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# Difficult Finances

How do you protect a client faced  
with a spouse in difficult financial  
circumstances?



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# What I will cover

- A. The Bankrupt Spouse
- B. The Reckless Spending Spouse
- C. The Fraudulent Spouse



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# A. Bankruptcy

## Some Technical Terminology Reminders:

- “Trust Deed”, not IVA in Scotland
- “Sequestration”, not bankruptcy
- “Debtor” not bankrupt



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# Bankruptcy (Scotland) Act 2016

NB: If in doubt, seek expert  
insolvency advice



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# Features of 2016 Act

- Consolidating Act – does not substantively alter the existing law
- Brings together provisions of 1985 Act, and various Acts since then eg BADAS – Bankruptcy and Debt Advice (Scotland) Act 2014
- Brings Trust Deeds into primary legislation
- Act is easier to navigate, a more “user-friendly” repository for the law of personal debt



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# Relevance to Family Lawyers

- S. 100 – power of Trustee to seek recall of court order for capital sum if debtor was absolutely insolvent at date of order.
- Power available up to five years after order
- Defence: debtor not absolutely insolvent
- **Advice:** keep record and notes of solvency of spouse at time of order



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# Pensions and Bankruptcy

- Pensions are generally protected and not challengeable by Trustee – ss 11-13 Welfare Reform and Pensions Act 1999
- Only where “excessive contributions” - S. 104
- *Horton v Henry* 2016 EWCA Civ 989 – Trustee cannot compel debtor to draw down part of pension where debtor was entitled to do so.



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# The Matrimonial Home

- s. 113 2016 Act – consent of spouse – “family home”
- Security – ranks above trustee – s. 109(7)



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## B.Reckless Spending

- Failed Business ventures
- Addictions
- Mortgaged to hilt



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- This aspect of difficult financial circumstances is more of a concern for South of the Border – spousal maintenance
- In Scotland – clean break – very restrictive ability to seek periodical allowance
- See (as an aside) – *M v M* 2006 AC 618 – Lord Hope of Craighead



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# Family Law (Scotland) Act 1985

s. 10(6)(c) – “any destruction, dissipation or alienation of property by either person” can amount to special circumstances



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## C. The Fraudulent Spouse

*Basher Ahmed v Sadiq Mohamed &  
Others*, C of S OH 24 August 2012, M G  
Thomson sitting as Temporary Judge



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# Land Registration etc (Scotland) Act 2012

s. 80 – “manifest inaccuracy”

s. 84 – compensation

s.86 – Acquisition from disponent  
without valid title



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