



No 18 Chambers

Financial Remedies Update

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Introduction

- First of a bi-monthly update on developments in financial remedy applications
- Developments over past year
- Updated PAG Guidance
- Recent case law
- Upcoming
- Questions

Developments

- Financial applications went 100% online from 1 March 2023
- Law Commission launched a review on MCA 1973 in April 2023 which is due to report in September 2024
- On 1 December 2023, HMCTS updated its Vulnerability Action Plan which outlines strategies supporting vulnerable users in accessing court and tribunal services.
- Pilot on reporting of cases by legal journalists and bloggers began on 29 January 2024
- Changes to FPR 2010 to take effect on 29 April 2024 including changes to the costs rules

Statistics

- Median value of total asset pool is £135K including pensions
- 1 in 5 have no assets
- 63% had assets less than £500K
- 68% have owner occupied homes, but only 34% of those had equity of more than £100K
- 28% of divorcees were renting
- 43% had net household income of less than £2K per month

Statistics (ctd)

- Women in more precarious position than men
- 40% of women have pension pot of less than £50K

PAG2

- 1st Edition July 2019
- Consultation in 2022
- 2nd Edition published in December 2023
- Contents “should be treated as prima facie persuasive in the areas it has analysed although of course susceptible to judicial oversight and criticism” (W v H [2020] EWFC 810)

Changes

- Now identified 27 instead of 26 complicating issues during the essential stages of a typical case. Listed at para 2.5.
- PODES need to self-certify
- Major change is introduction of Galbraith tables in relation to offsetting
- Both reports identify 3 approaches to identify value for offsetting:
 - CE (not often appropriate)
 - A figure based on calculations for equality of income or capital;
 - A figure based on the value of the pension holder's retained present or future benefits in the absence of a pension (FAIREST)

Offsetting value

- Third option is fairest
- V₁ PAG gave following ways of approaching:
 - Defined Contribution Fund Equivalent (DCFE)
 - The realisable value
 - The fund account value or cashflow modelling
 - An actuarial value
 - A value based on amortising the fund down to a zero balance at median life expectancy (i.e. Duxbury)

Offsetting value (ctd)

- V2 supplements the “amortisation” option with:
 - Galbraith tables i.e. an approximate approach to calculating an actuarial value based on a fixed methodology which assumes medium investment risk

Galbraith tables

- Produced by Jonathan Galbraith and Chris Goodwin who are actuaries at Matthieson Consulting
- Show a ball park value on pension entitlement (pounds per annum) for comparison with non pension assets
- [The-Galbraith-Tables.pdf \(mcact.co.uk\)](#)

Galbraith tables

- the tables are arrived at by amortising a lump sum to zero on typical life expectancy using a medium level of risk for the investment return assuming a drawdown approach for pension income.

How to use guide

To value a lump sum amount of £10,000 (in today's money terms) payable to someone retiring at age 65 who is today aged 40

1. Refer to "Factors used for the valuation of lump sums payable at retirement (either sex)" in Section B of this document.
2. Look up the factor for Age at date of calculation = 40 and Assumed retirement age = 65, which gives 0.562.
3. Multiply the lump sum being valued (the **multiplicand**) by the Galbraith Table factor (the **multiplier**) i.e. $10,000 \times 0.562 = £5,620$.
4. This means that we determine **£5,620** to be required today to provide this individual with £10,000 in today's money terms when he/she is aged 65, in 25 years' time.
5. Adjustments in respect of tax and/or utility may then be appropriate, as discussed in Section G of this document.

To value an index-linked pension amount of £1,000 (in today's money terms) that is payable to a man retiring at age 60 who is today aged 45

1. Refer to "Factors used for the valuation of pensions payable in retirement (males)" in Section B of this document.
2. Look up the factor for Age at date of calculation = 45 and Assumed retirement age = 60, which gives 26.230.
3. Multiply the *per annum* pension being valued (the **multiplicand**) by the Galbraith Table factor (the **multiplier**) i.e. $1,000 \times 26.230 = £26,230$.
4. This means that we determine **£26,230** to be required today to provide this individual with an index-linked £1,000 pa pension income, in today's money terms, from age 60—being in 15 years' time—for the rest of his life.
5. Adjustments in respect of tax and/or utility may then be appropriate, as discussed in Section G of this document.

KC v VS

- [2024] EWHC 278
- Arbuthnot J
- Guide to the Summary Assessment of Costs 2021 applied
- Intended for civil proceedings
- Arbitrary reduction applied of 30% after applying Guideline rates

L v O (Stay of Order: Hadkinson Order; Security for Costs)

- [2024] EWFC 6
- Cobb J
- Husband's Barder application
- Considered the true extent of privilege at FDR
- Wife applied for Hadkinson order and security for costs

Hadkinson Orders

- i) The respondent is in contempt;
- ii) The contempt is deliberate and continuing;
- iii) As a result, there is an impediment to the course of justice;
- iv) There is no other realistic and effective remedy;
- v) The order is proportionate to the problem and goes no further than necessary to remedy it.
- See Peter Jackson LJ in *De Gafforj v De Gafforj* [\[2018\] EWCA Civ 2070](#), at [11].

Barder Applications

- Barder v Barder (Caluori intervening)
[1987] 2 FLR 480
- Previously treated as an appeal procedurally now should be made to first instance judge (PD 9A para 13)
- Remedy applies to consent orders as it is does orders after a contested hearing

Lord Brandon's conditions

- *'Lord Brandon's four conditions must still all be met before any application on the basis of new events can succeed. Those conditions are:*
- *a) New events have occurred since the making of the order invalidating the basis, or fundamental assumption, upon which the order was made.*
- *b) The new events should have occurred within a relatively short time of the order having been made. It is extremely unlikely that could be as much as a year, and in most cases, it will be no more than a few months.*
- *c) The application to set aside should be made reasonably promptly in the circumstances of the case.*
- *d) The application if granted should not prejudice third parties who have, in good faith and for valuable consideration, acquired interests in property which is the subject matter of the relevant order. ... If the challenge relies on "new events", i.e. a change of circumstances, then Lord Brandon's criteria must be complied with to the letter. If the change did not happen within a year, or if it was not unforeseeable, then the court does not have the power to intervene.'* (Mostyn J *BT v CU* [2021] EWFC 87)
- Fifth condition suggested "The applicant must demonstrate there is no alternative mainstream relief available to him which broadly remedies the unfairness caused by the new event".

Re X (Financial Remedy: Non-Court Dispute Resolution)

- [2024] EWHC 538 (Fam)
- £27M - £29M assets – £1.1M costs between W and H
- R 3.4(1A) 29 April 2024
- Court will be able to adjourn proceedings to force parties to engage in ADR without their agreement

LMZ v AMZ

- [2024] EWFC 28.
- Age difference of 48 years between parties
- H 93 – W 45
- Needs based case where principles in Juffali applied

Juffali principles (para 79)

Thus, what I collect from these decisions are the following principles.

- The first consideration in any assessment of needs must be the welfare of any minor child or children of the family.
- After that, the principal factors which are likely to impact on the court's assessment of needs are:
 - the length of the marriage;
 - length of the period, following the end of the marriage, during which the applicant spouse will be making contributions to the welfare of the family;
 - the standard of living during the marriage;
 - the age of the applicant; and
 - the available resources as defined by section 25(2)(a)
 - There is an inter-relationship between the *level* at which future needs will be assessed and the *period* during which a court finds those needs should be met by the paying former spouse.

The longer that period, the more likely it is that a court will *not* assess those needs on the basis throughout of a standard of living which replicates that enjoyed during the currency of the marriage.

- In this context, it is entirely principled in terms of approach for the court to assess its award on the basis that needs, both in relation to housing and income, will reduce in future in an appropriate case.

- Suter v Jones [1987] Fam 111. CA, where Sir Roualeyn Cumming-Bruce said the following:

“Having regard to the prominence which the consideration of the welfare of children is given in s. 25(1), being selected as the first consideration among all the circumstances of the case, I collect an intention that this consideration is to be regarded as of first importance, to be borne in mind throughout consideration of all the circumstances including the particular circumstances specified in s. 25(2). But if it had been intended to be paramount, overriding all other considerations pointing to a just result, Parliament would have said so. It has not. So I construe the section in requiring the court to consider all the circumstances, including those set out in sub-s (2), always bearing in mind the important consideration of the welfare of the children, and then to try to attain a financial result which is just as between husband and wife.”

Impact of the 2024 Budget

From 6 April 2024:

- Class 2 NICs' reduced 2p to 8%
- Class 4 NICs reduced by 3p to 6%
- High Income Child Benefit Charge increased to £60K from £50K from 6 April with a tapered charge between £60 and £80K
- Reduction in higher rate CGT from 28% to 24%. Lower rate remains 18%.
- Non-dom tax status abolished to be replaced by residency-based system.

Any Questions?

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BARRISTERS CHAMBERS