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Pensions – A Baker’s Dozen of Pitfalls to Avoid with Pensions in Divorce



Mathieson Consulting Ltd
actuarial and expert witness services

1. Asking too many permutations

Becomes expensive, report becomes impenetrable, clients will be bamboozled

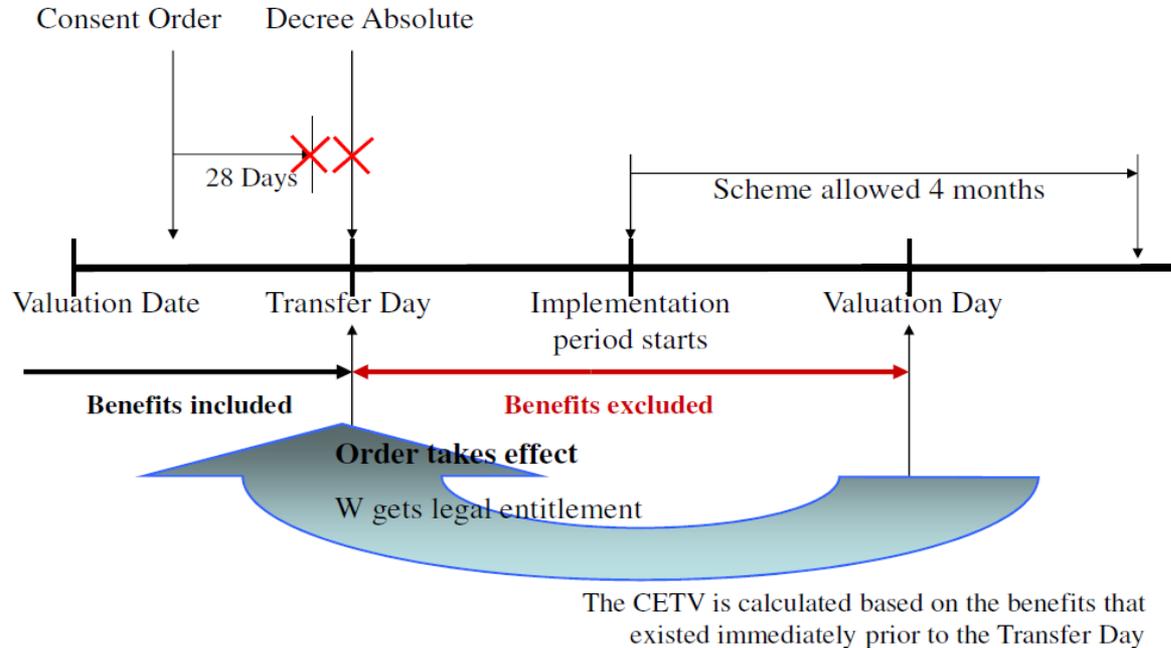
- Equality of income assuming retirement at ages 55, 60, 65, and state pension age (4 calculations).
- Excluding (i) pre marital, (ii) pre cohabitation, (iii) pre marital and post separation (iv) pre cohabitation and post separation (now 20 calculations).
- Assuming (i) no lump sum taken and (ii) maximum lump sum taken (now 40 calculations)
- Equality of Capital on each marital period (now 45 calculations)
- For each calculation above, calculate how much H would need to give W if the case were to be settled by way of offsetting instead.
- **90 Calculations**

2. Automatically wanting calcs which exclude contributions outside marriage

From the PAG report:

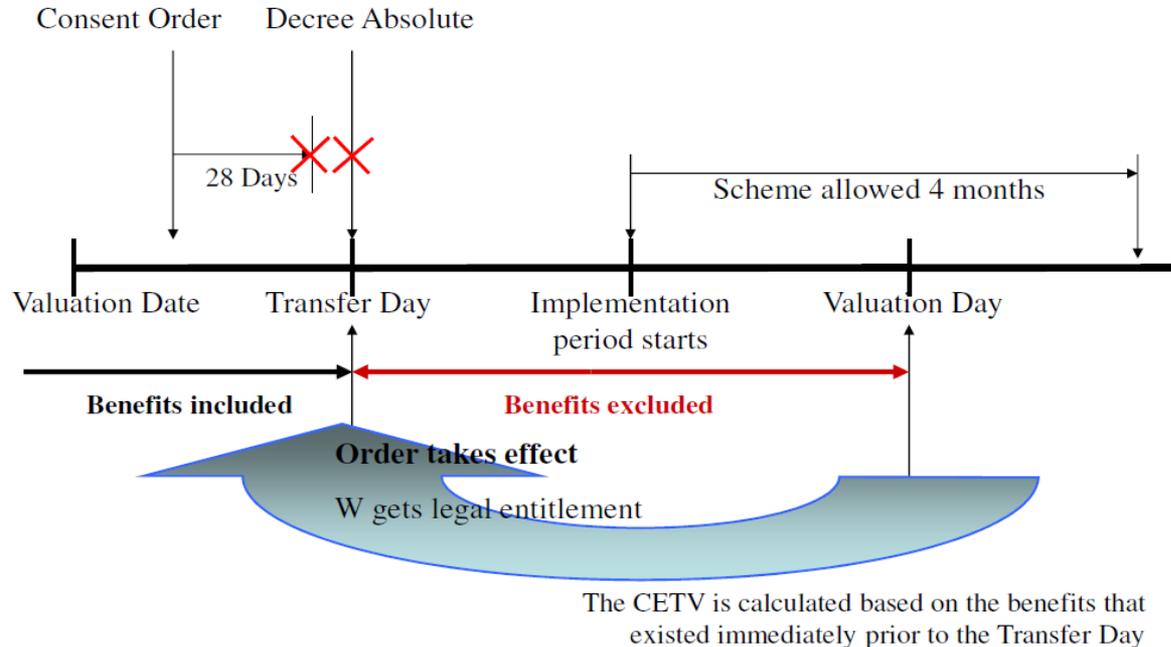
“In a ‘needs’ case, the court can have resort to any assets to meet the parties’ needs; in such cases it is rarely appropriate to apportion the pension based on the length of the marriage and existence of the pension.”

3. Sharing a Pension in Payment – Clawback and no lump sum



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4. Applying for Decree Absolute too soon



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5. Offsetting against DB scheme without knowing true comparative value

- H and W both aged 40.
- H active member of Armed Forces Pension Scheme.
- Only assets are equity in FMH worth £150,000, and AFPS CEV £144,650.
- W desperate to keep the house to house herself and children.
- H keen to retain pension.

5. Offsetting against DB scheme without knowing true comparative value

- Risk of negligence.
- What was done:
 - Straightforward offset, with assets seemingly of the same value. H keeps pension, W keeps house.
 - W's lawyers suggest they have actuarial report.
 - W resists on grounds of (i) costs and (ii) H putting pressure on W to settle.

5. Offsetting against DB scheme without knowing true comparative value

Look beyond H's CEV at the actual benefits:

- Has a preserved pension of £10,000 pa, plus lump sum of £30,000, payable at age 60.
- Cost to W of buying an equivalent pension on open market is £223,000.
This is also the open market value of H's pension.
- Is accepting equity in FMH to meet basic housing need now a good trade off?

5. Offsetting against DB scheme without knowing true comparative value

- But H currently has 21 years of service, next year he will have 22 years of service, at which point his pension would be paid immediately on leaving service, not at age 60.
- CE in 12 months' time will be £281,400 (not because his pension is any greater, still £10,000 pa plus lump sum of £30,000, but because it is now payable immediately not at age 60).

5. Offsetting against DB scheme without knowing true comparative value

- How does offset against equity in FMH look now?
- Open market value of H's pension in 12 months' time is over £500,000.
- Negligence claim against the solicitors.

6. Not seeking specialist advice when dealing with Uniformed Services pensions.

I refer the honourable lady and gentleman to the comments made earlier.

- Cliff edge events means CEVs can change dramatically over night.

7. Biggest pension or least expensive to share not always best option

H has 2 pensions, both DB:

DB 1, CEV £500,000, preserved pension £20,000 pa, PSO free

DB 2, CEV £500,000, preserved pension £15,000 pa, PSO £2,750 + VAT

W Has one DC fund worth £250,000

- Share DB 1, incomes may be equalised at £19,540 pa each
- Share DB 2, incomes may be equalised at £21,495 pa each.

8. Turkeys voting for Christmas questions

Usually around follow up questions regarding ill health.

- If you are acting for person with ill health, usually and perhaps counter-intuitively, not in best interest to raise questions.

But also around apportionment

- Have you done the sums yourself to check that if apportioning, you are not excluding more of other sides pension than your own?

9. Assuming income projected by PODE is only option.

If sharing H's DB pension, PODE will usually only consider W buying an annuity, so as to match risk and profile.

- If W receives pension credit of £500,000, and PODE suggests she will have income of £15,000 pa from age 60, which matches what H is left with, W has lots of other options.
- Just because PODE assumes she will buy index linked annuity, discuss with Financial Planner all of the options.

10. Accepting pension scheme data from administrators at face value.

XYZ Co Ltd Pension scheme:

- CEV, £600,000
- AVC fund £100,000

Does the CEV of £600,000 include the AVC fund or not?

Statement ambiguous but because of subtle wording we assume AVC in addition to £600,000, but we ask.

No, we are told, the AVC fund is included in £600,000, not in addition.

Are you sure we ask, because that doesn't quite make sense, given certain wording?

Ah, yes you are right, it is in addition.

11. Hidden Values

Mrs H	CEV	Mr H	CEV
Aviva Section 32	£18,818	Scottish Life PP	£18,731
		Axa PP	£33,502
Total	£18,818		£52,233

On face of **H** has greater pensions than **W**, for either offsetting or pension sharing.

But **W**'s Aviva pension contains obligation on scheme to pay a Guaranteed Minimum Pension (GMP) of **£4,444** pa at age 60

True comparable value of this pension is **£85,053** not **£18,818**

12. LTA Issues

Too complex to cover.

- Very complicated.
- Co-operation of both parties can on occasions save enormous amounts of tax.
- Sometimes a window of allowances with which we can bring both sides' pensions, but does not achieve equality , W still has less pension than H, but increasing PSO takes W over limit, and tax will become payable.
- Get pension incomes as close as possible, avoiding tax, then offset remaining difference.
- Many many other scenarios.

13. Old Age

- H Aged 90, in receipt of pension £65,000 pa
- W Aged 80.
- Parties ignored advice, and agreed 50% PSO in favour of W
- Cash Equivalent £80,000
- H's income dropped to £32,500 pa
- W Received pension credit £40,000
- W able to buy annuity of £5,000 pa

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Thank you

Your Brewin Dolphin family law team



George Mathieson
Director –
Mathieson Consulting Limited
T: +44121 7256 510
E: george.mathieson@mact.co.uk



Jonathan Galbraith
Senior Actuary and
Head of Product and Risk
T: +44121 7256 507
E: jonathan.galbraith@mact.co.uk

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