white paper

Rhys Taylor 19 May 2026

Pre-acquired Pensions

How should practitioners approach the matrimonialisation of pre-acquired pensions, and what implementation, appeal and set-aside issues are now arising in practice?

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The post-*Standish* conundrum in respect of pensions

- Trite that "invasion" of pre-acquired/non-matrimonial pensions permitted to meet needs.
- But what of sharing principle being applied to pre-acquired/non-matrimonial pension?
- Pre-*Standish* very hard to matrimonialise a pre-acquired/non-matrimonial pension, as by definition pension pots not mingled.
- Does it even matter?
  - May effect quantum, especially with removal of LTA limit.
  - Character re needs or sharing possibly key on set aside issues.

The post-*Standish* conundrum in respect of pensions

- Move from emphasis on mixing to *Standish* [52] "…how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them. That is, matrimonialisation rests on the parties, over time, treating the asset as shared."

- Duckworth passage expressly endorsed [53] " … matrimonial property … is governed by the parties' intentions and how they treat the relevant asset over a period of time. Thus where a party has demonstrated an intention to use an inheritance for the benefit of the family, by translating it into actual use and enjoyment, the parties have elected to treat it as matrimonial property, even if its origin was from outside the marriage."

Conundrums in practice

Conundrum One (with thanks to Joe Rainer "A Critical Take on Standish" [2025] 3 FRJ 232)

- Childless 8-year marriage, parties in early forties
- Substantial pre-accrued pensions on one side
- Pension holder says only share pension accrued during the marriage
- Other party wants to share all on basis that they treated the pension as shared
- The arguments
  - Holder says ridiculous
  - Claimant says we intended to be married until old age, whereupon we would live off our pensions which included pre-acquired and matrimonial.
  - Retort – only ever intended to share if we remained married, never intended to share if divorced!

Conundrums in practice

Conundrum Two

- H is 75, W is 55
- 10-year marriage
- W previously in blue-chip career with great prospects and good company pension
- H was retiring when parties married. H has substantial means and very valuable pensions
- Parties' agreed W would give up her career so the parties could enjoy life together
- W alleges that H said in the Dog & Duck pub "Don't worry about your career my darling, I just want us to be together and we can live off my pensions"
- W out of marketplace for last 10-years, will not be able to rejoin job-market at same level and has lost 10 key years of pension contributions.
- Matrimonialised?

Conundrums in practice

Conundrum Three

- 15-year marriage, no children
- H 63, W 60
- H has substantial pensions (£3m) and W has modest pensions (£35k)
- Ancient conversation in The Rock Inn "We will share everything equally in our marriage, everything comes and goes from the same pot."
- In reliance upon this W places a property which she is buying with her inheritance in joint names?
- Matrimonialsied?

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Conundrums in practice

Conundrum Four

- 15-year marriage, no children
- H 63, W 60
- H has substantial pensions (£3m) and W has modest pensions (£35k)
- Ancient conversation in The Fox and Hounds "If I contribute my £1,000,000 of cash to purchase of a family home in joint names will you treat your £1,000,000 pension as a joint asset, even if it remains in your name."
- In reliance upon this W places a property which she is buying with her inheritance in joint names?
- Matrimonlised?

BS v HC [2026] EWFC 20 (B)

- HHJ Hess – citable HHJ level case
  - Debate about what accrual said to fall within the marriage and what before
  - Straight-line vs deferred pension method discussed
  - Court did not rely on one mathematical formula
  - Refers to *Hart v Hart* [2017] EWCA Civ 1306 – court has broad discretion and fairness has wide horizon
  - Broad assessment on complex facts, 55% treated as matrimonial and therefore subject to sharing principle
  - But also discussed matrimonialisation
    - Conundrum Three – no matrimonialisation
    - Conundrum Four - matrimonialisation

BS v HC [2026] EWFC 20 (B)

- “[34] …Rights in a pension, unlike cash or property, rarely become ‘mingled’ during a marriage. They remain in the sole name of the person who earned those pension rights – that is just a feature of how pensions are held. They are never put into joint names. Where, as here, the pension rights have not been drawn down at all then they remain an in-mixed and un-utilized asset, but the source of future income. What does it take for it to be fair to treat such an asset as having been matrimonalised? Mr Warshaw has argued that, since the pension right remains untouched, it can in no sense meet the Supreme Court test in *Standish* because it has not yet been translated into ‘actual use and enjoyment’.”

BS v HC [2026] EWFC 20 (B)(continued)

- “In my view, whilst I recognize that these words do appear in the *Standish* judgment, this is too literal an interpretation. An actual use and enjoyment provides a clearer example, but a common intention to put the asset into use and enjoyment in the future could also in my view give rise to matrimonialisation if that intention was relied upon by the other party to his or her detriment. If I contribute my £1,000,000 of cash to purchase a family home in joint names will you agree to treat your £1,000,000 pension as a joint asset, even if it remains in your name” and the other spouse agrees then (notwithstanding that the pension has not yet been put into account use and enjoyment) that would amount to matrimonialisation in my view. A different conclusion would not be fair.”

“common intention” issues

- Divining intention – inevitably borrowed from implied trust law:
  - Express words – who said what, where and when?
  - But difficulty in proving the conversation in the Lamb and Flag took place
  - Inference of a common intention from actions alone?
- Importing requirement of detriment?
  - Why?
  - Too restrictive or sensible brake?
  - Where else does that apply in context of matrimonialisation?
- Extent of matrimonialistion – what is the measure? Comparisons with prop estoppel?
  - Meeting the expectation now trumps alleviating the detriment, unless result disproportionate.
  - What of a big promise in a short(ish) marriage?

Implementation

- “Taking effect” vs “implementation”
- No man’s land – can go on for months or years
- Template order tries to nudge people along
- Implementation period has to be commenced, with notice confirming commencement.
  - Service of prescribed documents
  - Payment of fee, if required
  - Notification of destination scheme

Implementation

What if:

- Someone chooses not to co-operate:
  - *AP v TP* [2025] EWFC 190 (B)
  - The Reluctant Pension Credit Member, David Salter, [2026] 1 FRJ 39
    - Thwaite/set-aside,
    - s.40A,
    - Default option,
    - Scope for interim draw down or transfer

Appeal or set aside

What if?

- Someone dies in meantime?
  - *Goodyear v Goodyear* [2022] EWFC 96 (B).
    - Does death "fundamentally undermine" order?
    - Needs or sharing?
  - *SY v DY* [2023] EWFC 280 (B).
    - Only reported case which has used 40A
    - PSO set aside and replaced with a payment to the estate.

Appeal or set aside

- Procedural conundrums (usually) in a hurry
- Sorry story of PD30A, paragraph 11 (beware of old Red Books)
- FPR 9.9A set aside or s.40A?
  - Auto stay provisions on appeal
    - Appeals within 21 days, Reg 9(2) Divorce etc (Pensions) Regulations 2000
    - Appeals made out of time, Reg 4 Pension Sharing (Implementation and discharge of liability) Regulations 2000
  - FPR 9.9A set asides can be made as of right CF appeals which need permission and prescribed time limits (subject to judicial variation)
  - s.40A wider powers to make further orders rather than pure set aside

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