

# Financial remedies—updated evidence—pensions (Finch v Baker)

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**Family analysis:** The Court of Appeal has refused a wife’s appeal against the circuit judge’s decision not to permit further evidence from the pension expert following his draft judgment. The wife argued that the husband would receive a higher income than the judge had intended, as the figures were significantly out of date. In the lead judgment, Lord Justice Moylan held that there is inevitably some delay with implementing pension sharing orders and this was an example of the court’s powers being exercised in a ‘broad, discretionary manner and not necessarily with the expectation of achieving mathematical precision’. It was also held that conduct cannot be brought into account under ‘all the circumstances of the case’ and must be properly determined in accordance with section 25(2)(g) of the Matrimonial Causes Act 1973 (MCA 1973). Further, the assertion by a party of a ‘negative contribution’ was stated to be no more than an attempt to argue conduct under a different guise. Rachael Goodall, barrister at 3PB Barristers, examines the case.

*Finch v Baker* [\[2021\] EWCA Civ 72](#)

## What are the practical implications of this case?

This case is important for financial remedy practitioners who may be faced with an order that is made by the court many months after a pension report, including situations where tax reports have not been updated, or where values of properties are going to be significantly out of date at the time of judgment.

Given the court’s wide discretion, which is not necessarily expected to achieve mathematical precision—and the requirement to determine cases expeditiously, the court is unlikely to allow applications for updated evidence at a late stage of proceedings. It is crucial that clients are given this advice and steps are taken to ensure that the evidence is as up to date as possible, enabling the case to be determined fairly and accurately.

## What was the background?

The parties were married for 20 years and had two children. The husband was aged 69 and the wife was aged 57. The capital assets (all jointly-owned properties) had an agreed value of £2.17m. The wife’s pension had a value of circa £2m, which was generated during the marriage and post-separation. The wife had been earning £160,000 gross per annum, but was off work due to ill health and had received formal notice of redundancy. The husband did not work.

The issues before the court were:

- what percentage of the pension sharing order should the husband receive?
- what (if any) share of the lump sum payment to the husband should be on the basis that the parties’ assets were transferred to the wife?
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## What did the court decide on the pensions issue?

This was not an easy issue to determine.

It was advanced by the wife that the circuit judge was wrong not to permit an updated pension report following circulation of the draft judgment. The wife argued that it became clear, following receipt of the draft judgment, that the income which would be produced by the pension sharing order would actually give the husband a higher income than the court had intended due to the pension figures being significantly out of date. There was also an issue in respect of the potential tax consequences, in particular in respect of the lifetime allowance, on the wife's financial resources.

The Court of Appeal decided that the circuit judge was not wrong to disallow further evidence to be adduced from the pension expert in response to his draft judgment. The court held that, 'in every case, there will be some delay between the court making a pension sharing order and the order being implemented'. It was further held that different figures at different times is just one example of the court's powers being exercised in a 'broad, discretionary manner and not necessarily with the expectation of achieving mathematical precision.' It was expressly noted that the wife had not sought fresh evidence at the permission hearing before Roberts J or during the course of the appeal hearing before the circuit judge.

The court also held that conduct cannot be brought into account under 'all the circumstances of the case' and must be properly determined in accordance with [MCA 1973, s 25\(2\)\(g\)](#). Further, the assertion by a party of a 'negative contribution' was stated to be no more than an attempt to argue conduct under a different guise.

### Case details:

- Court: Court of Appeal, Civil Division
- Judge: Lord Justice Lewison, Lord Justice Moylan and Lord Justice Nugee
- Date of judgment: 28 January 2021

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