

# Pension Notes

Windsor Actuarial Consultants Ltd

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## Fruits of Fidelity!

A competition to start our belated spring:

It is the tradition on an island that if a wife discovers her husband has been unfaithful, she must shoot him at midnight. Every wife knows about the fidelity (or otherwise) of every husband on the island, apart from her own. The husbands all know who's unfaithful. No-one gossips.

One day, a missionary, who always tells the truth, announces that at least one husband has been unfaithful.

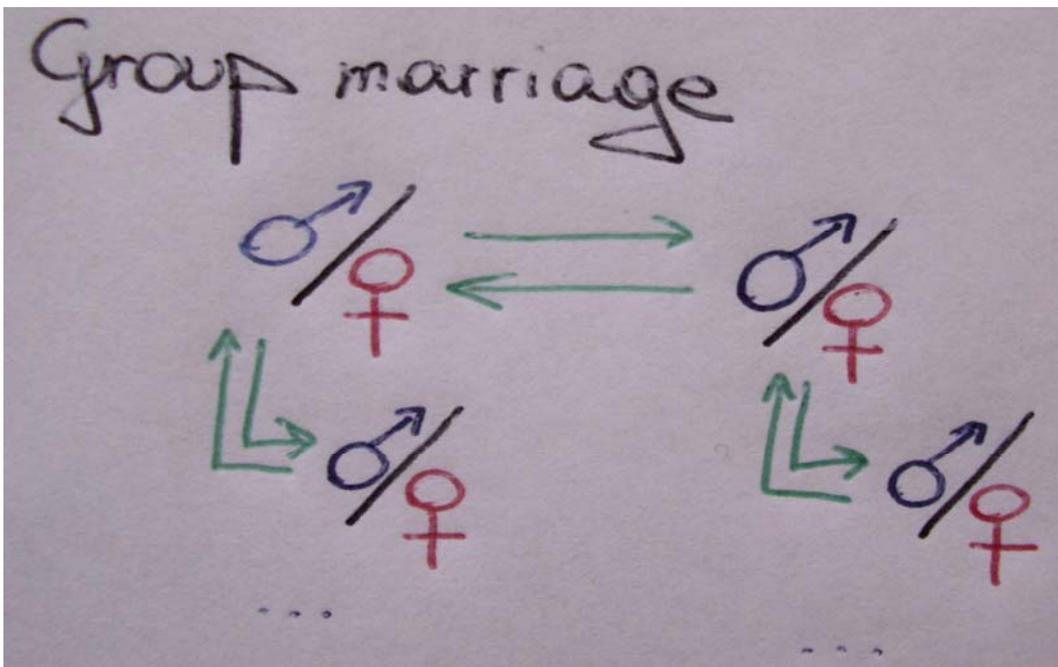
Assume you are an unfaithful husband. Do you need to leave the island for your own safety? And, if so, by when?

First three correct answers win a copy of "Pensions and Family Breakdown", by David Davison.

Good hunting!

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## Instructing a Pensions Expert

We receive queries on a regular basis as to how solicitors should instruct a pensions expert—family solicitors may deal with quite a few cases before one turns up where pensions advice may be useful, so the points to look for may not be obvious. It is also difficult for an expert who has been jointly instructed to advise on instructions once they have been given. An expert might be tempted to suggest, for example, that offsetting be considered as an alternative to pension sharing (or vice versa) - but the danger here is that we do not know the full circumstances of the case—the parties (or one of them) may be totally intransigent, and the instructions presented only achieved by hard negotiation by both solicitors—and we mustn't disrupt a carefully constructed set of instructions.

(This, of course, does not apply so single instructions, or if we are made aware that the parties are co-operating in examining all the options available to achieve a fair division of the pension assets).

So what are the main points to look for?

- 1) Proportionality—if the CE's and/or pension benefits are relatively small, a broad brush approach may be best—if a full report is not needed, the expert should be the first one to tell you. Don't be afraid to ask the question 'is it worthwhile'?
- 2) Retirement Ages—if there is one substantial and other smaller pensions, the natural course is to work from the normal retirement age of the large pension, as this would be the point at which the couple would have been expected to come into receipt of the main pension benefits had they remained together. However, it is quite common to request retirement at, for example, ages 60 and 65. It is worth noting that if benefits from a scheme are taken at other than the normal retirement age, the adjustment factors may be less than generous.

### 3) Marriage Period.

While for a long marriage, the usual position would be to ignore the effect of benefits accruing outside the marriage, we are receiving more instructions to exclude pension earned in periods outside of the marriage term.

Such an apportionment is usually reasonably easy to calculate, and can be requested as two options, which the parties can deliberate once the figures are known.



### 4) How Much?

Parties are (or should be) more interested in the expected pension benefits they will receive, rather than the percentage share of the CE, which does not usually correspond to the same percentage of total pension payable.

While a 50% share is the usual request (especially for a long marriage), we can provide a table of percentage shares, which gives the expected income for each party for each level of share (eg, 5%, 10%....95%, 100%). Hopefully, this would allow each party to be more aware of the possible expected outcome got both parties, and to negotiate from a more informed position.

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## Instructing a Pension Expert (continued)

### 5) Flexibility is Key

There is no reason not to combine a smaller pension share with offsetting, so this may solve an otherwise deadlocked position. For elderly clients, or in other unusual circumstances attachment orders may become attractive.

The main point is to avoid firming up the position too early, especially with regard to other marital assets. If these can be adjusted later in the day, this may provide a solution.

### 6) And the Unknowns?

We are happy to have the instruction “Any other matters which you think may affect the fair division of pension assets” included. This gives us scope to complete the picture, perhaps when issues emerge from reviewing the pensions that are not apparent from first sight.

\* \* \* \* \*

## “...Or a Rolls Royce....?”

“ If pensions were cars, then occupational schemes would surely be Aston Martins. The retirement benefits and insurance offered are hard to beat, though not everyone is lucky enough to have one. Your boss often contributes to the occupational scheme and the benefits offered would usually be out of reach in the private pensions market. “

So wrote Rachel Fixsen in the Independent—when? June 1998, nearly twelve years ago. Those words are even more true now, with the closure of more and more final salary schemes, and the increasing life expectancy costs.



## Services we offer

We Value  
The  
Pension

We aim to protect our clients’ long term financial position

We aim to contain our clients’ costs.

We aim to deliver effective reports.

We aim to deliver in a timely manner.

We aim to help finalise the proceedings, not to extend them.

We  
Advise  
On  
Sharing  
the  
Pension

We usually meet our aims.

Can we help to meet yours?

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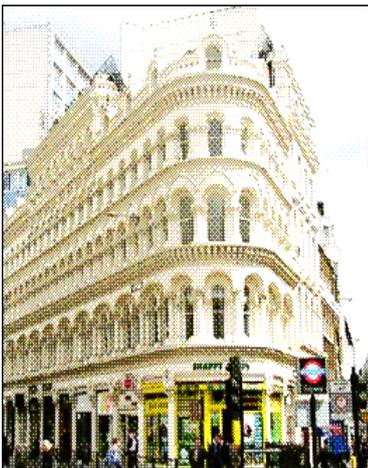
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*Windsor Actuarial Consultants provide consultancy services for solicitors and other professionals. We have a particular expertise in advising on fair divisions of pensions assets, and clear communication of the issues involved.*

*We have over 30 years of experience in pension scheme, life assurance and related areas involving complex financial matters.*

*Windsor's Managing Director, Peter Crowley is also an Individual Member of the Expert Witness Institute, and an Affiliate Member of Resolution.*

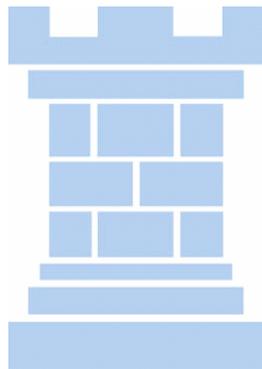
*We offer a service where we will express an initial view on your clients' pension and financial issues totally free of charge, so you can decide whether additional work and expense are justified for any particular case.*

**Free Leaflet for your Clients:**

**“Pensions on Divorce—  
Some Help at a Difficult Time”**

Many solicitors have found our free client-friendly leaflet “Pensions on Divorce—some help at a difficult time” really useful for clients who have difficulty dealing with the choices available and their long-term significance.

If you also would like a supply of these leaflets for your clients, please contact us at the above address or email us at [email@windsorac.com](mailto:email@windsorac.com).

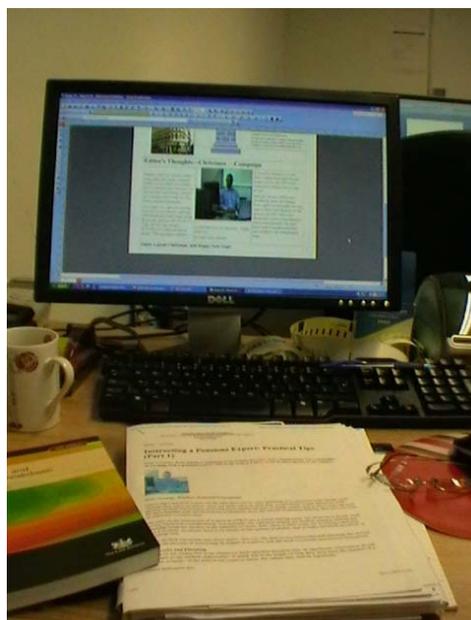


## Editor's Thoughts—One Bite of the Cherry?

In the Court Appeal's decision in Walkden, the wife was refused a share of the gain represented by the proceeds of the sale of his company in August 2007, and their settlement in June 2006.

This is consistent with the results of the Myerson appeal in 2009, where the husband had agreed to keep the shares (in his company) and wife had received cash and property.

The general principle that



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emerges is that a agreement between both parties and based on fair values as adjudged at the time of settlement would be difficult to challenge.

This reinforces the need to assess any significant pension assets at the time of divorce, as the Courts will take the view that any capital changes which occur after the split relate to subsequent experience rather than any failing in the original agreement or judgment.