

The Pension Advisory Group: developing guidance on pensions on divorce

The call for guidance about pensions on divorce has been heeded.

It is a curious feature of practice that, despite their complexity, few decisions concerning pensions on divorce are ever reported either at first instance or on appeal. Some helpful guidance has been provided by the Family Justice Council in its papers on financial needs on divorce, addressing litigants-in-person (April 2016) and the judges (June 2016), but, given their broader subject-matter, the guidance provided on pensions by these documents is necessarily limited in scope.

The Group and its brief

Under the leadership and joint chairmanship of Mr Justice Francis and His Honour Judge Edward Hess, the "Pension Advisory Group" ("PAG") has been formed. With the imprimatur of The President of the Family Division, the PAG's brief is to conduct an interdisciplinary review of how pensions are treated on divorce and to produce a Family Justice Council pension guide for the profession and divorcing public. It is hoped that this may encourage a consistency of practice which is currently lacking. As with the Family Justice Council and its guidance on financial needs, the PAG has no authority to change the law through any of its publications and it would not purport to do so, merely to seek to explain the current law and to facilitate best practice.

The PAG comprises a multidisciplinary group of judges, academics, actuaries, financial experts, family and pension lawyers drawn from each branch of the legal profession and a family mediator (see list of members below). The group has representatives of both the Family Law Bar Association and Resolution. In addition to involving several of the well-known experts who practice in this field of family law, the Institute and Faculty of Actuaries has appointed a representative to be part of the PAG and to provide an "outside" perspective.

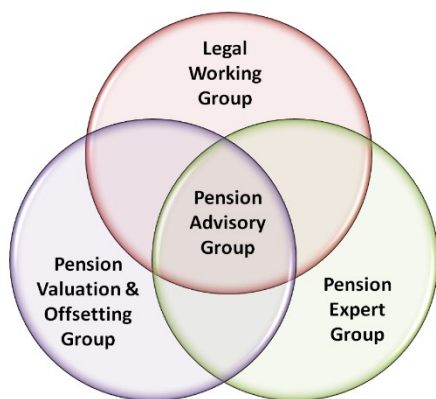
Led by Hilary Woodward, the academics' contribution to the project, funded by a Nuffield Foundation grant, will assist in ensuring that the work of PAG is firmly underpinned by objective and academically-defensible methods and analysis, and rooted in what is known from research about the longer term financial consequences of divorce.

The Group's agenda and working method

PAG has identified three interlocking areas of work that have been allocated to three working groups, which will each report to the PAG:

- A *legal working group* will review legal questions and how the Matrimonial Causes Act 1973 s.25 discretion is applied in this context;
- A *valuation and offsetting working group* will look at the assumptions used by experts when valuing pensions and calculating pension sharing and offsetting outcomes;
- An *expert working group* will consider the question of what regulation, qualifications and/or expertise Part 25 experts should have in order to assist the court. Consideration will be given to whether the use of a uniform technical standard might be advisable.

Evidently, the activities of the three working groups will overlap with each other, and so each working group will include individuals who are also members of at least one other working group (see diagram below). Each group will also include a cross section of lawyers, experts and academics. The left hand will know what the right hand is doing.



It is anticipated that each working group will produce a paper identifying areas of agreement and, importantly, areas of contention. The working papers will then be subject to further analysis by wider focus groups, as part of the attempt to resolve or at least narrow areas of contention. Comments on preliminary

conclusions will be sought from the judiciary and the profession generally. It is hoped that a final report and guide will be available by December 2018.

Your contribution is sought

To inform its work as fully as possible, the PAG would be very interested to hear from members of the judiciary, legal, actuarial and financial professionals, and representatives of special interest groups.

To stay within manageable bounds the PAG's membership is necessarily limited. However, the PAG is keen to create a big tent, to listen carefully and engage widely. It hopes to receive contributions from those who may be able to provide insights on the way that the law is currently working and how practice might be improved.

If you are aware of situations where to your mind pension issues on divorce have not been resolved in a satisfactory fashion please let us know! You may get in touch, in the first instance, by emailing Hilary Woodward at WoodwardHD@cardiff.ac.uk

Who we are

The membership of PAG (listed alphabetically in each category) currently comprises:

Co-Chairs: Mr Justice Francis, His Honour Judge Edward Hess

“CEO”: Hilary Woodward, former family solicitor and mediator, lead author of the first major study of the treatment of pensions in matrimonial cases: *Pensions on Divorce*: an empirical study (2014, funded by the Nuffield Foundation, administered by Cardiff University), currently Honorary Research Associate at Cardiff School of Law and Politics.

Academic members: Professor Rosemary Hunter, Professor of Law and Socio-Legal Studies at Queen Mary University of London, academic member of the Family Justice Council; Joanna Miles, University Senior Lecturer in Law, University of Cambridge and member of the Family Justice Council “financial needs” working party; and Professor Debora Price, former family law barrister, now Professor of Social Gerontology at the University of Manchester.

Legal members: James Copson, Robin Ellison and Simon Tyler (pensions lawyers), Pauline Fowler (chair of Resolution property, tax and pensions committee), Val Le Grice QC (on behalf

of FLBA), Fiona Hay, Sarah Hoskinson, David Salter, Christopher Sharp QC (family and personal injury specialist), Rhys Taylor and Philip Way.

Mediator: Dominic Raeside, Head of Mediation, Family Law in Partnership and mediation member of the Family Justice Council.

Expert members: Paul Cobley, Philip Doggart (IFoA temporary rep), David Lockett, George Mathieson, Peter Moore, Kate Routledge and Clive Weir.

The PAG held its first meeting on the 12 June 2017, photo below, and aims to conclude its work by the end of 2018.

