorce.
We will assume:

Divorcees are subject to English Law...

No conflict of interest

One party has the larger pension assets...

And that it’s **always** the bloke’s fault in an opposite sex marriage...
PART 1
BACKGROUND
Number of opposite sex couples divorcing: On petition of/Party to whom granted, all decrees

Source: ONS, 26 September 2018
Divorces of opposite sex couples: Men and Women age 60 and over

Source: ONS, 26 September 2018
Marital status by age group and sex, England, 2002 to 2017. Divorced over age 65, all persons

Source: ONS, 26 September 2018
Almost all (92%) of the brides and grooms aged 65 and over in 2014 were divorcees, widows or widowers, with only 8% getting married for the first time.

Source: ONS

Planning Point: Make sure any divorcees have reviewed/changed any nomination

Source: ONS
“Nearly one quarter of a million people face divorce in the UK each year, with the majority needing financial assistance. Yet there are just 42 accredited financial adviser specialists in family law – that’s one adviser for every 5,000 people.”

Source: Resolution with the Personal Finance Society “Unlock the divorce and separation market”
Griffiths v Dawson & Co
(1993)

• Dawson & Co failed to include Pension Assets

• Mrs Griffiths successfully sued her lawyer

• Pensions Act 1995 – Pensions must be included when assessing assets
PART 2
THE LEGAL PROCESS
PENSIONS & DIVORCE
PENSIONS & DIVORCE
THE LEGAL PROCESS

Irretrievable breakdown:

• 5 criteria:
  ▶ adultery
  ▶ unreasonable behaviour
  ▶ desertion
  ▶ two years separation + consent
  ▶ 5 years separation without consent

• The reason for the divorce does not affect the financial settlement

• 2 separate legal processes...dissolution and financial remedy
Dissolution

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

Financial remedy

- Kids’ needs first
- Clean break, 50/50 split preferred
PENSIONS & DIVORCE

PART 3
PENSION OPTIONS
PENSIONS & DIVORCE
ACTION POINTS

3 stages:

1. Find the pensions
2. Value the pensions
3. Decide how to split the pensions
Factfind

• Assets, liabilities and income for both parties
• Can use Form E for voluntary disclosure
• Required if full disclosure ordered by the Court
2. VALUING THE PENSION(S)

Cash Equivalent Value (CEV)

• Defined Contribution
  › CEV = Fund Value
  
  Exit charge?  
  GARs?  
  Loyalty Bonus?

• Defined Benefit
  › CEV calculated by **Scheme Actuary**
  
  Subject to assumptions...
PENSIONS & DIVORCE
DEFINED BENEFIT - CALCULATING THE CEV

Basic pension
- e.g. 60ths

Project to SRA
- Revaluation factor

Cost of pension at SRA
- Annuity factor

Cost today
- Discount factor

Fixed:
- scheme rules

Statutory:
- CPI/RPI

Interest/
Mortality/
Expenses

Actuarial
discretion
**Example**

- Male, aged 45, salary £50,000, 10 years’ service, NRD 65
- Pension x Revaluation x Discount Rate x Annuity Rate

\[
\frac{10/60 \times 50,000 \times (1+RR)^{20} \times (1/(1+DR))^{20}}{AR}
\]

<table>
<thead>
<tr>
<th>RPI</th>
<th>Annuity</th>
<th>Discount</th>
<th>CEV</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5%</td>
<td>2.86%</td>
<td>7.00%</td>
<td>£123,383</td>
</tr>
</tbody>
</table>

Source: Royal London, Money Advice Service. Figures shown are for illustrative purposes only.
PENSIONS AND DIVORCE
UNIFORMED SERVICES & PUBLIC SECTOR

Planning Point:
Always consider independent valuation for Armed Forces/Public Sector schemes

PENSIONS & DIVORCE
3. 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
• 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
PENSIONS & DIVORCE
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
PENSIONS & DIVORCE
THE EFFECT OF PENSION FREEDOM

Planning Point: **Review** any pension **attachment** orders: Pension Freedoms
PART 4
PENSION SHARING
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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
Planning Point:
Where LTA protection applies, make sure the pension credit goes to an existing scheme.
Planning Point: What’s the most tax-efficient way of rebuilding assets?
PART 5
EXAMPLE CASE STUDIES

PENSIONS & DIVORCE
Pensions & Divorce

Example Case Study 1

Paul

- Pension in payment £200,000 p.a.
- Capital value of Paul’s pension = £3,350,000
- Paul is not prepared to offer a share:
  1. They weren’t married very long
  2. She’s young enough to fund her own pension!

Heather

- Much younger, minimal pension
- Heather’s solicitor argues this is unfair

  Widow’s pension valued at £1m in her hands

  Heather received an extra cash settlement of £500k
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EXAMPLE CASE STUDY 2

Brad
- Final Salary scheme, NRA 60
- CEV = £250,000
- He is intending to retire at age 50

Angelina
- Minimal pension
- Angelina’s solicitor wonders if this should affect the share out
  - CEV recalculated at age 50 = £450,000
  - Angelina’s share was increased by £12,800 (from 40% to 45% of the original CEV)
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CASE STUDY 3

Gwyneth

• Several pensions from different careers:

<table>
<thead>
<tr>
<th>Pension</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>RAC</td>
<td>£20k</td>
</tr>
<tr>
<td>PP1</td>
<td>£30k</td>
</tr>
<tr>
<td>PP2</td>
<td>£45k</td>
</tr>
<tr>
<td>EPP</td>
<td>£100k</td>
</tr>
</tbody>
</table>

• The couple have agreed on a sharing order

Chris

• No pension at all.

• Chris’ solicitor is not sure which pension(s) should be shared

 Adviser analysed the separate pension plans

> Chris gets 100% share on PP1, 66% share on PP2 and 0% on RAC and EPP
Always consider independent valuation for Armed Forces/Public Sector schemes

Make sure any divorcees have reviewed/changed any nomination

Review any pension attachment orders

What’s the most tax-efficient way of rebuilding assets?

Where LTA protection applies, make sure the pension credit goes to existing scheme
Unlock the divorce and separation market

a £500 million opportunity for financial advisers

“Financial Adviser Specialist Accreditation is open to associate members of Resolution who hold a QCF Level 4 plus AF3/G60 and a valid Statement of Professional Standing (SPS).”

Source: Resolution with the Personal Finance Society “Unlock the divorce and separation market”
http://www.resolution.org.uk/editorial.asp?page_id=1013
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Cambodian man ‘wants kidney back’

An estranged couple have split the building in half to ensure their house in half to country’s convoluted process.

Moeun Rim and his wife, who have been estranged for more than three years, have split the building in half to ensure that the property and the contents are divided equally. They have also divided their land in half for them.

Mr Rim has removed his wife’s name from the property registration and the couple have also divided their land in half for them.

Divorce man 'wants kidney back'

A US man divorcing his wife is demanding that she return the kidney he donated to her or pay him $1.5m (£1m) in compensation.

Dr Richard Batista told reporters that he decided to go public because he was frustrated at the slow pace of divorce negotiations with his estranged wife.

He said he had not only given his heart to his wife, Dawnell, but donated his kidney to save her life.

Some divorce lawyers say a kidney is not a marital asset to be divided

Source: http://news.bbc.co.uk/1/hi/world/asia-pacific/7661786.stm
http://news.bbc.co.uk/1/hi/world/americas/7818751.stm
THANK YOU

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