



Brewin  
Dolphin

# Supporting your clients through divorce

Financial planning and pension  
advice

May 2023

# RBC Brewin Dolphin

## International and domestic capabilities

RBC is a global provider of financial services with almost 90,000 employees around the world in 29 countries.

In the UK we provide access to lending and deposits, financial planning and investment management services through our network of offices.

## RBC Brewin Dolphin

We offer a full range of financial advice and investment management services for individuals, families, charities, clients of independent financial advisers, trustees, and pension funds. We have developed strong relationships with professionals such as solicitors and accountants throughout the UK.

33  
offices

4,450  
employees

£51.7bn  
assets under  
management\*

\*Q3 results, for the three months ending 30 June 2022.

The value of investments can fall and you may get back less than you invested.

## An experienced friendly team



**George Mathieson**  
Former CEO of Mathieson  
Consulting



**Jonathan Galbraith**  
Mathieson Consulting

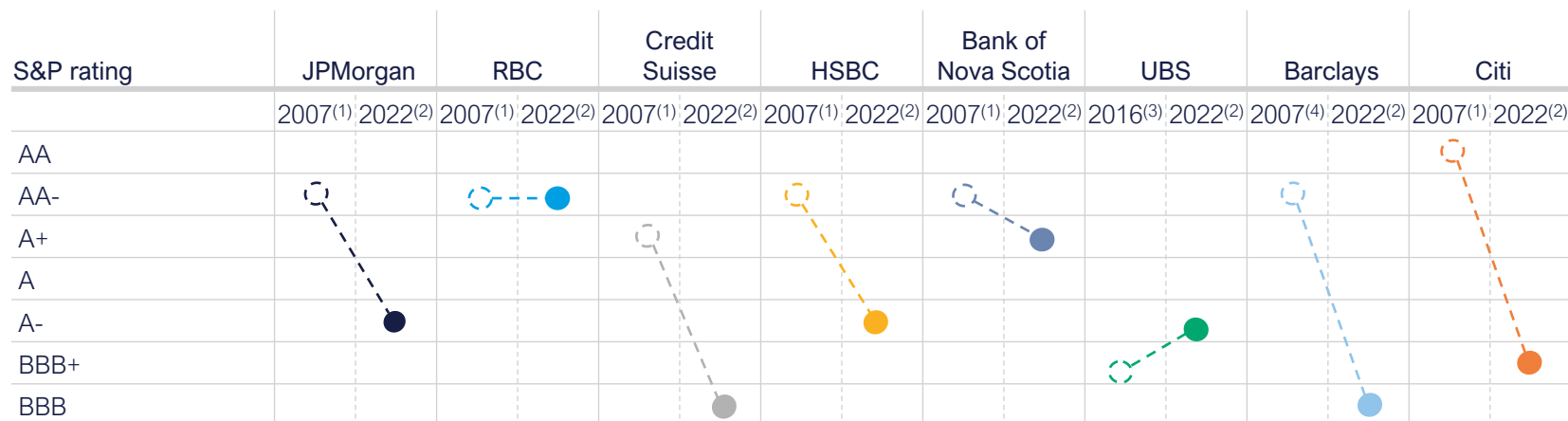


**Kirsty Simpson**  
Financial Planning

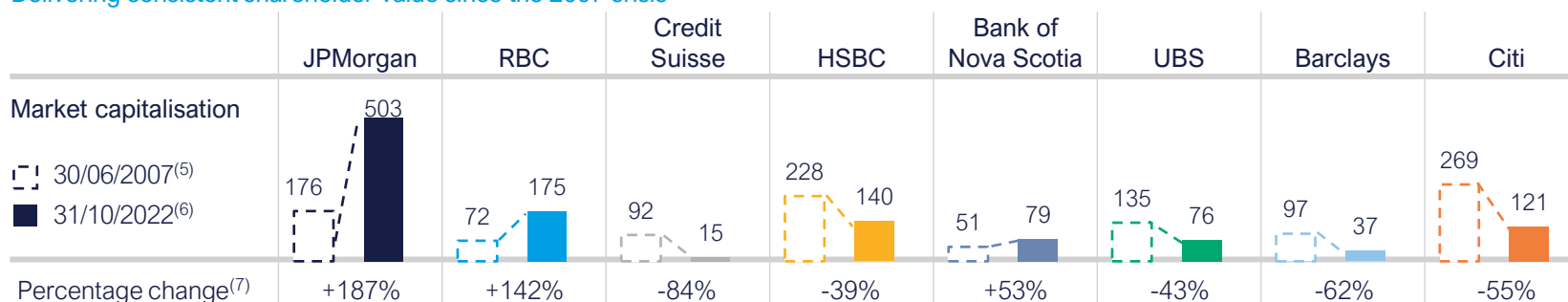


**Nicholas Irby**  
Financial Planning

# Royal Bank of Canada financial strength



## Delivering consistent shareholder value since the 2007 crisis



## Solid earnings through a diversified business model<sup>(8)</sup>

53%

Personal and commercial banking

20%

Wealth management

19%

Capital markets

5%

Insurance

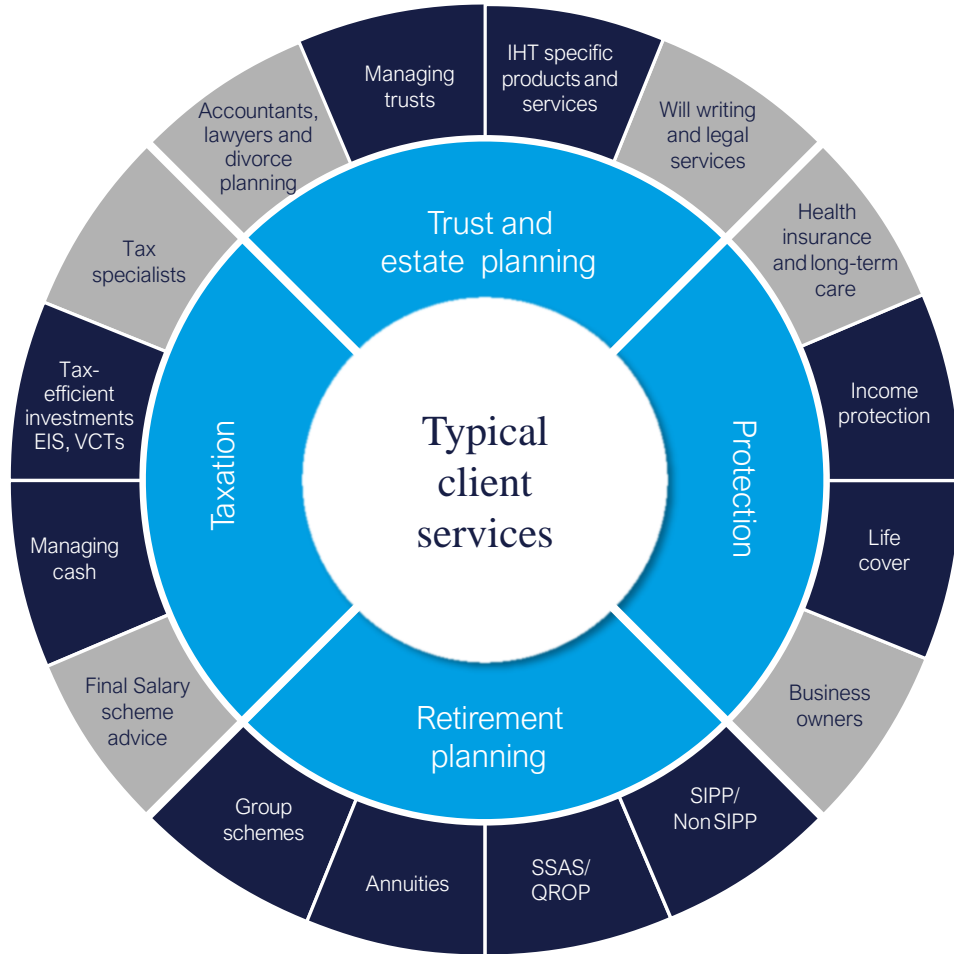
3%

Investor and treasury services




The value of investments, and any income from them, can fall and you may get back less than you invested. Information contained in this document is believed to be reliable and accurate, but without further investigation cannot be warranted as to accuracy or completeness.

<sup>(1)</sup> Rating assigned by Standard & Poor's to the long term obligations of the issuer if repaid in the local currency of the issuer, as at 30 June 2007 unless otherwise stated; <sup>(2)</sup> Rating assigned by Standard & Poor's to the long term obligations of the issuer if repaid in the local currency of the issuer, as at 31 October 2022; <sup>(3)</sup> Ratings as at 12 February 2016, being the earliest date S&P started rating the company's long term local currency issuer credit; <sup>(4)</sup> Ratings as at 28 September 2007, being the earliest date S&P started rating the company's long term local currency issuer; <sup>(5)</sup> Bloomberg, as at 30 June 2007, rounded off to the nearest billion; <sup>(6)</sup> Bloomberg, as at 31 October 2022, rounded off to the nearest billion; <sup>(7)</sup> Percentage change in market capitalisation for the period 30 June 2007 to 31 October 2022; <sup>(8)</sup> As at 31 October 2022. Earnings by Business Segment: Excludes Corporate Support. For more information, refer to the Key performance and non-GAAP measures section of our 2022 Annual Report.











# Advice with clients at the centre



RBC Brewin Dolphin Wealth Managers can help clients with a wide range of needs:

-  We can make a full recommendation
-  We can talk about your clients needs in these areas
-  We can identify a need and inform your clients if they require external specialist support

Introductions to a range of specialists:

Property advisers 	Land Agents 	Charity specialists 	Philanthropy specialists 	Education specialists 
Private equity 	Corporate finance advisers 	Passion investment specialists 	Insurers 	HR teams 

The value of investments, and any income from them, can fall and you may get back less than you invested. This does not constitute tax or legal advice. Tax treatment depends on the individual circumstances of each client and may be subject to change in the future. No investment is suitable in all cases and if you have any doubts as to an investment's suitability then you should contact us.

# Family and divorce (B2B2C)

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## Where do we come in?

1. **Pre-instruction** – financial planners assist with any general queries from accountants, solicitors and their underlying clients such as, ‘can I afford to get a divorce?’, ‘can I keep my house’
2. **Financial disclosure** – assisting them with fact finding and Form E and the complexities around investments and asset valuation – helping them to work out what is worth keeping and what is worth surrendering.
3. **Negotiation and financial remedy** – helping them with pensions advice, cashflow modelling and insurance all help the client understand their future financial security.
4. **Post-settlement** – Implementing PSOs and reassessing the clients financial options.

“ *Clients want to know the financial consequences of divorce and our family law Wealth Managers use their cash flow analysis, investments and pensions expertise from beginning to end of the financial settlement to answer these questions.* ”

## Benefits

1. We work with accountants and family solicitors to help their clients reach the right financial outcome.
2. We help manage liability by highlighting risks involving the negotiation of complex financial assets.
3. We offer complete financial remedy support from disclosure to post settlement.

The value of investments and any income from them can fall and you may get back less than you invested. Information is provided only as an example and is not a recommendation to pursue a particular strategy.

# Technical update

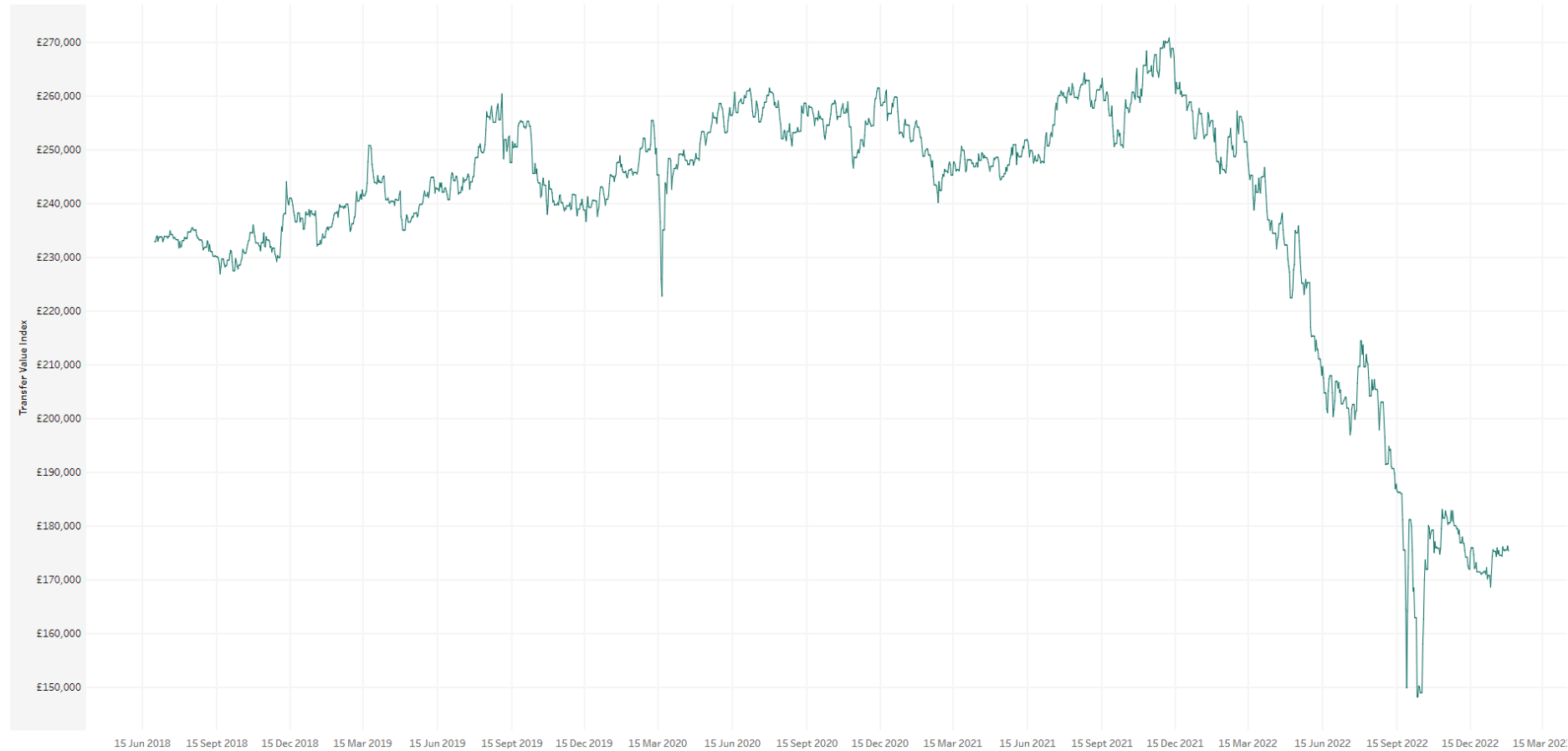
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## The key issues

1. Issues with CEVs
2. The pitfalls with offsetting – Introducing the Galbraith Tables
3. Lewis v Cunnington Solicitors [2023] EWHC 822 [KB]
4. CMX v EJX (French Marriage Contract) [2020] EWFC 136
5. YC v ZC [2022] EWFC 137

# Issues with CEVs

XPS Transfer Value Index



Source: XPS Pensions Group. Data to 31 January 2023

Neither simulated nor actual past performance are reliable indicators of future performance. Information contained in this document is believed to be reliable and accurate, but without further investigation cannot be warranted as to accuracy or completeness.

# Issues with CEVs

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## Fluctuating Private Sector DB CEVs

- Paralysis of Divorce settlements caused by fluctuating CEVs not a practical option.
- At the moment Public Sector CEVs unaffected.
- CEVs of DC funds may have fluctuated in line with markets, but not usually an issue as DC CEVs easy (usually) to obtain.
- Obtaining new CEV of DB scheme comes at cost if within 12 months.
- When do you expect to settle? If sometime historic CEV good for indicative figures upon which settlement can be agreed in principle, subject to subsequent fine tuning nearer date.



# Issues with CEVs

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## Fluctuating Private Sector DB CEVs

- Consider proportionality.
- If equality of income is objective, and DB fund in question is not to be shared, CEV is an irrelevance.
- Turmoil in DB CEVs also highlights fallacy of using CEVs for offsetting.

# The Galbraith Tables

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## Pitfalls with Offsetting

- Most cases of alleged negligence against family lawyers (in context of pensions) relate to Offsetting, rarely Pension Sharing.
- There are different interpretations of Offsetting. Is it the value of (say) H's pension to H, or cost of replicating for H's pension for W?
- Adjustments for tax / utility can be difficult to quantify.
- Accept that large / complex cases require expert input, but "Rule of Thumb" would be useful.

## Pitfalls with Offsetting (cont.)

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- Defined Contribution (Money Purchase) pensions typically have CEVs that are “Fair Value” being simply  $N^{\circ} \text{ Units} \times \text{Unit price}$ .
- Defined Benefit (Final Salary) CEVs are typically not reflective of “Fair Value” of underlying pension promise.
- For example, NHS pension of £20k pa plus lump sum of £60k, for someone aged 53, would have **CEV of c. £430k**. But fair or open market value of such a pension (**cost of buying on open market**) may be £650k to £750k.
- Other features of pensions can create complications e.g. guaranteed annuity rates, GMP elements, With Profits. (**See HHJ Hess judgment in YC v ZC [2022] EWFC 137**).

# Introducing ... The Galbraith Tables

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- The Galbraith tables have been produced by two actuaries at Mathieson Consulting Ltd, Jonathan Galbraith and Chris Goodwin.
- Saw the need from the work done with solicitors, and the challenge from PAG 1.
- Intended to work in a similar fashion to **Duxbury** (for capitalisation of spousal maintenance claims) and **Ogden** (primarily used for loss of income / pension on Catastrophic Injury claims).
- The tables seek to answer the same question as Ogden and Duxbury but for pensions: *How do you place a “£ amount value” today on a future per annum income stream (plus possible lump sum).*
- Version 1.0 of these tables appear in issue 1 of the Financial Remedies Journal, and can also be found at [www.mcat.co.uk](http://www.mcat.co.uk)

# The Galbraith Tables – Other things to consider

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- These amounts are before any tax / utility adjustment which is discussed in PAG and in the Tables User Guide.
- Assume the pension follow CPI pre and post retirement.
- These are simple defined benefit pensions, and treatment of other arrangements is discussed in the user guide.
- Two important caveats:
  - There is no substitute for seeking advice from a PODE when dealing with complex benefits.
  - Other experts may place a different value on the benefits: it was ever thus! Nonetheless we believe the tables are “good enough” for giving solicitors a steer on the value of pension benefits.

## The Galbraith Tables – Feedback already

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*“The DJ are aware of the tables and happy to endorse use of the tables. Final result was myself and opponent were able to use the tables to calculate the appropriate figures and did not take very long to agree on the amount needed to offset.”*

*“Absolutely brilliant resource. A genuine game-changer in dealing with pensions on divorce.”*

# Joanne Lewis v Cunnington Solicitors [2023] EWHC 822 [KB]

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- HHJ Coe sitting as a Judge of the High Court.
- Cohabitation began 1991, married April 1993, marriage broke down 2012.
- Retainer between claimant and defendant dated 16 April 2013.
- November 2013, defendant agreed by letter that claimant could settle direct with H, but that if she did, claimant would not be able advise or confirm on fairness of settlement.
- February 2014 claimant sent letter to defendant saying she had agreed settlement of £62k, plus assignment of Endowment Policy.
- 4 March 2014 defendant wrote to say she could not comment on whether the settlement was fair or reasonable in absence of financial disclosure, and required a disclaimer to be signed by claimant.
- Disclaimer signed by claimant on 11 March 2014.
- Prior to consent order being drawn up, there was an exchange of statements of financial information, which revealed H had CEV in Police pension scheme of £540k, and thus had total assets of £590k, and that claimant had liabilities of £5k. July 2014 claimant signed consent order, and sent to defendant, and it was sealed in August 2014.

Source: <https://www.bailii.org/ew/cases/EWHC/KB/2023/822.html>

# Joanne Lewis v Cunnington Solicitors [2023] EWHC 822 [KB]

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Very lengthy judgment, but at Paragraph 224:

*“Given the history, I find that considering the authorities and distinguishing Minkin, the situation between the defendant and Mrs Lewis at this point required that the reasonably incidental duties would have required it to set out at least for Mrs Lewis, a comparison between what she would receive through the proposed settlement and what she would reasonably receive if she pursued the matter to court. In short, she should have been advised that she was foregoing the opportunity to be awarded several hundreds of thousands of pounds.”*

Paragraph 227

*“[The solicitor] purported limiting of her ability to advise in the absence of full and frank disclosure is based on the premise that she did not have the information to give "detailed" advice. It may be that she could not have calculated every last pound in every savings account and so on, but the essential fact of a major asset being a police pension with a value in the region of £1 million was a matter on which she could clearly have advised.”*



# Joanne Lewis v Cunnington Solicitors [2023] EWHC 822 [KB]

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## Paragraph 228:

*“I find that any reasonably competent solicitor would have advised the claimant that the proposed settlement order was obviously and exorbitantly one-sided in the husband’s favour, giving the claimant less than 15% of the disclosed matrimonial assets and leaving her with an inadequate financial provision in the future, and particularly in retirement. I find that she should have been told that the court would make a pension sharing order in this case and that the starting point would be 50%. The circumstances in which the court would not have made such a pension sharing order in this case are very difficult to envisage indeed.”*

## Paragraph 233

*“I accept that a solicitor is not there to take the client’s decisions for her, or to lean on her, or to overbear her will. The client retains autonomy. However, that autonomy does not remove the need for appropriate advice to be given. That did not happen in this case.”*

## Paragraph 251

*“In any event telling the claimant of the possibility of the court making [a pension sharing] order does not discharge the defendant’s duty of care. The defendant ought to have advised at the very least that the court would make or would be extremely likely to make a pension sharing order and that it would be extremely valuable.”*

# Joanne Lewis v Cunnington Solicitors [2023] EWHC 822 [KB]

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## Paragraph 255:

*“The letter from the defendant to the claimant dated 1 August 2014, at p.645 says that [the Solicitor] has sent off the consent order, but that she does not consider the agreement to be fair. I consider this to be a significant breach of duty. She has sent off the consent order, knowing it is not fair. She has sent off the consent order on the basis that she cannot advise Mrs Lewis, even though, as I find she could have advised her. The advice should have been not to sign the consent order, but to pursue an application for a pension sharing order. The fact that Mrs Lewis could have ignored that advice does not mean it should not have been given.”*

## Paragraph 260:

*“If she had been advised about the likely remedy, she would have been granted, and its size, this would have been bound, as I find, to inform her decision about not only whether or not she could afford to fight her husband, but also whether or not the option of "getting rid of him" for a net sum in the region of £30,000 was still attractive.”*

# Joanne Lewis v Cunnington Solicitors [2023] EWHC 822 [KB]

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## Paragraph 273 & 274:

*“It seems to me that the defendant's argument on contributory negligence is bound up in the position they seek to adopt about which I asked Miss Evans early on in the proceedings. Namely, that this was “low-cost” or “budget” representation that they were offering the claimant and that some distribution of responsibility so as to divest the defendant of some of their liability would be “fair”. I reject any such suggestion. I have accepted that the extent of the duty of care is informed by the scope of the retainer. I have set out what I consider to be the defendant's duty of care in the circumstances of this case and the way in which it breached it. The cost of representation clearly will be limited by the extent of the work the solicitor is required to do, and the grade of solicitor doing it. That does not lower the standard of care imposed when carrying out the work within the remit of the retainer.*

## Conclusion

*274. The claim succeeds and there will be judgment for the claimant in the sum of £400,000.00.”*

# CMX v EJX (French Marriage Contract) [2020] EWFC 136

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## Judgment of Moor J:

*“I could not agree more [reference to SJ v RA [2014] EWHC 4054 (Fam), a decision by Nicholas Francis QC (as he then was) sitting as a deputy High Court Judge]. If assets are to be divided equally, they should be divided equally. In general, there is no justification for awarding more to one party because they are younger or have a longer life expectancy. Both parties should share the fruits of the marriage equally. Moreover, in my experience, the only thing that can be said is that life hardly ever goes according to plan, whether it be one party living far longer than expected or another remarrying immediately. It follows that I have become very troubled by directions that ask a pension actuary to calculate a division on the basis of equality of income in retirement. Apart from the fact that such reports tend to be very expensive, the simple fact is that such a direction almost enshrines the Duxbury paradox into practice. It cannot be right, in general, that the younger you are, the greater the award. In any event, it has no place whatsoever in equal division cases.”*

# CMX v EJX (French Marriage Contract) [2020] EWFC 136

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[What is the Duxbury Paradox? - Lord Nicholls in \*White\*:](#)

*"This approach also furnishes a solution to the so called Duxbury paradox in this type of case. In the present case Holman J referred to the well known paradox that the longer the marriage and hence the older the wife, the less the capital sum for a Duxbury type fund. A Duxbury calculation is no doubt a useful guide in assessing the amount of money required to provide for a person's financial needs. It is a means of capitalising an income requirement, but that is all. As I have been at pains to emphasise, financial needs are only one of the factors to be taken into account in arriving at the amount of the award.*

*"The amount of capital required to provide for an older wife's financial needs may well be less than the amount required to provide for a younger wife's financial needs, but it by no means follows that in a case where the resources exceed the parties' financial needs the older wife's award will be less than the younger wife's. Indeed, the older wife's award may be substantially larger."*

Source: <https://www.bailii.org/ew/cases/EWFC/H CJ/2022/136.html>

# CMX v EJX (French Marriage Contract) [2020] EWFC 136

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So what are Moor J's concerns in this case:

1. *That W gets more of H's pension if she is younger.*
2. *The Duxbury Paradox (The older W is the less she gets).*
3. *Costs of a PODE report.*

(Note 1 and 2 are the same thing)

## CMX v EJX (French Marriage Contract) [2020] EWFC 136

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Q: Why doesn't 50% PSO equalise incomes?

A: CEV of £500,000 for H's DB pension does not represent true open market value of pension of £35,000 pa at age 60

- If H wished to buy on open market a pension of £35,000 pa at age 60, H would require fund of £800,000.
- Therefore PSO of 50% :
  - H left with pension fund with open market value of £400,000 (50% of £800,000)
  - W left with pension fund with open market value of £250,000 (50% of CEV)
- Therefore, absent PODE (which troubles Moor J) , only option is to share CEV 50:50, which will enshrine a position disadvantageous to W.

## CMX v EJX (French Marriage Contract) [2020] EWFC 136

But lets now remove issues of CEV of DB / Final Salary pension undervaluing pension by considering DC / Money Purchase funds where there is no concept of “Undervalued CEVs” (unless Guaranteed Annuity Rates –see **YC v ZC** [2022] EWFC 137)

Husband age 55		Wife aged	55	50
H's fund pre PSO	£500,000	Pension credit received by W	£250,000	£250,000
PSO	50%			
Fund Post PSO	£250,000			
Value at age 60	£304,000	Value at age 60	£304,000	£370,000
Annuity bought at age 60	£12,200 pa	Annuity bought at age 60	£12,200 pa	£14,800 pa
Annuity at age 60 in today's money	£11,000 pa	Annuity at age 60 in today's money	£11,000 pa	£12,100 pa
<i>(Actual PSO required to achieve equality of income, assuming W is aged 50 and H 55 is 47.5%, equalises incomes at £11,600 pa each)</i>				

Source: <https://www.bailii.org/ew/cases/EWFC/H CJ/2022/136.html>



## YC v ZC [2022] EWFC 137

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- Judgment of HHJ Edward Hess
- H pensions of £502,000 (£414K with Royal London & £88K with Scottish Widows)
- W pensions of £58,000 (all Prudential)
- All pensions DC
- PSO of 45% of H's global pensions = equality , or just 55% on Royal London – “More easily implemented” (PODE)
- But PODE has missed GAR on Royal London fund, allowing conversion into income at rate of 9.45%, compared with market rate of 6%
- HHJ Hess therefore enhanced value of Royal London fund in asset schedule by 1.5 times

Source: <https://www.bailii.org/ew/cases/EWFC/H CJ/2022/137.html>

## YC v ZC [2022] EWFC 137

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*(iv) The discovery of the guaranteed annuity rate has substantially undermined the conclusions of the PODE report. Not only is the figurework for the production of an equal incomes outcome largely redundant; but also it must be noted that making a pension sharing order against a pension with a guaranteed annuity rate is hugely destructive to its real value - the portion externally transferred to another pension scheme would simply lose the hugely advantageous guaranteed annuity rate in the transfer – and a pension sharing order is not thus an attractive option.*

*(v) It is sobering to consider how much money would needlessly have been thrown away by my making a 55% pension sharing order against the Royal London pension. An investigation exercise independent of this case may be worth carrying out to discover why it was that the existence of the guaranteed annuity rate was not discovered by the PODE. I am unaware who was at fault. Should the PODE have been given this information by the husband? Should the PODE have been given this information by the pension administrators? What questions should have been asked of the pension administrators which were not asked? Whoever was responsible for this, for the purposes of this case the 'equal incomes' conclusions of the PODE report now have to be treated as largely unhelpful.*

# How we can help

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- We can help with pension queries, and decoding the information you have.
- Formal cash flow modelling – in both scenarios where settlement is known or unknown.
- Initial meetings or conversations with your clients to provide guidance and financially upskill them to make an informed decision.
- We want to financially educate and empower.



*While I appreciate I am in a better financial position than I realised – I wish I had this clarity before I reached a settlement as it would have helped remove some of the distress and worry about my future finances.*

Female client after stress testing settlement amount using cashflow tool

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# Risk warnings

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