



Institute
and Faculty
of Actuaries

Valuation and Expert issues: Draft guidance for consultation

IFoA response to Pensions Advisory Group

18 July 2018

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries (IFoA) is a royal chartered, not-for-profit, professional body. We represent and regulate over 32,000 actuaries worldwide, and oversee their education at all of stages of qualification and development throughout their careers.

We strive to act in the public interest by speaking out on issues where actuaries have the expertise to provide analysis and insight on public policy issues. To fulfil the requirements of our Charter, the IFoA maintains a Public Affairs function, which represents the views of the profession to Government, policymakers, regulators and other stakeholders, in order to shape public policy.

Actuarial science is founded on mathematical and statistical techniques used in insurance, pension fund management and investment. Actuaries provide commercial, financial and prudential advice on the management of assets and liabilities, particularly over the long term, and this long term view is reflected in our approach to analysing policy developments. A rigorous examination system, programme of continuous professional development and a professional code of conduct supports high standards and reflects the significant role of the profession in society.



Institute
and Faculty
of Actuaries

Hilary Woodward
On behalf of the Pensions Advisory Group
Cardiff School of Law and Politics
Cardiff University
Law Building
Museum Avenue
Cardiff
CF10 3AX

18 July 2018

Dear Hilary,

IFoA response to the Pensions Advisory Group (PAG) consultation on Valuation and Expert issues: Draft guidance for consultation

1. The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to provide input into the Pensions Advisory Group's (PAG) consultation on draft guidance regarding the treatment of pensions in divorce proceedings. As a chartered professional body, the IFoA has a duty to speak out on issues in the public interest. It is evident that this is one such issue, in that it is important that the relevant experts are able to undertake these cases knowledgeably and consistently, to avoid perverse outcomes.
2. We therefore particularly welcome the aim to drive standardisation between the relevant practitioners in how pensions are valued during divorce cases. We note that a "one size fits all" method is unlikely to be appropriate in all circumstances given the wide variety of factors to consider. Rather than answer specific questions, we have commented on a number of themes that we have identified when considering our submission. Our comments are set out below.

Instructing a PODE (Pensions on Divorce Expert)

3. In the first instance, we suggest that anyone instructing a PODE to act on their behalf should look to ensure that they are a current member of a relevant professional body or similar (and whether they have had any complaints upheld against them) so that they are subject to a level of regulatory standards or supervision, a code of conduct and a complaints procedure (should it be necessary).
4. The final best practice guide could therefore recommend that solicitors commissioning a PODE check that the PODE is a member of relevant professional body – or if a financial adviser, that they are FCA-approved and can be found on the Financial Conduct Authority's Financial Services Register.
5. Conversely, there may be individuals who are qualified to perform the role of a PODE who are not members of a professional body. In these instances, the guidance could recommend that the commissioning solicitor uses their discretion and considers other sources of evidence as to the

suitability of a potential PODE, for example, recommendations supporting the PODE's good professional standing.

Seeking expert advice

6. Anecdotally, we understand that most divorce cases do not involve a PODE, as it would not be appropriate to incur PODE fees where pensions are small or where they are all simple DC pots. The practice guidance should therefore recognise and list any exceptions where using a PODE would not be necessary. However, we recognise the potential need for a low-cost solution and we comment on this below. Where the case is more complex or where there are higher value and/or DB pensions involved, the guidance should recommend the involvement of a PODE.
7. At present, there is no "natural" information point to direct individuals on the importance of instructing a PODE. Consideration should be given to how this might be addressed; one solution could be the provision of information to individuals, similar to that provided in existing transfer packs, through the new single financial guidance body being established later this year. The guidance could also be used to promote the concept to the matrimonial bar, who as a small group get involved in most divorces at some level, and to advisory bodies like Citizens Advice.

Valuation

8. Arriving at fair and consistent valuations provides a significant challenge in divorce proceedings, particularly when converting and comparing DC and DB pots on a like-for-like basis. The inconsistency and variance in the valuation method used can lead to perverse outcomes. For example, an individual whose DB pension has a lower value than their ex-spouse's DC fund, may get a share of their ex-spouse's pension, even though their DB pension is higher than the pension that could be purchased by the DC pot at retirement. The fact that the courts and the divorcing couples themselves can take account of whichever valuation they wish when making a decision allows them to consider a more suitable measure in cases where the Cash Equivalent would be inappropriate but it also drives inconsistency in practice.
9. Whilst there is no easy solution to the problem of choosing a suitable consistent valuation basis, we believe the suggested use of the FCA's Transfer Value Comparator (TVC) mechanism provides the "least worst" methodology in determining the starting point for a valuation, in that it would provide a sensible, reasonable figure and it would be simpler to execute in practice. TVC aims to achieve the same result as a DC Fund Equivalent (DCFE) but does not take into account default risk in DB pensions. The guidance should therefore acknowledge this potential gap and recommend that PODEs consider such risks.
10. Furthermore, equipping financial advisers to act as PODEs could make the procedure more efficient for those entering divorce proceedings if the TVC methodology is used. However in some complex and financially significant cases it may be necessary to look beyond the simplifications in the TVC calculation and PODEs should have the flexibility to adjust their valuation accordingly.
11. We believe any suggestion that schemes should necessarily offer internal pension credits is unwise, not least because of the administrative challenges involved and the potential for inaccuracies, in addition to the question over whether it is possible to "oblige" schemes to offer it.

Offsetting

12. The production of Ogden-like tables for the purposes of offsetting might make it less likely that a case-specific approach would be taken, something that is likely to be important and more appropriate in such proceedings. However we recognise the potential for a low-cost solution where a PODE is not engaged, to provide access to a DC-consistent or like-for-like valuation where pension sizes are relatively modest or where the ex-couple do not have the cash for PODE fees. The guidance should therefore acknowledge the potential use of Ogden-like tables in these circumstances, but highlight the risks of the tables being used inappropriately – and, as above, recommend in the first instance that a PODE be engaged where possible.

Should you wish to discuss any of the points raised in further detail please contact Henry Thompson, Policy Manager, (henry.thompson@actuaries.org.uk / 0207 632 2135) in the first instance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jules Constantinou', with a horizontal line underneath.

Jules Constantinou
President, Institute and Faculty of Actuaries