TO ASSIST WITH MEDIATION

CASE NUMBER ZZ20D47421

BETWEEN

[redacted] (Petitioner)

and

[redacted] (Respondent)

PENSION REPORT

PREPARED BY [redacted]

Dated [redacted] 2021

Specialist Field: Pensions and Divorce

On behalf of: [redacted] (Petitioner)
and
[redacted] (Respondent)

On joint instructions of: Compass Resolution Ltd as mediator for both parties

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REPORT SUMMARY

This summary is provided for ease of reference only. It should be read in conjunction with the main body of the Report.

Results of this Report

1. I calculate that a PSO of **51.7%** over [redacted]'s NHS pension in payment in favour of [redacted] may result in equality of pension income between [redacted] and [redacted] assuming that they both retire immediately after the PSO is implemented, noting that [redacted]s NHS pension is already in payment and based on the entirety of their pension benefit accrual. Table G in Section 5 refers.

2. The Letter of Instruction requires the calculation of amounts of non-pension capital to be used for offsetting *in lieu* of pension sharing. Full details are to be found in Section 6 of this Report, and I suggest that this section is considered in some detail given the subjectivity associated with offsetting amounts.

3. Other matters raised in the Letter of Instruction are more discursive in nature and are addressed at various points throughout this Report. I recommend therefore that it be read in full.

Data and assumptions used in this Report

The data upon which the results shown in this Report rely are summarised in Section 2. Full details of the assumptions that underpin the calculations shown herein are set out in Appendix C and the caveats to the results are provided in Appendix D.

Special considerations

The stock market is unusually volatile in light of investor reaction to the coronavirus (COVID-19). We expect pension values to fluctuate more than usual, and the results shown in this Report should be understood in this context.

While the calculations provided in this Report will continue to give a very good guide as to the quantum of any required Orders, it may be the parties decide that some fine tuning—with the benefit of up-to-date values—would be sensible as they approach the time for Court to seal any Orders.

The current market volatility also makes it essential that [redacted] should take regulated financial advice from a suitably qualified financial adviser at the earliest opportunity. This Firm cannot provide such advice, but we are very happy to recommend suitably qualified advisors who have a wealth of experience in this very complex field. In order to preserve our absolute independence when acting as a Single Joint Expert, Mathieson Consulting Ltd insists that it receives no fees nor any other form of payment for making such recommendations / referrals.

In order to ensure there is no gap between the date of decree absolute and the effective date of implementation of the PSO, the parties should not apply for decree absolute until at least four weeks after the date on the PSO (assuming that there is no appeal).

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1 BACKGROUND TO THIS REPORT

In this Section, we summarise what is required under the terms of the Letter of Instruction and set out some detail of the structure of this Report.

1.1 Introduction

1.1.1 Mathieson Consulting Limited—hereafter "the Firm" or "this Firm"—has been jointly instructed by Compass Resolution Ltd acting as mediator for the Petitioner [redacted], and the Respondent [redacted] to investigate their pension benefits in connection with their Divorce and Financial Remedy Proceedings, case number ZZ20D47421.

1.1.2 We understand that this Report has been commissioned on a voluntary basis and has not been ordered by the Court. This Report has been prepared using the same assumptions and methodologies as a Report prepared for the Court, and therefore it may be used in Court if necessary.

1.1.3 A copy of the Letter of Instruction dated 21 December 2020 is attached as Appendix A to this Report.

1.1.4 I am not a legal expert, but by definition this Report reflects my understanding of certain legal matters. I am an expert witness, not a witness of fact. If further information is produced and brought to my attention after service of this Report, I reserve the right to revise my opinions as appropriate. My Curriculum Vitae is set out in Appendix B.

1.1.5 Where it has been necessary for me to make assumptions, these have been indicated. The assumptions adopted in this Report are detailed in Appendix C.

1.1.6 Appendix D of this Report sets out various caveats and disclaimers in respect of the results shown herein. It is important that these are read in conjunction with the content of the main body of this Report.

1.1.7 This Report makes a number of references to *A Guide to the Treatment of Pensions of Divorce*, which is the report of the Pension Advisory Group (PAG), as published in July 2019 by the Nuffield Foundation. The PAG is a multi-disciplinary body including leading actuarial, legal, judicial, academic and other experts in the field of Pensions and Divorce. The establishment of this Group was sanctioned by the President of the Family Division, and is jointly chaired by Mr Justice Francis and HHJ Edward Hess. Its purpose is to provide an authoritative guide to the Courts, lawyers, and others, as to the correct treatment of pensions in divorce cases.

1.1.8 *A Guide to the Treatment of Pensions of Divorce* shall hereafter be referred to as "the PAG Report". This document may be found online at https://www.nuffieldfoundation.org/sites/default/files/files/Guide_To_The_Treatment_of_Pensions_on_Divorce-Digital(1).pdf.

1.2 The requirements of the Letter of Instruction

1.2.1 The Letter of Instruction asks this Firm to advise on the following matters:

<u>Pension sharing</u>

- The required Pension Sharing Order (PSO) to achieve equality of pension benefits on retirement (at the ages of 60 and 65[1]), including income and lump sum entitlement, based upon the current pension valuations.
    - Based on the entirety of service and pension accrual to date, and
    - Based on length of service and pension accrual from the date of (cohabitation) marriage to the date of separation.

<u>Pension Offsetting</u>

- How much 10%, 20%, 30%, 40% and 50% of NHS pension is worth in cash terms.

1.2.2 We subsequently received an email from Compass Resolution on 1 February 2021 which confirmed that the parties have agreed that there was no requirement to apportion Mrs Callahan's NHS pension to the marital period. It was also confirmed that the parties had agreed that there was no requirement to apportion either parties' Australian pension funds to the marital period.

1.2.3 We thereafter received an email from Compass Resolution dated 9 February 2021 which confirmed that [redacted] pension were all accrued within the marital period and therefore do not require any exclusions for pre-marriage and post-separation accrual.

[1] Retirement ages are discussed in Subsection 4.2 of this Report

2 PENSION BENEFITS AND DATA

The purpose of this Section is to provide a breakdown of the pension benefits held by the parties in this case, and also the other data provided to us. Details of the specifics of the parties' pensions are also specified in this Section.

2.1 Pensions other than UK State pensions

2.1.1 The following table sets out the occupational and personal pension benefits (i.e. those other than UK State pensions) that I shall consider in this Report. Each pension is discussed in detail in the notes that follow thereafter.

2.1.2 For reference, the general features of defined benefit (e.g. final salary and career average revalued earnings (CARE)) pension schemes and defined contribution (also known as "money purchase") arrangements are set out in Appendix G for information.

Table A: Summary of Pension Benefits

Scheme / Provider	Type	NRA	Current Pension	CEV	Date of CEV	Notes
[redacted] (age 61)						
NHS Pension Scheme (1995)	Defined Benefit	In payment	£37,721 pa	£794,746	19 March 2021	(1)
Fusion Wealth SIPP	Defined Contribution	From 55	-	£338,819	23 February 2021	(2)
Macquarie Super Accumulator	Overseas pension	?	-	£14,029	4 February 2001	(3)
[redacted] (age 64)						
AV Super 630 plan	Overseas pension	?	-	£216,255	28 January 2021	(3)
NHS Pension Scheme (2015)	Defined Benefit	67	£854 pa	£15,168	13 November 2020	(4)
St. James's Place Stakeholder Plan (Scottish Widows)	Defined Contribution	From 55	-	£94,568	18 May 2020	(5)

(1) [redacted] is a pensioner member of the NHS Pension Scheme as governed by the 1995 regulations, which is a public sector defined benefit (DB) pension scheme. Her pension in payment as at August 2020 was £37,721 pa which increases in line with the Consumer Prices Index (CPI).

The CEV of this pension was calculated by the scheme administrators to be £813,277 as at 13 August 2020. We have access to the NHS Pension Scheme actuarial tables and have been able to reproduce the CEV calculation precisely.

CEV calculations within the NHS scheme are age-related and as [redacted] has passed a birthday since the CEV was calculated, we have updated the CEV figure to reflect her change in age. The revised figure is shown in Table A and is the ones which we will use in our calculations.

(2) [redacted] has a defined contribution (DC) fund which is a Self-Invested Personal Pension (SIPP) with Fusion Wealth. This plan does not benefit from guaranteed annuity rates and the fund and transfer values are sufficiently close in the context of the pensions in this case that any difference is not material. Under current HMRC regulations, benefits from this pension arrangement can commence immediately as Mrs Callahan has passed the current minimum pension age of age 55.

(3) Both [redacted] have accrued a pension fund in Australia. I am not an expert on Australian pension scheme structures / legislation, but the funds both parties have accrued, seem to be similar to a UK defined contribution (DC) structure. I will therefore ascribe to these funds, all of the attributes (in terms of structure and assumptions) of a UK defined contribution scheme.

In order to convert the parties' Australian funds to Sterling we rely upon the currency conversion website www.xe.com which states that the current exchange rate is £1 = AUD 1.789055 as at 18 March 2021. The Sterling equivalent of each party's Australian fund is set out in the table below. These figures have been included in Table A and are the amounts in Sterling upon which we have based our calculations.

Table B: Converting the parties' Australian DC funds into Sterling amounts

	Value in AUD	Date of valuation	Conversion rate	Sterling equivalent
Mr [redacted] AV Super 630 plan	$386,893	28 January 2021	£1 = AUD1.789055	**£216,255**
Mrs [redacted] Macquarie plan	$25,099	3 February 2021		**£14,029**

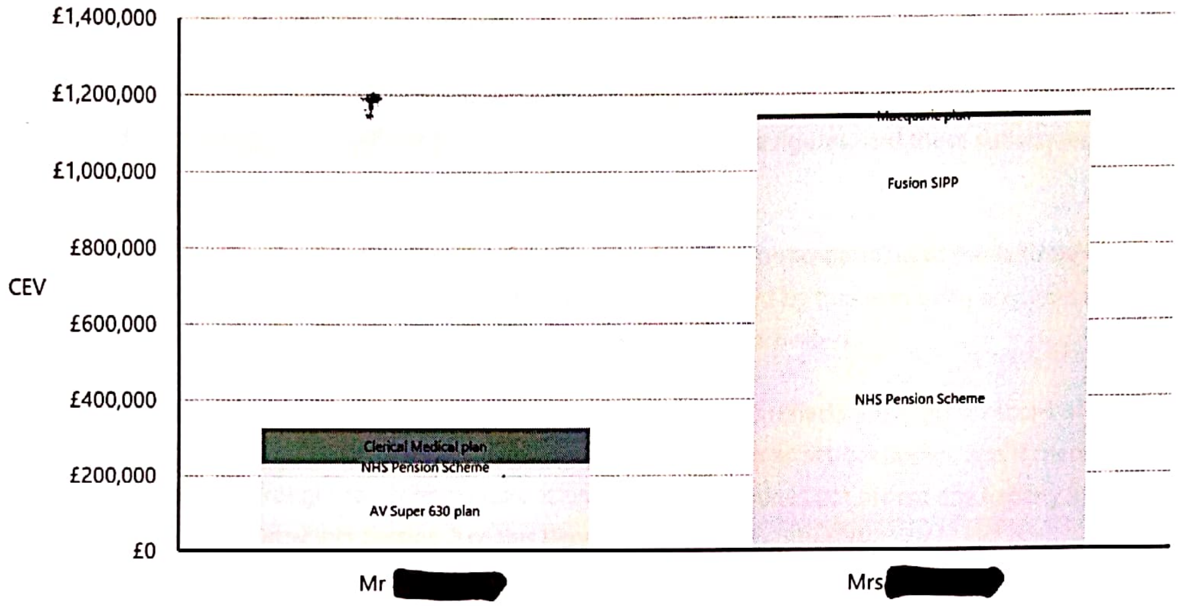
(4) Mr [redacted] is a member of the NHS Pension Scheme as governed by the 2015 regulations, which is a Career Average Revalued Earnings (CARE) scheme. In this scheme, he had accrued a pension of £854 pa as at November 2020 which is payable at his State Pension Age of 66. The CEV for this pension is £15,168 as at 13 November 2020, a figure we have been able to reproduce precisely.

While Mr [redacted] remains in active service, his accrued CARE pension will increase at a rate of CPI plus 1.5% pa, with this reducing to mere CPI linkage were he to leave the scheme which is what we will assume for the purposes of our calculations. Once in payment, his NHS pension will increase in line with the CPI.

(5) Mr [redacted] has a defined contribution fund with Scottish Widows (formerly Clerical Medical). The plan does not benefit from any guaranteed annuity rates, and the fund and transfer values are the same.

2.1.3 The chart below shows how the CEVs of the pensions are distributed between the parties:

Figure I: Distribution of CEVs between the parties



2.1.4 While the chart above is intended to give a broad indication of the distribution of pension value between Mr [redacted] and Mrs [redacted], it is noted that the CEVs of different pensions are not typically consistent. This issue is addressed in various places throughout this Report.

2.2 UK State pensions

2.2.1 We have been provided with details of Mr [redacted] and Mrs [redacted] UK State pensions. These are summarised in the table below:

Table C: State pensions summary

	SPA	State pension accrued to 5 April 2020	Maximum State pension achievable, 2020/21 terms	Further years of NICs required to attain maximum
Mr [redacted]	66	Has not accrued sufficient NI contributions for a UK State Pension		
Mrs [redacted]	66	£137.55 pw (£7,177 pa)	£167.58 pw (£8,744 pa)	6 years from April 2019

2.2.2 The "single tier" State pension that is payable to those who reach SPA after 5 April 2016 receives annual increases in line with the "Triple Lock Guarantee". This is the best of: i) price inflation (as measured by CPI), ii) the increase in the National Average Earnings Index, and iii) a fixed amount of 2.50% pa.

2.2.3 The Triple Lock Guarantee remains subject to review, but at the time of writing there has been no change in Government policy in respect thereof. It is the Firm's policy to assume that the State pension will increase by at least inflation—as measured with reference to CPI—hereafter.

2.2.4 It should be noted that under the terms of the single tier State pension, there is no scope for any State pension to be shared between the parties. I discuss my proposed treatment in respect thereof in Subsection 4.4 of this Report.

2.3 Generic comments in respect of pension data provided

2.3.1 Except where expressly indicated, I have not audited the information supplied and accordingly, I can accept no liability should Mr [redacted] or Mrs [redacted] rely upon the accuracy of the figures, and these subsequently prove to be incorrect.

2.3.2 The pension benefits set out within this Section of the Report reflect my understanding of the entirety of the parties' pension entitlements. This is in line with the information provided by the instructing solicitors and the data which this Firm has subsequently sought from the various pension providers.

2.3.3 I urge the parties to verify the information set out herein to ensure that it reflects a complete record of their respective pensions. This Report can only take account of those pensions as set out above, and if there are any omissions, this should be brought to my immediate attention. This Firm does not accept any liability in respect of pensions that are not set out within Section 2 of this Report.

2.3.4 It is no longer the standard practice of this Firm to include details of the documents used and referenced in the production of this Report. If such information is required, please advise us such that this may be sent under separate cover.

2.3.5 While the calculations provided in this Report will continue to give a very good guide as to the quantum of any required Orders, it may be the parties decide that some fine tuning—with the benefit of up-to-date values—would be sensible as they approach the time for Court to seal any Orders.

2.3.6 The different methods of settlement available when dealing with pension rights are Pension Sharing Orders, Offsetting and Attachment Orders (Earmarking). The body of this Report shall deal specifically with the method(s) as required by the Letter of Instruction. However, the features of all three methods are summarised in Appendix E for information.

2.3.7 Appendix E of this Report sets out details of how a Cash Equivalent Value (CEV) is calculated, along with how alternative methods may be used to compute values of these pensions. Unless otherwise stated, for the purposes of this Report we have treated the CEVs (and benefits) as being calculated as at the date of the Report.

2.4 Dates relevant to the calculations in this Report

2.4.1 The dates of birth of Mr [redacted] and Mrs [redacted] are as follows:

Table D: Dates of birth	
Mr [redacted] date of birth	[redacted] 1956
Mrs [redacted] date of birth	[redacted] 1959

3 HOW A PENSION SHARING ORDER WOULD MANIFEST ITSELF

This Section provides details on how a Pension Sharing Order (PSO) would be applied in practice in this case. Further generic information on this—and indeed other—methods of settlement is to be found in Appendix E of this Report.

3.1 PSO over Mrs [redacted] NHS pension in payment

3.1.1 The PSO expresses a percentage of the pension to be shared; it cannot express a monetary amount. If a PSO is made over Mrs [redacted] NHS pension, then her pension in payment will immediately reduce by the percentage stated in the Order and Mr Callahan will be awarded a pension credit calculated by multiplying the CEV by the percentage stated in the Order.

3.1.2 The pension credit must then be used to secure a pension in the NHS scheme payable immediately as Mr [redacted] has passed the Normal Retirement Age for pension credit benefits in the NHS scheme of age 60; this is referred to as internal implementation. Mr [redacted] will not be given the option to take his pension credit out of the NHS scheme for the purpose of securing a retirement income by other means (what is referred to as external implementation).

3.1.3 Under the internal implementation terms that apply within the scheme, Mr [redacted] will be granted £53.82 pa in the NHS scheme for each £1,000 of pension credit.

3.1.4 By way of example, were there to be a PSO of 10% over Mrs [redacted]'s NHS pension, her pension in payment would immediately reduce by £3,772 pa (10% of £37,721 pa).

3.1.5 Mr [redacted] would be awarded a pension credit of £79,475 (10% of £794,746) which would secure him a pension of £4,277 pa, payable immediately after the PSO is implemented and in his own name. Once in payment, this pension increases in line with the CPI.

3.1.6 It should be noted that the pension awarded to Mr [redacted] in the NHS scheme is more than the pension immediately "lost" by Mrs [redacted]. This is because:

- Mr [redacted] is over 3 years older than Mrs [redacted]. This allows the NHS scheme to be more generous in the amount of basic pension that is awarded to him as it is less expensive to secure a throughout life income of £1,000 pa for example for an individual currently aged 64 than it is to secure the same throughout life income of £1,000 pa for an individual currently aged 61.

- Mrs [redacted]'s pension has an attaching spouse's pension payable if she were to remarry and pre-decease his spouse. The pension awarded to Mr [redacted] does not have such an attaching spouse's pension. This again allows the NHS scheme to be more generous in the amount of basic pension that is awarded to him.

3.1.7 The NHS scheme will charge £1,722 (inclusive of VAT) to implement a PSO over this pension.

3.1.8 It should be noted that a PSO takes effect from the later of i) 28 days[2] after the Order is made or ii) date of *decree absolute*. There is often then a delay between the Order becoming effective and eventually being implemented. (The scheme administrators / trustees have four months in which to implement an Order from the date they receive all necessary information.) However, once implemented, this will be from the effective date of the Order and the scheme administrators / trustees will seek to recover any pension overpaid to Mrs [redacted] since the effective date.

3.1.9 For example, if a PSO of 10% was granted, reducing Mrs [redacted]'s pension by £3,772 pa and it took, say, six months to implement fully the Order, she would then have to pay back £1,886 to the NHS scheme.

3.1.10 In order to ensure there is no gap between the date of *decree absolute* and the effective date of implementation of the PSO, the parties should not apply for *decree absolute* until at least four weeks after the date on the PSO (assuming that there is no appeal).

3.1.11 It should also be noted that another feature of a PSO over a pension in payment is that the recipient (Mr [redacted]) will not be able to commute any of [redacted] for tax-free cash.

[2] Calculated as being seven days after the latest date to file an appeal which we understand to be 21 days.

4 ISSUES TO CONSIDER

Before the required calculations are shown, there are various important issues that must be considered and drawn to the reader's attention. This Section seeks to draw out these issues and provides details on how they will be addressed in the calculations that follow. It is recommended that this Section of the Report be studied in some detail before the results are considered.

4.1 Which benefits should be shared?

4.1.1 When devising a pension sharing solution, we seek to equalise the quality and type of income as well as the amount of the income in order to replicate—as far as is possible—the features of the different types of benefits held in this case, in terms of i) security of future income, ii) increases in payment, and iii) flexibility of the benefits. In addition, we try to maximise the income level of both parties in retirement.

4.1.2 With regard to the security of future income, it is noted that pensions that are provided by a defined benefit scheme are much more predictable than those derived from a defined contribution arrangement. Further, pensions provided by public sector defined benefit pension schemes may be considered to be more secure than those payable from private sector pension schemes.

4.1.3 We seek to equalise such defined benefit and defined contribution pensions separately, but this is not always possible (where a PSO over a defined benefit pension gives rise to external implementation and the resulting pension credit taking the form of defined contribution funds). However, as explained later within Section 4, we seek to use defined contribution funds to provide an income in retirement that provides a similar level of security as a pension from a defined benefit scheme.

4.1.4 In calculating equality of income, we usually try to find a solution that not only matches the amount of income retained by each party but also the increases in payment on that income and the type of income.

4.1.5 To that end, I propose to share Mrs [redacted] NHS pension which will result in both parties have similar levels of pension income derived from defined benefit arrangements[3] and similar levels from defined contribution arrangements.

4.2 Retirement ages

4.2.1 Before proceeding, I note that throughout this Report, the term "retirement" is in general used to mean "the point at which pension benefits are put into payment". This may not necessarily coincide with the point at which either party leaves paid employment on grounds of age (what is more commonly meant by the term "retirement" outside the pensions arena).

4.2.2 The Letter of Instruction asks that we equalise incomes based on Mr [redacted] and Mrs [redacted] each retiring at ages 60 and 65.

[3] I include Mrs [redacted]s UK State Pension here.

4.2.3 I initially note that both Mr and Mrs [redacted] have already passed age 60 so the former retirement age scenario is redundant.

4.2.4 When considering the ages at which incomes are to be equalised, it should be noted that Mrs [redacted] NHS pension is already in payment and any pension credit awarded to Mr [redacted] from the NHS Pension Scheme will be payable immediately. It should also be noted that there would be no benefit in assuming that Mr [redacted] would postpone taking these benefits as the NHS scheme does not offer any enhancement in respect of pension credit benefits being drawn late. We shall therefore look to equalise pension incomes immediately after any PSO is implemented[4] and we will assume that all other pensions not already in payment will be put into payment at this point.

4.2.5 In practice, this means that Mr [redacted] own NHS 2015 pension will be subject to a **6.7%** reduction for early payment becoming **£797 pa** if taken immediately. It should be noted that Early Retirement Factors can—and indeed do—change over time.

4.3 Securing an income using defined contribution pension funds

4.3.1 I have undertaken the calculations assuming Mr [redacted] and Mrs [redacted] each use their respective post-PSO defined contribution funds to purchase annuities at retirement. As described in Section 2 of this Report, I have ascribed to the parties' Australian DC funds, all of the attributes (in terms of structure and assumptions) of a UK DC scheme.

4.3.2 Annuity purchase occurs when an individual takes his/her defined contribution funds to an insurer at retirement, using these to secure an income for life. These come in many forms, with different levels of pension increase available, guarantees on the payment term and the scope to include a spouse's pension provision if this is so desired.

4.3.3 The purchase of such an annuity gives the individual peace of mind that the promised income will be paid for life—the product offers protection against longevity risk (the risk of living longer than expected and having no money left) and investment risk (that the funds held may fall in value).

4.3.4 It is our professional opinion that if overall equality is to be achieved it is not just equality of income, but also equality of the *type* of income (i.e. the rate of pension increases) and also equality of *security* of income. Defined benefit pensions may be considered to be secure forms of income, in that—other than through scheme failure—the income is subject neither to longevity nor investment risk. To this end, an annuity reflects the best possible proxy for a defined benefit pension, and so it is assumed that defined contribution funds shall be used to purchase such annuities when the parties come to retire.

4.3.5 There exist other forms by which benefits can be taken from defined contribution funds, including via income drawdown or—since 2015—through taking what are known as uncrystallised funds pension lump sums (UFPLSs).

[4] In practice, it may take a number of months for a PSO to be written and implemented.

Such approaches *may* be able to provide a higher income than does annuity purchase, but without the protection against longevity and investment risk.

4.3.6 This Report shall **not** consider any such alternative approaches on the grounds that this Firm believes that the protection provided to defined benefit pensions is best matched via annuity purchase—and not through income drawdown or other such approaches. It remains the case that the parties may wish to seek appropriate financial advice on how best to secure a retirement income from defined contribution pension funds.

4.3.7 For the purposes of the calculations that are shown in this Report, I shall assume that inflation-linked annuities—specifically, those which will receive increases in line with CPI—are purchased, such that the incomes secured increase in (broadly) the same manner as a NHS pension. Subsection 4.7 provides details of the annuity rates used and how these have been derived.

4.3.8 For the purposes of the calculations that follow later in this Report, it is helpful to determine the annuity income in retirement associated with each party's defined contribution pension funds. The table below sets out details of this annuity income:

Table E: Converting DC funds into immediate annuities

Mr [redacted]	Current amount	Immediate annuity secured
AV Super 630 plan	£216,255	£6,929 pa
Clerical Medical plan	£94,568	£3,030 pa
Mrs [redacted]		
Fusion SIPP	£338,821	£9,050 pa
Macquarie plan	£14,029	£375 pa

4.4 State Pensions

4.4.1 UK State pensions are different from the other pensions considered in this case, in terms of their accrual, the increases that they receive and the age at which these can be taken. It is my preferred approach to consider UK State pensions in isolation from the parties' occupational pensions.

4.4.2 In most cases, I tend to find that the difference in the parties' accrued UK State pensions is not material, or otherwise it is easy to conclude that both will receive the maximum or near maximum State pension upon retirement. However, in this case Mr [redacted] has not made sufficient NI contributions to qualify for a UK State Pension and therefore we are left with a difference in the parties' UK State Pension entitlement of £7,177 pa[5]. Further, there is no mechanism whereby Mrs [redacted]'s UK State pension may be shared with Mr [redacted]

[5] This is the amount of State Pension currently accrued by Mrs [redacted]. It is noted in Table C of this Report that the maximum State Pension Mrs [redacted] may accrue is £8,744 pa at her State Pension Age (26 November 2025 at age 66) in today's money terms and this is dependent upon her continuing to make NI contributions. It is understood however that Mrs [redacted] is not currently in employment and she is unlikely to return to employment. For the purposes of the calculations herein it is therefore assumed that Mrs [redacted] accrues no further UK State Pension.

4.4.3 However, UK State pensions cannot be taken early, so if we are to assume that pension incomes are equalised immediately, how can we square the circle to equalise these incomes?

4.4.4 While acknowledging that early retirement in respect of UK State pensions is not possible, I propose to calculate a hypothetical UK State pension amount for Mrs [redacted] based upon the principle of actuarial neutrality. This means that the actuarial value of a notional UK State Pension for Mrs [redacted] if taken immediately is the same as the actuarial value of her UK State Pension if taken at her State Pension Age of age 66. This will then allow me to assume that all Mrs [redacted]'s pensions are put into payment immediately and therefore incomes can be equalised immediately.

4.4.5 Using this methodology, I determine a hypothetical UK State Pension for Mrs [redacted] assuming her immediate retirement to be **£5,237 pa**.

4.4.6 It is important to stress that i) this amount is not the actual UK State pension that Mrs [redacted] will receive; and ii) a UK State pension cannot be taken until SPA is attained. I assume throughout that the UK State pension may in broad terms be said to follow CPI, and thus this figure is deemed to be comparable with the NHS pension / pension credit and the annuities assumed to be purchased by the parties from their respective DC funds.

4.4.7 Using the actuarial neutrality method above results in an early retirement reduction of around 6.5% pa. As an aside it is instructive to note that while State pensions cannot be taken early, they can be deferred. Under the "new" (post 2016) regime, for every nine weeks that an individual defers his/her State pension, an uplift of 1% will be granted. This equates to c. 5.8% for every year that the State pension is deferred which is comparable to the hypothetical early retirement reductions calculated above.

4.5 Apportionment of pension benefits

4.5.1 As described in Subsection 1.2 of this Report, whilst the Letter of Instruction in this case requires that calculations be carried out on the basis of some of the pension benefits being excluded on grounds of these having been built up outside the period of the relationship, what we call the apportionment (or appropriation) of the pensions, we subsequently received emails from Compass Resolution dated 1 February 2021 and 9 February 2021 which confirmed that the parties have agreed that no apportionment was required for any of the pensions in this analysis. Thus, all calculations in this Report will include the parties' pension benefits in their entirety.

4.5.2 Such an approach is consistent with what is set out in Subsection 12.1 of the PAG Report in respect of the apportionment of pension benefits:

> *"Whether pensions should be apportioned for a period of the relationship is a matter of judicial discretion in adjudicated cases, and a matter for the parties in uncontested cases. However, broadly speaking,* ***in needs cases*** *(where the assets do not exceed the parties' needs)* ***apportionment is rarely appropriate****; in sharing cases (where the assets do exceed the parties' needs) apportionment may be appropriate."*

4.6 Tax-free cash lump sums

4.6.1 The Letter of Instruction asks that we equalise pension income and lump sum entitlement.

4.6.2 For reference, within UK defined contribution pension schemes some 25% of the fund value at retirement can be taken as a tax-free cash lump sum (with HMRC now describing such an amount as a Pension Commencement Lump Sum or PCLS). It follows that this will reduce the funds available for annuity purchase. Additional amounts of cash can be taken under the "pension freedoms" that were introduced in 2015, but such lump sums would be taxable.

4.6.3 When it comes to defined benefit schemes, the member can choose to give up or "commute" some of the pension to provide such a tax-free cash lump sum at retirement. In this case Mrs[redacted]s NHS pension in payment is the only defined benefit scheme and, as this is already in payment, no further lump sums can be drawn from this pension or any NHS pension credit awarded to Mr[redacted].

4.6.4 As set out at various points in this Report I am no expert on Australian pensions and have ascribed the attributes of UK defined contribution fund to these pensions. It is not therefore known whether either party will be able to generate a lump sum (either tax-free or taxable) from their respective Australian funds and hence I have not considered this issue in my calculations.

4.7 Assumptions made

4.7.1 Appendix C sets out in detail the assumptions that are made when the calculations shown within this Report are performed.

4.7.2 In particular, it is noted that defined contribution pension monies and non-pension capital are assumed to increase at a rate of 2.00% pa in excess of inflation on the CPI measure. Thus we can say that "real" investment returns of 2.00% pa are to be assumed in the period to retirement.

4.7.3 Future-dated amounts shown in this Report are expressed in today's money terms with reference to CPI.

4.7.4 As outlined in Appendix C, this Report makes use of our in-house annuity calculator to estimate the terms on which the parties might purchase annuities at retirement. I set out below the annuity rates used in this Report:

Table F: Annuity rates

Age	Increase rate	Annuity rate
61 years 3 months[6]	2.5% pa (our proxy for CPI increases in payment)	2.67%
64 years 8 months[7]		3.20%

4.7.5 The calculations shown in this Report are predicated upon the assumptions set out above and discussed in greater detail in Appendix C of this Report. It follows that were different assumptions to be adopted, the results shown hereafter would be subject to change.

[6] Mrs [redacted]e.
[7] Mr C[redacted]

5 PENSION SHARING CALCULATIONS

This Section sets out the pension sharing calculations as required by the Letter of Instruction, along with details of the benefits that the parties will be expected to have post-PSO.

5.1 Equality of pension incomes

5.1.1 I calculate that a PSO of 51.7% over Mrs [redacted]'s NHS pension in payment in favour of Mr [redacted] may result in equality of pension income between Mr [redacted] and Mrs [redacted] assuming that they both retire immediately after the PSO is implemented, noting that Mrs [redacted]'s NHS pension is already in payment and based on the entirety of their pension benefit accrual.

5.1.2 The following table shows the possible pension incomes as a result of the PSO, in today's money:

Table G: Equality of pension income

Mrs [redacted]	Pre PSO	PSO	Post PSO
NHS pension	£37,721 pa	51.7%	£18,214 pa
Assigned annuity from Fusion SIPP	£9,050 pa	0%	£9,050 pa
Assigned annuity from Macquarie plan	£375 pa	0%	£375 pa
Hypothetical State Pension	£5,237 pa	0%	£5,237 pa
Total taken into consideration			**£32,876 pa**
Mr [redacted]			
NHS pension credit received		£410,997	
Immediate NHS pension awarded			£22,120 pa
Add: Own NHS pension assuming immediate retirement			£797 pa
Add: Assigned annuity income from AV Super 630 plan			£6,929 pa
Add: Assigned annuity income from Scottish Widows plan			£3,030 pa
Total taken into consideration			**£32,876 pa**

5.1.3 Following implementation of the PSO:

- The income that Mrs [redacted] receives from her NHS pension in payment will reduce by 51.7% and may become £18,214 pa.
- She retains the assigned annuity incomes from her Fusion SIPP and Macquarie plan, which are respectively £9,050 pa and £375 pa if taken immediately together with her hypothetical State Pension of £5,237 pa.
- Thus, in total, Mrs [redacted] is expected to have a post-PSO pension income of **£32,876 pa.**
- Mr [redacted] will receive a pension credit of £410,997 (being 51.7% of the NHS Penson Scheme CEV of £794,746). With such an amount, he may be awarded a pension of £22,120 pa payable immediately after the PSO is implemented.

- He retains the expected incomes from his own NHS 2015 pension, which is £797 pa if taken immediately together with the assigned annuity incomes from his AV Super 630 plan and Scottish Widows plan, which are respectively £6,929 pa and £3,030 pa if taken immediately.

- Thus, in total, Mr [redacted] is expected to have a post-PSO pension income of **£32,876 pa** and, as such, pension incomes are equalised for Mr [redacted] and Mrs [redacted].

5.1.4 Following the PSO set out in the table above, ca 70% of each party's post-PSO pension income will be derived from defined benefit pensions (including Mrs [redacted]'s hypothetical UK State Pension) and ca 30% of each party's post-PSO pension income will be derived from defined contribution funds.

5.1.5 Once again, it is noted that the pension amount shown above in relation to Mrs [redacted]'s UK State Pension has been adjusted to allow for "actuarial neutrality" i.e. converting the pension into a hypothetical pension payable immediately rather than one payable from her State Pension Age. It must be remembered that this most certainly **not** the actual UK State pension that she will receive in retirement, and what is shown above is not to be relied upon as a projection of benefits payable in retirement.

5.1.6 Mrs [redacted]'s NHS pension and Mr [redacted]'s own NHS 2015 pension have attaching spouse's pensions that are payable on death if they were to remarry and pre-decease a new spouse. The other pensions shown, including any NHS pension awarded to Mr [redacted], do not have such an attaching spouse's pension.

5.1.7 No allowance is shown in the table above for the taking of a tax-free cash lump sum upon retirement. However, each party can take 25% of his/her respective UK defined contribution pension funds at retirement as a tax-free cash lump sum if this is so desired and Mr [redacted] may be able to take further lump sums from his own NHS 2015 pension by way of commutation[8]. As noted elsewhere in this report, Mr [redacted] will not be permitted to generate a lump sum from any NHS pension credit awarded to him from Mrs [redacted]'s NHS pension in payment.

[8] "Commutation" is the process by which defined benefit scheme members elect to surrender some annual pension at retirement in exchange for a one-off cash lump sum, which is paid tax-free. The terms on which this is offered—known as the commutation factors—are set by the scheme.

6 OFFSETTING CALCULATIONS

The Letter of Instruction asks that we consider an offsetting solution in this case. Within this Section, I shall explain what is meant by this and how suitable figures are calculated.

6.1 Introduction to offsetting

6.1.1 Offsetting is a remedy used in the settlement of pension issues upon divorce whereby each party retains his / her own pension benefits in full, and an adjustment is made to the non-pension capital assets in the case to compensate for any difference in the value of the pension assets. Some additional information in respect of this process is to be found in Appendix E of this Report where methods of settlement are discussed.

6.1.2 It must be noted at this stage that offsetting is seldom seen as an "exact science", and we are aware that in different parts of England & Wales, different approaches to offsetting are adopted. Indeed, Annex 3 (Pensions) of the *Guidance on "Financial Needs" on Divorce*[9] notes that (our emphasis):

> *"where (for whatever reason) a court wishes to set off the value of a pension against other assets **<u>the methodology to be utilised is uncertain</u>**".*

6.1.3 Further, it is often the case that what different stakeholders mean by offsetting is not always the same, and to this end there is more than one way of arriving at a figure or range of figures that can be regarded as being suitable for the purposes of offsetting.

6.1.4 There are two stages to the process of offsetting, and I suggest that these are considered in turn for the purposes of the calculations that follow:

- Stage 1 refers to the valuation of pension benefits for offsetting purposes i.e. how to value the pensions in a manner that is both internally consistent and consistent with the valuation of non-pension capital.
- Stage 2 refers to how any such amounts should be adjusted in relation to tax and utility to allow a fair comparison to be made with non-pension capital amounts.

6.1.5 The method we will use will be to calculate how much in non-pension capital Mr [redacted] will require to allow him to secure an income by means of annuity purchase in the open market which would give rise to his matching the income stream received by Mrs [redacted]. I will refer to this as "offsetting to match incomes".

[9] As published by the Family Justice Council, as at June 2016
(see https://www.judiciary.uk/wp-content/uploads/2013/04/guidance-on-financial-needs-on-divorce-june-2016-2.pdf).

6.2 Offsetting to match incomes

6.2.1 The table below shows the derivation of the amount of offset capital to be used *in lieu* of pension sharing, both before and after the possible income tax adjustment:

Table H: Offsetting to match incomes	
Mrs [redacted]s NHS pension	£37,721 pa
Add: Hypothetical State Pension	£5,237 pa
Less: Mr [redacted]'s own NHS 2015 pension	(£797 pa)
Total income unmatched by Mr [redacted]	£42,161 pa
Annuity cost in respect of this amount	£1,315,916
Add: Mrs [redacted]'s DC funds	£352,851
Less: Mr [redacted]'s DC funds	(£310,823)
Offsetting amount prior to tax adjustment	**£1,357,943**
Less: Possible 20% tax adjustment	*(£271,589)*
Offsetting amount after tax adjustment	***£1,086,354***

6.2.2 By way of an explanation (prior to the tax adjustment being made):

- Mrs [redacted]'s current NHS pension in payment is £37,721 pa to which we add her hypothetical State Pension of £5,237 pa (assuming immediate retirement) and then deduct Mr [redacted]s own NHS 2015 pension assuming immediate retirement of £797 pa. Thus, Mrs [redacted] could be said to have an unmatched income of £42,161 pa.

- I determine that Mr [redacted] would require £1,315,916 to purchase an annuity of £42,161 pa (receiving increases of 2.5% pa, our proxy for CPI increases in payment).

- To this amount we add Mrs [redacted]'s DC funds of £352,851 (£338,821 in relation to her Fusion SIPP and £14,029 in relation to her Macquarie plan) and then deduct Mr [redacted]'s own DC funds of £310,823 £216,255 in relation to his AV Super 630 plan and £94,568 in relation to his Scottish Widows plan).

- Hence, we can say that before tax / utility adjustments, Mr [redacted] would need to retain **£1,357,943** more than Mrs [redacted] in non-pension capital to offset the differences in pensions between the parties based upon the "offsetting to match incomes" methodology.

6.2.3 Throughout offsetting, we refer to how much more one party needs than the other in terms of offset capital. In this case we are saying that on account of Mrs [redacted] having more valuable pension benefits than Mr [redacted], he will need to retain £1,357,943 more in non-pension capital (again prior to any adjustment for tax / utility).

6.2.4 There are two ways of looking at this, both of which arrive at the same outcome:

- From a position where the non-pension capital has already been divided and on an entirety basis, Mrs [redacted] needs to give Mr [redacted] £678,971 of her share of non-pension assets, so that overall, he ends up with £1,357,943 more in non-pension assets than her.

- Or, before any of the non-pension assets are divided, Mr [redacted] has the first £1,357,943, then the residue can be divided, so that again, he ends up with £1,357,943 more than her.

6.2.5 Thereafter, I propose to make a tax adjustment of 20% to this figure which reduces it to **£1,086,354**.

6.2.6 In providing these figures in respect of offsetting, it is necessary for me to stress the following:

- These figures are after an adjustment for assumed basic rate tax (see Appendix I);
- A further adjustment for utility may be appropriate (again see Appendix I);
- Alternative methods for offsetting could be countenanced; and
- The above figures are for guidance and discussion purposes only.

6.3 Partial offsetting

6.3.1 Thus, with reference to the analysis above and the results shown in Table G in Section 5, we can say that there are two discrete solutions in this case, being:

- A PSO of 51.7% may be made over the NHS pension of Mrs Callahan, or alternatively

- Mr Callahan may retain some £1,086,354 more than Mrs Callahan in non-pension capital, allowing for an assumed tax adjustment of 20% (and none in respect of utility).

6.3.2 Hence, every **10%** of PSO over Mrs Callahan's NHS pension equates to Mr Callahan retaining ca **£210,100** more than Mrs Callahan in non-pension capital allowing for an assumed tax adjustment of 20% (and none in respect of utility).

7 EXPERT WITNESS DECLARATION

I, Chris Goodwin, do declare that:

- I am a Fellow of the Institute and Faculty of Actuaries;
- I self-certify as a Pension On Divorce Expert (PODE), as defined by the Pension Advisory Group in *A Guide to the Treatment of Pensions of Divorce*, published in July 2019, and I confirm that I display the competencies that are detailed in Appendix D of that document;
- In carrying out the calculations producing this Report I have taken account of the relevant Actuarial Professional Standards (APSs) produced by the Institute and Faculty of Actuaries and Technical Actuarial Standards (TASs) produced by the Financial Reporting Council, in particular, APS X2 (Review of Actuarial Work), APS X3 (The Actuary as an Expert in Legal Proceedings), and TAS 100 (Principles for Technical Actuarial Work);
- I understand my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party who has engaged me or the party who has paid or is liable to pay me. I confirm that I have complied with this duty, and will continue to comply with this duty;
- I confirm that there is no conflict of interest in this case, other than that already discussed in the Report, and that I will advise all the parties without delay if, between the date of this Report and the final hearing, there is any change to these circumstances;
- I confirm that insofar as the facts stated in my Report are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and professional opinion;
- I have endeavoured to include in my Report those matters of which I have knowledge or of which I have been made aware that might adversely affect the validity of my opinion. I have clearly stated any qualification to my Report;
- This Report has been prepared in accordance with Part 25 of the Family Procedure Rules 2010 and Practice Direction 25B;
- I have indicated the sources of all of the information used;
- I have not, without forming an independent view, included or excluded anything which has been suggested to me by others (in particular, my instructing lawyers);
- I understand my Report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath or affirmation;
- I may be cross-examined on my Report by a cross-examiner assisted by an expert;
- I am likely to become the subject of adverse public criticism by the Judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above;
- I confirm that I have not entered into any agreement where the amount or payment of my fees is in any way dependent upon the outcome of this case; and
- I understand that if, after producing my Report, I change my view on any material matter, such a change of view should be communicated to all the parties without delay, and when appropriate to the Court.

Chris Goodwin BSc FIA
For and on behalf of Mathieson Consulting Limited
19 March 2021

APPENDIX A LETTER OF INSTRUCTION

Compass Resolution

<u>Letter of instruction to Actuary to carry out a pension calculation and report</u>

Mathieson Consulting Ltd

Seymour House, 15a Frederick Road,
Edgbaston, West Midlands B15 1JD

Date 21st December 2020

Dear Sir/Madam

Re[redacted]

[redacted]: NI number:...........................

[redacted]n: NI number...................................

Lynne and Peter are in mediation to resolve financial matters and reach a financial settlement including an agreement in respect of their pensions.

Mediator

John Hind, Director Compass Resolution Ltd is the mediator to whom the report is to be sent

Documents

Please find attached/enclose the following documents for your information

- Memorandum of Understanding (and specifically the division of pensions para)

This doc confidential and privileged document sets out among other things the financial options Lynne and Peter wish to explore including their pension options

- Open financial summary

These documents sets out Peter and Lynne's net assets, liabilities, pensions, income and outgoings.

Introduction

Lynne and Peter are in mediation with John Hind, mediator.

Lynne and Peter propose to instruct you to report to them in relation to their pension options.

They wish to instruct you directly to report to them (with a copy of your report to the mediator and their solicitors)

Their contact details are set out below

[redacted]

As requested by yourselves, the Actuaries fee will be payable by the mediator upon production of your invoice, in accordance with your terms

Documents

Please find attached latest cevs relating to the pensions referred to below and in their open financial summary

Pension schemes

	Peter	Lynne	
State Pension Income			From 26.11.2025
NHS		813,277	CETV 08/20 £813,277.18
Fusion Wealth		317,993	Fund value.. Money purchase sch?30/09/20
Macquarrie Invest 486		11309	$AUD 20,375.70 30/6/20 Superannuation lump sum
Clerical medical	94568		May 2020 Stakeholder
AV super 630	206423		$AUD 373,735.98 Lump sum superannuation Nov 2020
NHS	15168		Devon Doctors NHS CETV £15,168.18
Capital value of 2SP (SERPS)	?	?	

Your instructions

You are instructed as follows;

Pension sharing

Please calculate a pension division between Lynne and Peter if they wish to achieve equality of pension benefits on retirement (at the ages of 60 and 65), including income and lump sum entitlement, based on the current pension valuations.

- Based on the entirety of service and pension accrual to date, and
- Based on length of service and pension accrual from the date of (cohabitation) marriage to the date of separation.

Pension Offsetting

Please calculate how much 10%, 20%, 30%, 40% and 50% of NHS pension is worth in cash terms

Your duty

This is a joint instruction by Lynne and Peter facilitated by the mediator.

(Even though there are no court proceedings) We should be grateful if you would ensure that your report is prepared in accordance with the Family Procedure Rules 2010 and duties to the court.

Your duties to the Court are set out in more detail in the accompanying Practice Direction of Part 25; Practice Direction 25 (b) "duty of an expert, the experts report and arranging for an expert to attend Court". This can be downloaded from www.justice.gov.uk/court/procedure-rules/family/parts/part25

Your report must be verified by a statement of truth in the following form:-

"I confirm that I have made clear which facts and matters are referred to in this report are within my knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matter to which they refer".

Discussions with the parties

If you need to discuss matters with Peter or Lynne we would ask that any correspondence/emails are copied in to the other party (and the mediator).

Timetable

As there is no Court Order in place with a deadline for filing of the report, there is no set deadline.

However, Lynne and Peter are eager to progress matters so would you please provide a broad time estimate and inform Peter and Lynne should this change at any point and the reasons for this.

Your fee

Lynne and Peter have agreed that the mediator will pay your fee from funds provided by them to the mediator for this purpose based on your estimate £ 2580 incl vat

Before you begin any work please provide Peter, Lynne and the mediator with your terms of business.

We look forward to hearing from you.

Your faithfully,

John E Hind LLB.FMCA.CMC reg
Mediator. Solicitor (retr'd).Trainer
Director, Compass Resolution Ltd

APPENDIX B REPORT WRITER'S CURRICULUM VITAE

Chris Goodwin BSc (Hons) FIA

I am an experienced pensions actuary, having worked in the UK pensions industry for over 30 years.

I joined Mathieson Consulting in 2017, and I prepare and advise on Expert Witness reports in the area of pensions on divorce. I have written or peer-reviewed over 800 such cases.

Previously during my career, I have worked for both actuarial consultants and life assurance companies including Aon Hewitt, Zurich Financial Services and the Prudential.

I have served as a Scheme Actuary to a portfolio of occupational pension schemes and have advised clients on pension matters from a wide range of business sectors including financial services, banking, manufacturing, the motor trade and charities. I have also served as a trustee director for a portfolio of Small Self-Administered Schemes.

Whilst working for Zurich Financial Services, I was responsible for implementing the Pension Sharing on Divorce Regulations within the business and as a Scheme Actuary, I advised clients on how they should implement pension sharing orders. I have also provided actuarial tables and procedures to clients for transfer value calculations, including those required to calculate pension credits.

As well as being a qualified actuary, I also hold a Post Graduate Certificate in Education (PGCE) in respect of the teaching of mathematics and have taught economics to actuarial students at the Central University of Finance and Economics, Beijing.

Employment history

2017–present	Senior Actuary and Report Writer, Mathieson Consulting
2016–2017	Trainee Mathematics Teacher, University of Worcester
2013–2015	Director, Goodwin Actuarial Services
2006–2012	Senior Consultant, Aon Hewitt
2003–2006	Senior Business Development Manager, Prudential
1994–2003	Director of In-Retirement Product Development, Zurich Financial Services
1988–1994	Consultant, Bacon & Woodrow (now Aon)

Qualifications and memberships

PGCE in secondary level Mathematics with post 16 enhancement, 2017
Exempt approved authority to provide investment advice, 2007–2012
Scheme Actuary, 1997–2003 and 2007–2012
Fellow of the Institute & Faculty of Actuaries, qualified 1994
BSc (Hons) in Economics & Statistics, University of Southampton, 1988

December 2020

APPENDIX C ASSUMPTIONS USED IN THIS REPORT

As explained in the body of the Report, it has been necessary to make a number of assumptions in order to comply with the Letter of Instruction. The assumptions adopted by this Firm are set out in some detail below, and any deviations from the assumptions provided herein shall be set out clearly in the body of the Report.

Methodology for setting assumptions

C.1. In line with the PAG Report, it is the policy of this Firm that assumptions used for valuing pensions should *"broadly follow the FCA guidance on pension transfers"* (Appendix Q of the PAG report).

C.2. The FCA guidance as published in March 2018[10] refers in particular to the Transfer Value Comparator (TVC), which is used where financial advice is given upon the merits of an individual taking a transfer from a defined benefit scheme (what is in general known as a "DB to DC transfer").

C.3. This Firm agrees that this provides a suitable starting point for assumption setting, but it reserves the right to use alternative assumptions where it is appropriate to do so. In particular, it is noted that the guidance is aimed at performing calculations where an individual elects to take a (voluntary) transfer from a defined benefit pension scheme, while the calculations shown in this Report are intended to remove disparities in pensions between two divorcing parties. It is noted, for example, that the TVC makes no allowance for the risk of default that remains inherent within defined benefit pension schemes.

C.4. The specifics of the assumptions adopted are as detailed below within this Appendix.

Financial assumptions

C.5. The long-term financial assumptions used by this Firm are as follows:

Price inflation, Consumer Prices Index (CPI) measure	2.00% pa
Price inflation, Retail Prices Index (RPI) measure	2.75% pa
Investment returns prior to retirement (net of taxes and charges)	4.00% pa

C.6. It is the Firm's policy to round all long-term financial assumptions to the nearest 0.25% pa.

C.7. While these assumptions are chosen to replicate the recommended FCA assumptions that apply from 6 April 2019, this Firm believes that these assumptions can be justified on the grounds set out below:

- Future increases in the Consumer Prices Index (CPI) are assumed to follow a trend of 2.00% pa, in line with the inflation target set by the UK Government for the Bank of England (refer to http://www.bankofengland.co.uk/monetary-policy). This does not mean that CPI is expected to increase by 2.00% precisely each year; instead it is assumed that the increase CPI will on average will be 2.00% pa.

[10] This document can be found at https://www.fca.org.uk/publication/policy/ps18-06.pdf. It is noted that at the time of writing (December 2020), no more recent guidance has been published i.e. this document is still in force.

- As for future increases in the Retail Prices Index (RPI), it should be first noted that there are a number of differences between the "basket of goods" used for CPI and for RPI. In particular, RPI includes housing costs that are excluded from CPI. The averaging process used with each index is also different—RPI uses a simple arithmetic mean, while CPI uses a more mathematically-correct geometric mean.

- Historically, RPI has increased at a faster rate than CPI, and it may be assumed that this trend shall continue into the future. However, it has been announced that from 2030 onwards, the RPI measure of inflation will be "reformed" such that it aligns with CPIH (itself a variant of CPI that takes account of housing costs), and in turn we might expect to see the RPI–CPI "gap" fall away.

- To this end, while it is our current assumption that RPI will increase at a rate 1.00% pa greater than the increase in CPI, we make an allowance for the proposed 2030 change by reducing our RPI assumption by 0.25% pa. This gives rise to a long-term rate of increase in RPI of 2.75% pa.

- It is necessary to make an investment return assumption for the purposes of assigning incomes to defined contribution funds, calculating alternative values of defined benefit pensions and for the purposes of offsetting (as applicable). Empirical evidence suggests that there has been a broad relationship between investment returns and inflation.

- Based on such data, it is assumed that long-term investment returns will increase at a rate that is 2.75% pa greater than the increase in CPI, giving an overall long-term return of 4.75% pa. However, a deduction of 0.75% pa is made in respect of investment expenses, which leads to a nominal rate of 4.00% pa being assumed for investment returns (being equivalent to a "real" return of 2.00% pa over CPI).

- This assumption is supported by the FCA's prescribed projections for various asset classes in which an individual may choose to invest during the period to retirement. However, no attempt is made to suggest i) how monies may be invested to achieve the investment returns as set out above, ii) what may constitute optimal investment portfolios based upon an individual's term to retirement, nor iii) the investment risk associated with holding any portfolio that may be expected to deliver such investment returns. Nothing in this Report may be construed as being reflective of such advice.

- Further, no attempt is made to adopt any form of term-dependent investment returns: the assumption above is treated as being applicable whether the individual is five years from retirement or 30+ years from retirement.

Demographic assumptions and annuity rates

C.8. This Firm has developed an annuity rate modeller that is intended to provide an estimate of the terms that may be available to individuals who seek to purchase annuities at retirement. The rates that emerge from this modeller were shown in the body of the Report, with these rates being used for the purpose of:

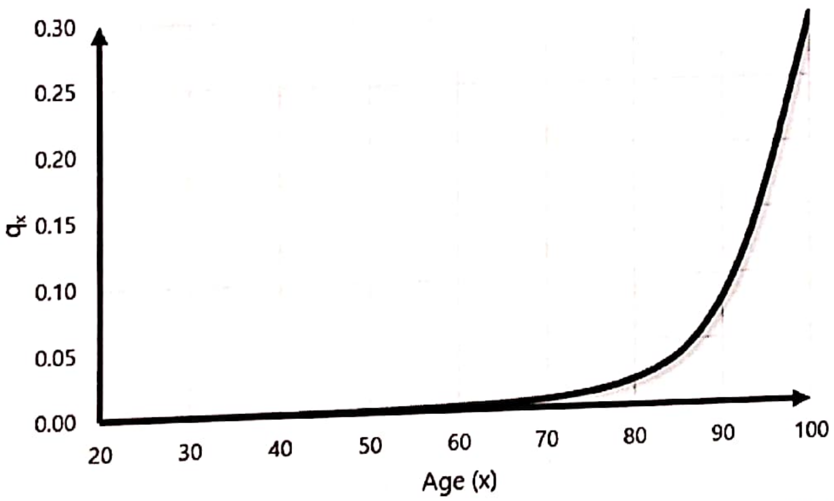
- Determining the annual income that can be derived from defined contribution funds, based upon annuity purchase at retirement age; and

- Placing a capital value—what is referred to as an "Open Market Value"—on defined benefit pension promises by determining the defined contribution funds that would be required to match these benefit promises.

C.9. The Firm's annuity modeller makes use of the following assumptions when generating annuity rates:

Discount rate	Long-term Gilt yields[11], less a term-dependent adjustment
Inflation-linked pension increases	In-house assumptions shown earlier, plus 0.5% pa
Mortality tables	Average of S2 PMA and S2 PFA tables, year of birth
Mortality projections	CMI 2017 subject to minimum 1.50% rate of improvement
Spouse's pension provision	Nil i.e. single life annuity assumed
Guarantee period	Nil
Payment terms	Continuous payment (proxy for monthly in advance)
Expenses upon purchase of annuity	No explicit allowance made; assumed met separately

C.10. The mortality tables (and associated projections) shown above give rise to the following unisex "q_x" rates, where q_x is the probability that someone aged exactly x will die before attaining age $x+1$:



C.11. These assumptions are expected broadly to replicate the annuity rates that may be available to the parties via annuity purchase from leading providers in the open market as at the date of this Report. While the assumptions used by insurers for the purpose of pricing such annuities are not in the public domain, this Firm is of the opinion that the assumptions set out above serve as a suitable proxy in respect thereof.

C.12. To this end, it is noted that these assumptions do not necessarily replicate what is set out by the FCA, as detailed in Appendix Q of the PAG report. This Firm is of the opinion that seeking to replicate—at least in broad terms—annuity rates achievable in the open market takes priority over strict adherence to published guidance, although the FCA guidance too is intended to provide a proxy for how insurers may price annuities. To this end, it is not expected that markedly different results would emerge were the FCA guidance to be followed verbatim instead.

C.13. The mortality assumptions set out above broadly reflect those used by the Pension Protection Fund (PPF) where an assessment is made of a pension scheme's solvency (whether it has sufficient funds to allow the pension benefits to be "bought out" by an insurer).

[11] Gilt yields are the yields on Government bonds (fixed interest bonds in this particular case).

C.14. While it must be noted that the rates that are produced by the Firm's annuity rate modeller are **not** expected to match precisely the terms that may be available to the parties in this case when they come to retire, the assumptions above are regularly tested against the annuity terms that are available in the open market to ensure that the figures produced lie within an acceptable range.

C.15. Absent any explicit provision for ill health annuity terms, insurers tend to make allowance for such factors as postcode and the total level of funds being used for annuity purchase—as a proxy for socio-economic status—which are not readily modelled. The Firm's modeller is intended to provide terms that are consistent with retirement in normal health for non-smokers.

C.16. Insurers may also change their annuity pricing at short notice for commercial reasons i.e. absent any movement in financial market conditions. Again, it is not possible to model such considerations and it is noted that the terms that may be secured via open market annuity purchase may fluctuate more over time than the results that emerge from the Firm's annuity modeller.

C.17. Where it is necessary to depart from the rates produced by the annuity modeller (e.g. where "impaired life" ill-health annuities are required), this will be made clear in the body of the Report, and details of the alternative terms used shall be shown along with their source.

C.18. While historically annuity providers would have provided different rates to men and women, this practice was outlawed from c. 2012 onwards on grounds of sex discrimination, and as such the modeller produces rates that are "unisex" in nature.

C.19. The annuity rate modeller takes account of expected future improvements in mortality using the projection terms shown above. In particular, this means that—based upon calculations being performed in 2020—the annuity rate available to a 40-year old who is expected to retire at age 60 will reflect a year of birth of 1980. This is believed to be superior to assuming that current annuity terms will prevail when retirement is deferred to a later date.

C.20. However, it must be noted that uncertainty exists in terms of annuity pricing where retirement is not imminent—both financial and demographic assumptions used to price annuities have changed significantly over the last 15–20 years and may be expected to do so again over the future in a manner that is not readily predictable.

C.21. No allowance is made for pre-retirement mortality i.e. calculations assume that the parties will survive to the retirement ages shown in the Report. Likewise, no allowance is made for any benefits payable upon death before retirement where these may be applicable.

C.22. Further, no allowance is made for any expenses associated with annuity purchase: the calculations in this Report assume either that i) such costs are met separately, or ii) the costs may be treated as neutral (i.e. incurred by both parties) and therefore cancel out for the purposes of the analysis shown herein.

Assumptions in respect of offsetting[12]

C.23. Where figures are shown in respect of offsetting using Method D, these are calculated using the "offsetting calculator" that this Firm has developed.

C.24. The offsetting calculator uses the same assumptions as those shown above are adopted, except that sex-specific mortality rates are used i.e. the S2 PMA tables are used to determine life expectancy in respect of males and S2 PFA in respect of females. This reflects that fact that this method relies on valuing the "interest" that each party has in the other's pension, absent the divorce.

C.25. In general, the offsetting calculator will use details of actual spouse's pensions that attach to the original member pensions where these are available. Absent such information, it shall be assumed that the pension payable to a spouse upon the death of a member will be at a rate of 50% of the member's pension.

C.26. The assumptions used in respect of the other methods of offsetting adopted (A–C) are as shown earlier within this Appendix.

Pension increases

C.27. Unless stated otherwise in the body of the Report, where pensions receive different rates of increase either before or after retirement, calculations of conversion have been performed to express all pension incomes in the same "currency" i.e. such that they all increase in the same manner to allow a fair comparison to be made. In practical terms, this means that the face value of pensions that receive more generous increases are uplifted, and reductions to the face value of pensions that are non-increasing or in receipt of less generous increases are made.

C.28. These conversions are performed with reference to the Firm's in-house factors, which take account of long-term assumptions for various measures of inflation, the ages of parties and the assumed retirement ages.

C.29. It is acknowledged that such a method of conversion reflects a simplified approach, and that far more sophisticated actuarial modelling could be used. However, it is the opinion of this Firm that the benefits of a more sophisticated model would be spurious—in light of the assumptions that need to be made—and in turn that this approach is sufficiently robust for the purpose of the calculations that are shown in this Report.

Leaving service benefits

C.30. In dealing with the pension benefits provided by defined benefit schemes, in general we allow for the "leaving service benefits" that these may provide to current active members. In particular, this means that we value the benefits that would be payable were the member to leave active service—and assume deferred status—as at the date of the report.

C.31. The rationale behind this stance is that to do otherwise would be to predicate the calculations upon an individual remaining active in a pension scheme for what is potentially some length of time into the future, which is

[12] Where deemed relevant to the calculations shown in this Report.

something that cannot be predicted. Further, CEVs are always calculated on such leaving service terms and thus the adoption of such an approach in the pension benefit amounts used herein is consistent with such a valuation.

C.32. In practical terms, this means that we assume that the benefits will increase only in line with the scheme's revaluation policy, rather than continuing to follow the member's salary. To the extent that salaries may be said to follow price inflation in the future, this assumption is not expected to have a material impact upon the figures that may then emerge.

C.33. Further, we make no allowance for any enhanced revaluation terms that active members may enjoy e.g. in the NHS Pension Scheme 2015, where the accrued pensions of active members increase at a rate of CPI plus 1.50% pa, rather than the standard CPI increases that are applied to the pensions of deferred members.

C.34. The principle of "leaving service benefits" also means that no allowance is made for any preferential terms granted to active members of pension schemes over the standard terms afforded deferred members e.g. where early retirement factors differ between active and deferred members, we shall use the latter in our calculations.

C.35. Any deviations from this policy required by the facts of the case shall clearly be stated in the main body of the Report.

Minimum pension age

C.36. Under current HMRC rules, the minimum age at which pension benefits can be taken is 55, although exceptions apply in respect of i) serious ill-health; and ii) the provisions within some of the uniformed public sector pension schemes (Armed Forces, Police, Fire). Prior to 6 April 2010, this "minimum pension age" was set at age 50.

C.37. At the time of writing, there is some uncertainty as to whether the minimum pension age will increase in the future. The Government has previously announced that this age will increase in 2028—in line with the increase in State Pension Age—to age 57, with this proposed change affecting those born after 5 April 1973.

C.38. However, this change has not yet been enshrined in legislation[13], and on such grounds this Report (unless otherwise stated) shall assume that pension benefits can be accessed from age 55 onwards in all cases.

Costs of implementation of a PSO

C.39. Where pension schemes and defined contribution pension providers will levy charges to implement a PSO, these are as detailed within the body of this Report.

C.40. In addition to any such charges levied by the pension providers, it should be noted that professional fees may also be incurred if either party chooses to seek independent financial advice, as referred to at various points in this Report.

[13] As explained at https://www.pensionsadvisoryservice.org.uk/about-pensions/pension-reform/freedom-and-choice.

C.41. For the purposes of this Report, it is assumed that any such costs will be met explicitly and not out of the current pension benefits.

Sensitivity of results

C.42. The calculations shown in the body of this Report are based upon the particular assumptions set out in within this Appendix. It follows that if different assumptions were used instead, then the results of the calculations shown in this Report are expected to change.

Taxation

C.43. All pension incomes used in this Report are gross for the purposes of income tax, and thus tax considerations may need to be taken into account by the parties.

C.44. Lump sums taken at retirement are in general paid tax-free, unless it is stated otherwise in the body of this Report.

C.45. In general, no provision has been included for any tax implications as a result of either party breaching the Lifetime Allowance or the Annual Allowance. If such issues have been explicitly considered in this Report, the detail of this is to be found therein. Further details of the operation of the Lifetime Allowance and Annual Allowance are to be found in Appendix H to this Report.

C.46. Nothing in this Report should be construed as being reflective of advice on matters pertaining to tax, which this Firm is not able to provide.

Regulatory compliance

C.47. This Report complies with Technical Actuarial Standard 100: Principles for Technical Actuarial Work (TAS 100) issued by the Financial Reporting Council (FRC).

C.48. For the avoidance of doubt, this Firm is **not** regulated by the Financial Conduct Authority (FCA) and in turn nothing herein may be regarded as being reflective of financial, investment or tax planning advice to either party. (The parties may wish to seek the advice of an IFA or similar individual who is versed in matters pertaining to such matters).

APPENDIX D CAVEATS TO THE RESULTS SHOWN IN THIS REPORT

D.1. This Report uses pension data obtained from both parties, the instructing solicitors and/or the various administrators of the pensions. We have relied on the party providing the data to ensure that it is reasonable and sufficient for the purpose of performing the calculations that are shown in this Report, but the Report will provide details where we have any misgivings around the quality of that data.

D.2. It is necessary for us to rely upon any such information provided to us for the purposes of the calculations shown within this Report. However, it must be understood that we have not carried out a forensic analysis of the data, and we cannot be held responsible if it subsequently emerges that there are errors in the data provided. We are unable to offer any such guarantees in respect of the accuracy of data provided to us from other parties.

D.3. The pension benefits considered in this case were explicitly set out in Section 2 of this Report. Where any of these pension benefits are ignored—for example, on grounds of materiality—this has been made explicit within the Report. Therefore, the information shown in Section 2 reflects our understanding of the totality of the parties' pension benefits in this case.

D.4. We have taken reasonable steps to ensure that there are no other pension benefits omitted **based on the information provided to us**, but we cannot be held responsible were it to transpire at a later date that either party has further pension entitlements of which we were not informed. This Firm accepts no liability were such a matter to arise, and no guarantees can be provided in respect of the completeness of pensions data.

D.5. Where this Report considers pension sharing to equalise incomes, it is noted that the pension benefits shown in Section 5 as being payable in retirement reflect a best estimate at the date of this Report using the data supplied to this Firm. The estimated benefits are **not** guaranteed amounts and are used to calculate the appropriate PSO(s). It should be noted that in practice, the amount of actual benefits receivable by both parties both before and after any pension share is likely to be different. Furthermore, it is assumed within the relevant calculations that the pension debits will be applied uniformly across any different tranches of accrued pension.

D.6. Any or all of the assumptions made in Appendix C of this Report may be proved by future events to be incorrect. Under such circumstances, the calculations shown within this Report may also prove to be inaccurate. This Firm can accept no liability nor accept responsibility should this transpire.

D.7. The calculations shown in this Report are predicated upon the CEV amounts that are shown in Section 2 a) being correct as at the date of this Report; and b) remaining so as at the date that any Order is implemented (assumed to be within six months of the date of this Report unless specified otherwise). However, all such cases give rise to what has been dubbed "moving target syndrome", in that CEVs of defined benefit schemes are only guaranteed for three months, and the fund values of defined contribution arrangements will fluctuate on a daily basis. To this end, both parties may wish to consider having the calculations in this Report refreshed using new CEVs just prior to the final specific quantum of any Order is calculated and sealed by the Court. It should be noted that the CEV of a pension belonging to an active member of a scheme (i.e. one still accruing benefits in the scheme) is likely to increase at a faster rate than one for a deferred pensioner member (a member who has ceased accrual in the scheme but is not yet retired).

D.8. In cases where there is a material difference in the ages of the parties, any changes in the financial and demographic assumptions between the date of this Report and the date that any Order is implemented can have a significant impact on the final outcome. The issues raised in the paragraph above are even more relevant in these situations.

D.9. Where PSOs are made over pension benefits that are not yet in payment at the date of this Report, it is noted that the holder of these pension benefits may be in a position to access these (subject to any scheme or HMRC requirements). If any such pensions are put into payment, the calculations and conclusions reached within this Report are rendered void and obsolete, unless it is specifically stated otherwise.

D.10. Where pension benefits are held in public sector defined benefit schemes (being NHS, Teachers, Armed Forces, Police, Firefighters, Civil Service and Local Government) it should be noted that the specifics of these schemes are in general in the public domain and in turn we have a deep understanding of the benefits that tend to be provided to such scheme members. However, it remains the case that all such public sector schemes have intricacies and subtleties where members may receive non-standard benefits. We shall endeavour to seek out details of any such terms that may apply to the pensions in this case, but it should be understood that this is not always possible given the information provided. As with private sector pension schemes, what is shown in Section 2 of this Report in respect of public sector pensions reflects our best understanding of the individual's entitlement therein.

D.11. It is noted that most (although not all) defined benefit pension schemes were contracted-out of the State Earnings-Related Pension Scheme (SERPS, later S2P), which gives rise to members who accrued benefits over the years 1978 to 1997 having an entitlement to receive Guaranteed Minimum Pension (GMP). In most such cases, it is very difficult to obtain precise and correct information from scheme administrators as to how GMP amounts are taken into account, in terms of i) how such amounts increase before and after retirement; and ii) how it interacts with other elements of pension within the scheme.

D.12. It is often the case that pension scheme administrators are unable to provide correct information in respect of GMP, and upon being challenged on this point, they provide conflicting information. In the vast majority of cases, if these assumptions are incorrect—or indeed if the information provided is incorrect—the difference that it might make to the calculations will be minimal. This Firm takes the view that it is not proportionate to expend significant time and cost in seeking fully to understand how the GMP may interact with other elements of pension. However, there does exist the possibility—albeit remote—that GMP considerations could make a material difference to our calculations. This Firm cannot accept any liability if such circumstances were to occur.

D.13. The calculations shown in this Report take account only of pension benefits accrued to date—unless otherwise specified—and no allowance is made for any pension benefits that may be accrued after the date of this Report. Therefore, where this Report includes pension benefits in respect of active members of defined benefit pension schemes, these are shown on a "leaving service basis" as at the date of the Report (again, unless it is made clear in the Report that an alternative treatment applies). This means that the pension amounts shown—and the calculations that follow from these—are not predicated upon the member remaining in active service beyond the date of the Report. In particular, no allowance is made for i) any salary linkage in excess of, or indeed less than, the revaluation of deferred benefits that the scheme provides, such that that both the pension debit and pension remaining after the debit has been applied are assumed to increase at the rate of revaluation of deferred benefits, regardless of whether salary increases are at a different rate; ii) the accrual of any additional pension benefits thereafter; or iii) any special terms (enhanced revaluation rates, alternative early/late retirement factors) that apply to active members but not to deferred members. To the extent that any alternative approach is adopted (e.g. in respect of the uniformed services—Police, Firefighters and Armed Forces schemes), this shall be discussed with in this Report.

D.14. This Firm has chosen not to be authorised by the FCA (Financial Conduct Authority) for provision of financial advice. Therefore, nothing contained within this Report can or should be construed as being reflective of financial advice, nor of investment or tax planning advice. Both parties may wish to take advice from a suitably qualified Independent Financial Advisor (IFA) before any settlement is reached, particularly in respect of i) which pensions should be shared (where there is a choice); and ii) where any pension credit should be invested.

D.15. With the exception of pension benefits being provided by schemes that have entered the Pension Protection Fund (PPF) at the time of writing this Report, it is assumed that all benefits stated will be paid in full and thus that no (further) pension schemes considered in this case are subject to entering the PPF, either now or in the future. It is noted that accrued pension benefits can be reduced as part of the entry conditions for the PPF.

D.16. This Report is based on the relevant legislation in force at the date of the Report. Any future legislative changes which may affect the conclusions of the Report have not been allowed for unless stated otherwise. The Firm can accept no responsibility for future changes in legislation which may affect the outcome of this case.

D.17. Where applicable, the calculations in this Report make no attempt to reflect possible changes in benefits that may arise as a consequence of the ruling made in *Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank PLC and others [2018] EWHC 2839 (Ch)*. This ruling requires that pension schemes should equalise pension benefits in respect of sex to remove any differences that exist in respect of Guaranteed Minimum Pension (GMP) earned after 17 May 1990. While this ruling may yet lead to legacy defined benefit pension scheme benefits being increased, the impact that this may have on the benefits considered in this Report lies well beyond the scope of this Report and as such no allowance is made in respect of it.

D.18. Again as applicable, this Report—and the calculations shown herein—do not take account of any changes that may be applicable in light of the ruling in the case of *The Lord Chancellor v McCloud & Others [2018] EWCA Civ 2844*, which relates to the Firefighters' Pension Scheme and the Judicial Pension Scheme, but is also expected to be applicable to the other public sector pension defined benefit pension schemes. In short, this ruling found that the approach adopted by these schemes by which individuals transferred to the current version of the scheme from 2015 onwards breached age discrimination legislation. At the time of writing, it is unclear what will happen in respect of this, but it is possible that such transfers may be unwound, and individuals may have benefits reinstated in the pre-2015 arrangements. This Report can only consider pension benefits as they stand at present, and thus no account can be taken of retrospective changes that may be made to pension benefits in light of the McCloud ruling.

D.19. To the extent that we are asked to consider "anything else deemed relevant" in the Letter of Instruction, we interpret this as an opportunity for us to raise within this Report other salient features of the case and/or suggest alternative approaches to resolving pension issues that are not expressly set out in the Letter of Instruction (where we deem it appropriate in our professional opinion to do so). It is **not** interpreted by this Firm as our being required to provide an indemnity that all such potential issues that lie outside the specific requirements of the

Letter of Instruction have been considered. Therefore, we accept no liability in respect of such wider relevant issues that lie outside the specific points raised in the Letter of Instruction.

APPENDIX E CEVS AND OMVS

The table below provides a helpful definition of how CEVs (Cash Equivalent Values) and alternative OMVs (Open Market Values) are determined.

	CEV (Cash Equivalent Value)	**OMV (Open Market Value)**
Description	The amount payable by the pension scheme in respect of the underlying benefits should the member elect to transfer these to a new arrangement	The amount of money that is required to replicate the pension promise at retirement, based upon assumed annuity purchase in the open market
Other names	Transfer value, Cash Equivalent Transfer Value (CETV), Cash Equivalent (CE) and other variations	Fair Value, True Value, Real Value, "Defined Contribution Fund Equivalent" among others
What is valued?	"Leaving service benefits" in a defined benefit scheme i.e. what has been accrued based upon leaving service at date of calculation[14]	
	Typically raw fund value in defined contribution scheme; may or may not allow for future bonuses etc.	Fund value in defined contribution scheme, but allowing for any other benefit promises (bonuses, guaranteed annuity rates etc)
Who sets assumptions?	The scheme actuary, insurer or pension provider	This Firm[15] (see Appendix C)
Comparable across pension schemes?	Generally not	Yes, and also comparable with non-pension assets (after tax / utility adjustments)
Which figure is the higher of the two?	CEVs typically fall short of OMVs in defined benefit schemes, and are usually identical in defined contribution schemes. Where the CEV exceeds the calculated OMV, we discard the latter and take the CEV as the true OMV of the promised benefits[16].	

[14] In so doing, the results of the Report are not predicated upon active members remaining thus until retirement. Further details are to be found in C.30–C.35 in Appendix C to this Report.
[15] Notwithstanding the fact that the OMVs in this Report employ assumptions set by us, it is noted that some public sector pension schemes (in particular, the NHS Pension Scheme) have taken to quoting an "OMV" of accrued benefits on annual statements sent to members.
[16] To provide an analogy here for this treatment, let us suppose we owned an oil painting that was valued by experts at £200,000, but then a potential purchaser today offered us £250,000 for it. We would regard the higher figure as the true value of the oil painting, on the grounds that this is the amount of money that we can realise immediately in respect of it. This would therefore supersede any "theoretical assessment" of the painting's value as carried out by an expert.

APPENDIX F METHODS OF SETTLEMENT

F.1. There are three remedies for dealing with an imbalance of pensions in Ancillary Relief Proceedings available to the Court, being **Offsetting**, **Pension Attachment Orders** and **Pension Sharing Orders**.

F.2. Each of these remedies has its place, although perhaps it is fair to say that Attachment Orders are becoming less common. Further, following judgements in ***Cowan***[17] and ***Maskell***[18] and more recently ***Martin-Dye***[19], practitioners are becoming increasingly wary of Offsetting.

F.3. The three methods of settlement are considered in greater detail below:

Offsetting

F.4. Offsetting allows one party to retain his or her pension rights, and *in lieu*, the other party has a disproportionate amount of non-pension assets e.g. property, cash etc.

F.5. For example, the husband has a pension arrangement with Scottish Widows which has a CEV of £100,000. He retains this pension following the divorce, and the wife retains an additional £100,000 of cash. Is this fair?

F.6. Offsetting always creates issues in terms of how much should one provide to one party in non-pension assets in lieu of the other party having greater pension assets, with the legal precedents outlined above providing some different perspectives on this. The extent to which non pension capital should be discounted against pension capital is often a contentious area.

F.7. The following is an extract of the judgement in Maskell: *"...for the judge is making the seemingly somewhat elementary mistake of confusing present capital with a right to financial benefits on retirement, only 25 per cent of which maximum could be taken in capital terms, the other 75 per cent being taken as an annuity stream. He simply failed to compare like with like."*

F.8. Other important points to consider in respect of offsetting are as follows:

- Offsetting can only be used if there are sufficient 'other assets' held by the parties with which the difference in the pension assets can be offset.
- It is possible to use a mixture of offsetting and pension sharing if the circumstances of particular cases dictate that this would lead to the fairest settlement.

[17] Cowan v Cowan [2001] EWCA Civ 679.
[18] Maskell v Maskell [2001] EWCA Civ 858.
[19] Martin-Dye v Martin-Dye [2006] EWCA Civ 681.

- Much greater flexibility exists where non-pension capital is used by way of offset. For example, the HMRC requirement that one must be aged 55 to access pension benefits does not apply to such non-pension asset amounts.

F.9. The value of the pension assets—and indeed non-pension assets as well—is very important. The Cash Equivalent Value (CEV) is a starting point. However, the CEV provided is not necessarily always considered to be a fair value of the pension asset. The following points should be considered:

- The CEV of a defined benefit pension is the amount calculated by the scheme actuary in respect of what would be paid out from the scheme if a member wished to transfer his/her pension benefits to another pension arrangement (or was required to under a pension sharing order).
- Each such scheme will use its own set of actuarial factors for calculating CEVs, with these taking into account (amongst other things) the financial market conditions prevailing at the date of calculation and the funding level of the pension scheme itself.
- It is not uncommon for the CEVs of defined benefit pension schemes to be lower than the cost of providing the same benefits in the open market through the purchase of an annuity. In particular, public sector pension schemes have CEVs that provide c. 55–65% of this open market cost of providing the promised benefits.
- Such calculated offset amounts might be further adjusted in respect of tax and utility.

Pension Attachment Orders

F.10. Attachment Orders—previously known as Earmarking Orders—are by their nature a deferred remedy. Under such an arrangement, the member would retain his / her pension benefits, but upon retirement or death, the ex-spouse would then receive a specified proportion of the pension, lump sum or death benefits, or indeed some combination thereof. Some important features of Attachment Orders are as follows:

- Attachment Orders have the capability of being varied.
- They can be used on Judicial Separation (in contrast to Pension Sharing Orders; see below).
- The Order is defeated upon death of either party, or the remarriage of the beneficiary.
- The Order comes into force upon retirement of the member, and to this end the ex-spouse has no control over when payments will be received.
- The member can wilfully or innocently frustrate the Order (***T***[20], and ***Burrow***[21]).

[20] T v T (Financial Relief: Pensions) [1998] 1 FLR 1072.
[21] Burrow v Burrow [1999] 1 FLR 508.

- It is our understanding that the member is responsible for the taxation on the whole amount. The ex-spouse is therefore not usually responsible for tax on the amount of pension received.

- The Order will specify a percentage of the payments to the member that will pass to the ex-spouse and will include pension rights earned after divorce (if applicable).

- Such an Order effectively runs contrary to the principle of a clean break.

F.11. Attachment Orders have fallen largely into disuse following the introduction of Pension Sharing Orders, perhaps as a consequence of the points raised above.

Pension Sharing Orders

F.12. This remedy is available for divorces petitioned after 1 December 2000. It is only available by Order (i.e. Court Order or Consent Order) on legal divorce and dissolution of a civil partnership; the remedy is not available for a Judicial Separation. Pension Sharing Orders benefit from being irrevocable, and they are not capable of being varied.

F.13. A Pension Sharing Order must specify a percentage of the benefits to be shared; it cannot specify an amount (under the law as applicable in England & Wales). Any percentage of a pension can be shared, up to and including 100%.

F.14. Pension schemes may charge to implement an Order, with the majority of defined benefit schemes levying such a charge. Some defined contribution arrangements also charge but this is less common.

F.15. The party with the pension rights has a pension debit applied to his/her existing pension, with this being expressed as a percentage over the accrued pension benefits (in defined benefit schemes) or funds held (in defined contribution schemes).

F.16. The beneficiary of the Order receives a pension credit, which can be transferred to his/her own pension arrangement ("external implementation"), or it can be kept within the ceding scheme ("internal implementation"). This depends upon the circumstances of the case; most pension schemes will only offer one such option.

F.17. The ex-spouse is strongly encouraged to take independent financial advice where there is an option of internal and external pension sharing, and also where there is the option of external implementation only. The choices discussed in this report are to assist the Court in achieving a fair settlement for both parties and nothing herein constitutes financial advice to either party on such matters.

F.18. If a pension is in payment, the pension debit is deducted from the member's pension upon implementation of the PSO. If there is a delay between the Order becoming effective (21 days after the Order is made; or date of *decree absolute*, whichever is the later) and its implementation then the party with the pension debit will find that he/she will receive a demand for overpayment of the pension between the effective date and the implementation date.

F.19. In order to ensure there is no gap between the date of *decree absolute* and the effective date of implementation of the PSO, the parties should not apply for *decree absolute* until at least four weeks after the date on the PSO (assuming that there is no appeal).

F.20. Under a Pension Sharing Order, the ex-spouse's awarded pension rights are separate from the member's pension rights. The ex-spouse is therefore able to access these rights regardless of the actions thereafter of the pension debit member.

F.21. Where an individual has separate pension records in the same scheme and / or more than one pension with the same provider, it is important that the Pension Sharing Annex (Form P1) is clearly drafted to make it apparent as to the precise benefits that should be shared. Delays in implementation, additional costs and *in extremis* incorrect benefits being shared may result where Orders are unclear or ambiguous.

F.22. Pension schemes have a four-month implementation period in which to implement the Order by transferring the pension credit to the receiving member. This period begins following the later of i) the effective date of the Order (i.e. that specified in the Annex); and ii) the date at which the scheme has all the information required to implement the Order. Within this implementation period, the CEV of the benefits will be recalculated (at what is called the "valuation day").

APPENDIX G FEATURES OF DEFINED BENEFIT AND DEFINED CONTRIBUTION PENSION SCHEMES

This Appendix provides some useful generic information on the operation of pension schemes in the UK.

Defined benefit pension schemes

G.1. Defined benefit schemes have traditionally been seen as the best type of pension offered by employers. They pay a pension income from a specified retirement age, based on a prescribed formula which is usually linked to salary and service within the scheme.

G.2. Examples of such defined benefit arrangements include "final salary" and "career average revalued earnings (CARE)" pension schemes. CARE schemes differ from final salary schemes in that the pension that is accrued each year is based upon the member's salary *in that particular year*, increased in line with inflation on some specified measure to retirement. To the extent that salaries might be expected to grow at a faster rate than price inflation, CARE schemes are expected to provide lower benefits in retirement than final salary schemes.

G.3. In general, contributions are payable by both the member and the employer, but the "benefit promise" that exists is not directly linked to the actual contributions paid. Defined benefit pension schemes maintain a fund to provide members' benefits as they fall due, but such monies are pooled, rather than being held in individual member accounts. It is also noted that most public sector schemes are unfunded; however, these enjoy the security of Government backing instead.

G.4. Retirement dates differ from scheme to scheme but are usually at age 60 or 65 years. Should an individual wish to take early retirement then reductions are usually applied to the pension benefits because they are payable for a longer period. Likewise, schemes may offer an uplift where retirement is postponed beyond the scheme's Normal Retirement Age (NRA).

G.5. Individuals may also take a tax-free cash lump sum at the time of retirement. The amount will vary from scheme to scheme but is usually taken by giving up part of the pension—what is known as "cash commutation". In some schemes, usually those in the public sector, members may be entitled to an automatic lump sum in addition to the pension.

G.6. Defined benefit schemes have made news headlines over recent years: the majority of private sector employers have now closed these schemes for new employees due to the risks and the financial burden. A significant number of companies have also closed their defined benefit pension schemes to existing employees, and even where this has not occurred it is common for employers to have made significant changes to benefit structures to reduce risk and the expected costs of providing pension benefits. This includes the public sector pension schemes, which have seen two rounds of benefit reform since the early 2000s.

G.7. Should the employer fail and there are insufficient assets to provide all of the benefits earned to date then the scheme will usually enter the Pension Protection Fund. (PPF). Within the PPF, a level of benefits is provided which is usually less than those under the scheme. Full details of the benefits provided may be found at www.pensionprotectionfund.org.uk.

Defined contribution pension schemes

G.8. Defined contribution (or "money purchase") arrangements in general comprise a fund based on contributions paid by the member and/or the employer, and the member receives whatever this fund can provide at retirement. Various options exist at retirement by which the member can convert the pension monies into retirement benefits.

G.9. Examples of defined contribution arrangements are group money purchase schemes and personal pensions, although other more complex arrangements such as Self-Invested Personal Pensions (SIPPs) and Small Self-Administered Schemes (SSASs) also exist.

G.10. Funds can be accessed from age 55 years onwards under current HMRC rules, although this age is expected to be increased in line with the proposed increase in the State Pension Age (to 57 in 2028).

G.11. At the time of taking benefits from a defined contribution pension arrangement, the individual can usually choose to take 25% of the value of the fund as a tax-free lump sum. The individual can also choose to commence drawdown from the residual fund rather than purchasing an annuity with it.

G.12. Some older defined contribution arrangements provide guaranteed annuity rates which allow the member to convert funds into pension in retirement at a specified rate. Such guarantees are often very valuable and can provide an annuity income well in excess of what can be achieved by way of an "open market" option.

G.13. Notwithstanding the above, there is no guarantee regarding the pension income which may be received by an individual from such a defined contribution arrangement. The level of this income will depend upon:

- the level of contributions paid in by the member and / or employer;
- the investment performance of the funds held within the arrangement;
- the age at which the funds are accessed (with higher annuity terms being available the later that retirement occurs);
- the cost of annuities at the time of annuity purchase; and
- any ancillary benefits purchased as part of the annuity (including spouse's pension provision, guarantee periods and annual increases in the pension income).

G.14. Defined contribution pension arrangements provide each individual with his/her own pension "pot" and to this end any failure of the sponsoring employer is not expected to lead to the member's accrued funds being compromised in any way.

APPENDIX H LIFETIME ALLOWANCE AND ANNUAL ALLOWANCE

This Appendix provides a summary of the two main instruments of pensions taxation, being the Lifetime Allowance and the Annual Allowance.

General remarks

H.1. It is noted that this information is intended to be educational and indicative; it is not intended to reflect any form of advice that can be relied upon. The reader is strongly encouraged to seek tax advice from one who is well-versed in pensions matters where LTA and/or AA issues are deemed to be pertinent.

H.2. Nothing in this Appendix should be taken as being contradictory to the terms specified in HMRC's pensions tax manual, and in the event of any conflict between these documents, the HMRC tax manual will prevail. In particular, this Appendix reflects a summary of how the LTA and AA operate, with a particular focus on the implications pertaining to pension sharing. It is not intended to be exhaustive in respect of pension tax matters.

H.3. The information shown herein was correct as at December 2020 and may be subject to change.

Lifetime Allowance (LTA)

H.4. The Lifetime Allowance is a limit to the total amount of tax-efficient pension benefits that an individual can accrue over his/her lifetime. It was introduced on 6 April 2006 (what was then known as "A-Day"). Details of LTA amounts applicable in successive tax years are shown in the table below:

Tax year	LTA amount
2006/07	£1,500,000
2007/08	£1,600,000
2008/09	£1,650,000
2009/10	£1,750,000
2010/11	£1,800,000
2011/12	£1,800,000
2012/13	£1,500,000
2013/14	£1,500,000
2014/15	£1,250,000
2015/16	£1,250,000
2016/17	£1,000,000
2017/18	£1,000,000
2018/19	£1,030,000
2019/20	£1,055,000
2020/21	£1,073,100
2021/22	£1,078,900

H.5. Pension benefits are tested against the LTA as follows:

- Defined contribution arrangements with reference to their fund value when benefits are taken; and
- Defined benefit pension amounts are multiplied by 20 upon being put into payment to place a value on these (with any automatic lump sums been taken at face value).

H.6. Any excess over the LTA gives rise to a tax charge that is calculated depending on how these excess benefits are taken (with the outcome being neutral from a tax perspective):

- If taken as a cash lump sum, the excess is subject to a 55% tax rate; or
- If taken as an income, it is taxed at 25% in addition to the normal income tax regime.

H.7. HMRC provide a number of protections against the LTA, some of which are no longer available to new applications. Details of these can be found at https://www.gov.uk/guidance/pension-schemes-protect-your-lifetime-allowance. The impact of a Pension Sharing Order on the pension debit member (that is, the one whose benefits are being reduced) can be affected where some such protections are held.

H.8. In general, pension credits received following a Pension Sharing Order are tested against the LTA of pension credit member (the recipient). However, where a PSO is made over "crystallised" funds—those in respect of pensions in payment or defined contribution funds where the tax-free cash has been accessed—a "disqualifying pension credit" is payable.

H.9. It is possible for pension credit members to avoid having any such disqualifying pension credits giving rise to any LTA tax charge at retirement (on the grounds that such funds have already been tested while in the hands of the pension debit member).

H.10. Where parties are assumed to retire in the future, it is necessary to estimate the LTA that might then be applicable. It can be seen from the previous table that the amount of the LTA has changed significantly since its introduction in 2006, and indeed that it remains significantly below the maximum amount attained in 2010/11. There is no certainty whatsoever on how the LTA may change in the future: this is predicated upon political considerations besides economic ones.

H.11. However, since 2018/19 the LTA has been increased in line with price inflation on the Consumer Prices Index (CPI) measure. Absent any evidence to the contrary, it is the policy of this Firm to assume that the LTA shall follow CPI hereafter, but it must be remembered that there is no requirement that it shall do so.

Annual Allowance (AA)

H.12. The Annual Allowance is a limit to the total amount of tax-efficient pension benefits that an individual can accrue over during each tax year. It too was introduced on 6 April 2006, and the table below shows the AA amounts that have been applicable in the tax years since then:

Tax year	AA amount
2006/07	£215,000
2007/08	£225,000
2008/09	£235,000
2009/10	£245,000[22]
2010/11	£255,000
2011/12	£50,000
2012/13	£50,000
2013/14	£50,000
2014/15 onwards	£40,000

H.13. It is noted in passing that tax year 2015/16 was effectively split into two "Pension Input Periods" around the 2015 Summer Budget (on 8 July 2015) so there was in essence a double allowance in that tax year.

H.14. It is not typically necessary for an assumption to be made on how the AA may develop in the future, and it is reasonable to assume that a figure of £40,000 shall prevail hereafter.

H.15. While the AA has remained unchanged in recent years, it is noted that two further changes have been made to the regime:

- From 2015/16 onwards, a Money Purchase Annual Allowance (MPAA) applies to those who have flexibly accessed pension monies, with a view to avoiding the "recycling" of such amounts and subsequent double tax relief. The MPAA is set at £4,000.

- From 2016/17 onwards, the AA is reduced for high earners. For the tax year 2020/21, those who have a "threshold income" of over £200,000 and "adjusted income" of over £240,000 will be subject to a tapered AA, which may reduce to just £4,000. Further details are to be found at https://www.gov.uk/guidance/pension-schemes-work-out-your-tapered-annual-allowance.

H.16. Accrual of pension rights are tested against the AA each year on the following basis:

- Defined contribution arrangements with reference to the contributions paid in; and

- A defined benefit pension is taken at the end of the tax year, less the start year figure uplifted by CPI, and is then multiplied by 16 (with lump sums accrued tested at face value).

[22] In truth, the tax-efficient amount that could be saved in 2009/10 was smaller, as an additional charge—the Special Annual Allowance Charge—was also applicable prior to the reduction of the AA to £50,000 in 2011/12.

H.17. An AA tax charge arises on such amounts in excess of the AA each year. The excess is added to the individual's taxable income for the year and is thus payable as an additional income tax charge. It follows also that any further pension contributions made during that year will cease to attract any tax relief.

H.18. A three-year "carry forward" of unused AA entitlements is permitted by HMRC which may avoid an AA charge when a one-off event has given rise to pensions accrual in one year in excess of the AA.

H.19. HMRC permits pension schemes to absorb the cost of AA charges through a reduction in benefits payable at retirement (in cases where the AA charge exceeds £2,000). This regime typically applies to defined benefit schemes but may also extend to some defined contribution schemes. Such "scheme pays" arrangements tend to be scheme-specific and the operation of these is often complex (especially where pension sharing is to apply also).

H.20. Where a PSO is made over a pension in a UK pension scheme, the pension credit that is payable to the member is classed as a transfer, rather than a contribution. To this end, it is **not** tested against the receiving member's AA. (It is noted that different treatments may apply where overseas pensions are involved; such eventualities are very rare when pension sharing is considered.)

APPENDIX I AMOUNTS USED FOR OFFSETTING PURPOSES

This Appendix provides information on how amounts that emerge in respect of offsetting should be used and how they might be adjusted in respect of tax and utility. It should be read in conjunction with the relevant Sections of the Report.

Why not simply use the CEVs?

I.1. The text in the body of this Report alludes as to why in general CEVs cannot be used as a basis of valuing pensions for offsetting. The reasons are as follows:

- The CEV of a defined benefit pension is calculated in such a fundamentally different way to the CEV of a defined contribution fund. This means that any attempt to compare such pensions using the CEVs at face value simply will not work. In other words, one cannot compare £10,000 of capital in a defined benefit scheme with £10,000 of capital in a defined contribution scheme: such amounts would be expected to provide totally different incomes.

- Each defined benefit scheme will use its own set of actuarial assumptions to determine a CEV, and this renders meaningless any comparison of one defined benefit scheme's CEV with that of another defined benefit scheme. In other words, one cannot compare £10,000 of capital in defined benefit scheme A with that of £10,000 of capital in defined benefit scheme B. The seemingly identical CEVs may therefore represent totally different pension incomes.

- The CEV of a defined benefit pension does not typically represent the cost of buying the same income on the open market, outside of the pension wrapper. However, if one party is to retain non-pension capital, then buying an equivalent income stream on the open market is often what he or she will have to do. Thus, one cannot compare £10,000 of capital in a defined benefit scheme with £10,000 of capital in a bank account or share portfolio.

I.2. By contrast, in light of the "pension freedom" rules that were introduced in 2015, a CEV in respect of a defined contribution pension arrangement *can* be thought of as being the same as monies in a bank or building society account, except that tax need be paid in order to access such funds. Francis J—sitting as a deputy in the High Court at the time—came to the same conclusion in ***SJ v RA***[23].

I.3. Arguably, the CEV of a defined benefit scheme may be thought of in the same way following the introduction of the "pension freedom" rules, but this would require what is known as a "DB to DC transfer" i.e. cashing in a defined benefit pension promise. Such transfers may or may not be in the individual's financial interest, and it is noted that both the transferring and receiving pension arrangements will require that formal financial advice is taken from an IFA before permitting any such transfer to proceed. It is not the policy of this Firm to assume that any such transfer is taken.

[23] SJ v RA [2014] EWHC 4054 (Fam).

Why should there be any adjustment for income tax or utility?

I.4. Cash outside of a pension fund is potentially more tax efficient than pension capital, as the latter can only be used to provide taxable income—after the tax free lump sum has been taken—whereas non-pension capital can be used to generate income with no tax. Alternatively, a fund of £10,000 of cash can be converted into a pension fund of £12,500, after basic rate tax relief.

I.5. Given the choice between having £10,000 of cash or £10,000 of pension funds, most people would elect for £10,000 of cash. This is because it is more flexible, accessible, and liquid than monies in a pension fund—this is what is often referred to as the "Utility Argument". However, it must be noted that this argument is not always applicable, as discussed below.

I.6. It is therefore necessary to adjust any calculated amount of non-pension capital to be used for offsetting purposes to reflect i) the greater tax efficiency compared to any equivalent amount in a pension fund; and ii) the greater utility, where this is applicable.

I.7. With regards to the first adjustment for income tax, there is some consensus that the adjustment is either 15% if the person with the greater pension income will be a basic rate taxpayer in retirement or 30% if they are forecast to be a higher rate taxpayer in retirement. These amounts reflect the current tax rates and assume that 25% of the pension funds can be taken tax-free.

I.8. It is possible that if the pension assets are very small indeed, and the State pension is minimal, that the adjustment for tax could be less than 15%. It is also possible that the adjustment for tax could be greater than 30%, if the pension holder is in the 45% tax bracket, or it could be between 15% and 30% if the pension straddles basic and higher rate tax. It follows also that if the pensions are in payment then no tax-free cash lump sums can be accessed and rates of 20% or 40% should apply.

I.9. It is the view of the Pension Advisory Group—as set out in the PAG Report—that any adjustment for utility is what is called a section 25 factor i.e. it depends upon the specific facts of the case. Ultimately it is for the Court to decide upon what utility argument exists, having considered all of the facts of the case. Some of the factors for assessing the size of the utility argument are set out as follows:

- If the non-pension capital being offered relates to equity in the Former Matrimonial Home, and this meets a very basic housing need, it could be argued that such an asset is perhaps almost equally as illiquid as a pension fund and thus the quantum of the utility adjustment could perhaps be very small.

- By contrast, if the non-pension capital being offered is cash which is superfluous to needs, then the quantum of any adjustment could be significantly greater.

I.10. In bringing together the above, the Family Justice Council (FJC) "Needs" paper for Litigants in Person[24] suggests that perhaps an adjustment of between 20 and 40% need be made for tax and utility. PAG proposes that the

[24] The document can be found at https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/guidance/sorting-out-finances-on-divorce/.

adjustment should be broken down and proposes that adjustment for tax alone should be between 15% and 30% (as stated above), dependent upon whether the member is expected to pay tax at current basic or higher rates. In addition, there **may** be an adjustment for utility—based on the specific facts of the case—of between 0% and 25%[25]. Therefore, PAG's view is that the overall adjustment for both tax and utility could be between 15% and 55%.

I.11. PAG discusses adjustments in respect of utility in some detail in Paragraphs 7.37–7.43. The key observations are as shown below (emphasis as per PAG report itself):

- "Unlike tax adjustments, adjustment for utility is **not a matter on which the PODE should be expected to comment...**" (Para 7.38);
- "**It is impossible to come up with a 'rule of thumb'** formula which may assist parties with how they might apply a utility adjustment; much will depend on the facts of the case. Indeed, in some cases it may be appropriate to make no further adjustment." (Para 7.40);
- "[PAG's] anecdotal observation is that in many cases pensions appear to have been excessively adjusted for perceived utility" (Para 7.41 (g)); and
- "Dependent on the facts of each case **a range of 0%–25% could potentially be argued** to be appropriate as a further adjustment to pension values for offsetting purposes where the application of a utility adjustment is considered justified on the facts of the case." (Para 7.42).

I.12. It should also be born in mind that the adjustments for tax / utility may potentially vary between the parties. For example, if one party has a defined contribution fund very close to retirement and the other party has a defined benefit pension with a long period to retirement, any such adjustment for utility may be different for one party. Values used for offsetting in the body of the report assume a uniform rate of adjustment for tax.

I.13. The above explanation of offsetting is a distillation of a very complex thought process. Full details of this thought process and associated considerations can be found in the PAG report, and it is recommended that the offsetting sections of the report be read in conjunction with the PAG report.

[25] The factors which PAG suggest may be considered when considering the Utility discount, are set out on pages 23–24 of the PAG Valuation and Expert report, but very firmly concludes that the adjustment for utility should remain within the discretion of the Court using S. 25 factors.