

## **Report of the Duxbury Working Party (provisional), September 2024**

### **Resolution's response to the Duxbury Working Party**

Resolution's 6,500 members are family lawyers, mediators, collaborative practitioners, arbitrators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes. Resolution members abide by a Code of Practice which emphasises a constructive and collaborative approach to family problems and encourages solutions that take into account the needs of the whole family and the best interests of any children in particular.

Resolution is committed to developing and promoting best standards in the practice of family law amongst both its members and amongst family lawyers in general.

We also campaign for better laws and better support for families and children undergoing family change.

This response was prepared by Resolution's Pensions, Tax and Financial Remedies Committee.

#### **Introductory comments**

1. Resolution welcomes the provisional Report of the Duxbury Working Party. It is a well-written document and one that demonstrates both an attempt to address concerns that have historically been raised and an acceptance that there is need to update some of the assumptions and thinking behind the tables. The explanation of the history has also been extremely helpful in understanding the context.
2. Resolution applauds the Working Party for extending the contributors to the report, and to seeking feedback from stakeholders. By doing so the Duxbury calculations can only be more robust, and hence more widely agreed and accepted.
3. Resolution invites the Working Party to publish an anonymised summary of the responses and feedback received in the final report, so that it is clear what assumptions and recommendations have received general approval, and which areas remain contentious. Bearing in mind that Duxbury is only ever a 'tool not a rule', it is important that judges and litigants using the figures are aware of which areas are contentious.
4. Resolution would support membership of the Working Party being extended even more widely in the future to ensure as wide a range of views as is realistically possible is reflected.

#### **Annual Management Charges - Para 172**

5. There have been concerns raised about the absence of investment charges in the tables for a number of years. Resolution therefore welcomes and supports the Working Party's provisional recommendation that they should now be included in the calculations.

6. However, it appears that the percentage figures used in the report for such charges is a composite one intended to include all the costs in the process and therefore intended to include fund management charge, product charge and charge for ongoing advice. Whilst there is not an industry standard, Resolution's informal soundings have generated general agreement that most clients typically incur the following fees:

- fund charges of between 0.3% to 1.2% (or more);
- adviser charges of between 0.75% to 1% (the majority); and
- platform fees of around 0.2% to 0.4% save in the most high value cases.

Based on this analysis, the very lowest aggregate charge is likely to be around 1.25% and many clients will pay closer to 2.6%. Thus, given that the overwhelming majority of our clients will require financial advice, the use of 1% does not appear to reflect the actual experiences of clients when investing sums through financial advisers. Bearing in mind that for obvious reasons many of the recipients of Duxbury awards may be more risk averse than average when it comes to investment returns, the need to set management charges at a realistic figure for the purposes of the Duxbury calculations assumes even greater importance.

7. Resolution also notes that 'winners and losers' is the rationale (at least in part) for not amending any of the assumptions for investment return, but considers that the choice of a low composite management charge means that recipients of Duxbury awards would have to absorb an additional financial reduction.
8. Resolution therefore invites the Working Party to reflect further on the appropriate percentage charges and would suggest that the adoption of a higher figure can be readily justified.

#### **Rates of Return**

9. Resolution notes the recommendation of the Working Party not to amend the assumptions in relation to rates of return. Resolution considers however that a distinction could reasonably be drawn between High Net Worth/Ultra High Net Worth cases (subject to certain caveats) and those in Middle Money cases.
10. There is also a respectable and logical argument to have differing rates of return pre and post-retirement age, as risk profiles wane into older age.

#### **High Net Worth and Ultra High Net Worth cases**

11. Resolution agrees the current assumptions as to rates of return should continue to be used in high-net-worth (HNW), and ultra-high-net-worth (UHNW) cases, where the payee is agreed not to be (or is found not to be) vulnerable, and where the term being capitalised is one of 20 years or longer.
12. Resolution accepts the analysis that there will be no injustice caused by there being 'winners and losers' in those calculations given the sums involved.
13. However, if the payee is vulnerable and/or the term being capitalised is shorter than 20 years, Resolution recommends more conservative assumptions should be adopted.

## **Middle-money cases**

14. Resolution is of the view that current assumptions as to rates of return should not be used for:
  - any term below 20 years (where there is no data to suggest the assumed rates of return are accurate);
  - when the payee is vulnerable (for example, because of their health, or life experiences) and therefore it would be appropriate for them to have the benefit of a more cautious investment profile and less robust assumptions;
  - when the payee is receiving the award later in life, and therefore remarriage, or future cohabitation is less likely. Resolution believes from informal soundings that the likelihood of remarriage is more remote for many women (still more often the recipient of Duxbury funds than men) than the number of references to this possibility in the provisional Report would suggest; and/or
  - where the sum received is smaller.
15. In these cases, the impact of a poorly performing fund may cause real hardship to the recipient due to the assumptions applied. In reaching this view Resolution has taken on board the research from the [Fair Shares? report](#) about the outcome of awards.
16. Duxbury is also regularly used when considering the appropriate lump sum on a variation of maintenance application under MCA 1973 s31. If this is near, or at, retirement age, there are real problems for that age group if the fund received is insufficient to meet needs, including anticipating future care needs which can be a significant drain on financial resources. Resolution believes particular care needs to be taken in that instance.
17. Resolution acknowledges that if a distinction is to be drawn between HNW/UHNW and other cases there would need to be a decision taken as to when a case is in the former category. Resolution would suggest that perhaps this should be where the recipient would be receiving (on standard assumptions) a capital sum to meet income needs of around £75,000 pa. Below this figure, we believe more conservative assumptions should be applied and the sum then recalculated accordingly.

## **Other recommendations**

18. Resolution supports the other main recommendations in the report namely (i) removing the assumption that the recipient has the benefit of a full State Pension; and (ii) the tables published annually in At A Glance should not be prepared on the basis that a whole life award is the default.

## **Data collection**

19. Resolution understands that there is no accurate data for rates of remarriage for ex spouses who are not economically dependent, but we believe that the data would show that the likelihood of remarriage wanes as the individual gets older. Resolution would be happy to assist the Working Party when it is next convened by collating data from its committees and its membership about such matters as rates of remarriage, cohabitation and annual management charges. That would enable wider research to be used to produce future figures.

**Kind thanks**

20. Resolution thanks all the members of the Working Party for their work. Their contribution to separating families is invaluable.

For further information please contact:

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**Resolution, November 2024**