

## PENSIONS & DIVORCE

### Early retirement during the divorce process

What happens if, during the divorce process, the husband, who has a significantly higher pension, is thinking of taking early retirement or might draw benefits before the divorce process completes.

The solicitors for both clients need to be clear about the effect this would have on available financial assets as well as any pension share.

### The Issues to consider and understand

- Any significant advantages or disadvantages of retiring before and after the serving of a Pension Sharing Order.
- How many and the types of pension held
- The availability for pension commencement lump sum (PCLS) from a pension share.
- The process for sharing a pension in payment.
- When any pension credit will be available to the wife, regardless of early retirement or otherwise.

### The impact of early retirement

Crystallising a pension before financial settlement has been

agreed in divorce proceedings can have negative effects, in this case for the wife.

There is one significant advantage in that any pension commencement lump sum (PCLS) taken by the husband can be brought into the assets pre-divorce and utilised accordingly. However it being paid out should not be over-looked.

Early retirement invariably means a reduced pension.

Mathematically, the valuation of this pension ought to be similar to the pension payable at a later normal retirement date. But, the loss of the lump sum in the Current Estimated Value (CEV) calculation needs to be taken into account.

A significant disadvantage to the wife is that any Pension Sharing Order made against a pension in payment means the wife will not be able to take a lump sum from any pension credit she receives, if any PCLS was taken by the husband on early retirement, from that particular pension.

Also, no PCLS can be paid from such a pension credit, even if it is transferred to a personal pension.

If a pension share is placed against the husband's pension

and he retires early, a lower pension will be payable to him because a pension debit will need to be deducted. In this situation, the wife is unaffected and has access to her pension credit in accordance with individual scheme or plan rules.

If a pension share is placed against a pension in payment, the husband's pension will reduce immediately. It is important to remember that implementing a pension share can take months, which could mean repayment by the husband of overpaid pension from the date the Order took effect.

Every pension scheme can choose how they deal with a pension credit. They can decide whether the credit is transferred out of the scheme (like most personal pensions); stays in the scheme (such as unfunded public sector schemes); or they can offer a choice (as in local government pension schemes).

If the pension credit is transferred out, the wife can have access to benefits from her age 55 (subject to receiving scheme's rules), but if the pension credit must remain in the scheme, the scheme might not provide any benefit for that credit until normal retirement age (which may be later, such as 60 or 65).

For these clients, it could be that the husband retires early, before any pension share is implemented; he takes all the lump sum, and receives immediate income. A pension share is implemented with the pension credit for the wife not being available until her 65th birthday and with no lump sum available from that pension credit.

**By agreement, or in extreme cases by a Court Order, it is possible to prevent early retirement while divorce proceedings are in progress**

### The recommended strategy

- Solicitors to understand (or seek advice from a professional IFA) whether a lump sum is available from pensions held by husband and wife
- Solicitors to outline when and how any lump sum is taken and who receives this.
- Any lump sum taken during the divorce needs to be considered
- Are there any pensions where the lump sum or income has not been taken, even if they have been drawn from some pensions?
- Solicitors to consider the availability of pension lump sums or income to ex-spouse receiving the pension credit after divorce and their age of being entitles (could be as late as 65).
- Don't get caught out by missing a lump sum being taken during the divorce process

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