

Briefing Note for Lawyers involved in Ancillary Relief

Subject : Final Salary Pension Fund Deficits

I think I can say without fear of contradiction that 2009 has started off pretty bleak from an economic perspective. Wherever one turns there is bad news, and I am afraid I am going to add to it.

Private Sector Pension Schemes have been particularly hard hit through 2008, especially the *Final Salary* variety.

According to the Pension Protection Fund (the official pension scheme safety net), the collective *deficit* of the UK's private sector final salary pension schemes shot up from £136bn in November 2008 to a staggering £195bn in December 2008. In December 2007, the collective position of these funds was a *surplus* of nearly £12bn.

In March 2008, nearly 3,000 final salary schemes were showing a surplus. Now, only 823 schemes are still showing a surplus.

So what are the implications, if any, for Ancillary Relief settlements?

The first is that there is every likelihood that the CETV you obtained 6 months earlier will be out of date and wrong. If schemes have moved from a position of surplus to deficit between you obtaining the CETV for Form E Disclosure, and implementation of a Pension Sharing Order (PSO), then the beneficiary of the PSO could well be very disappointed. The scheme actuaries / administrators will treat the implementation of a PSO as a transfer, and may apply actuarial reductions to reflect the newly 'found' deficit.

Upon Implementation, the beneficiary may find that the pension credit he/she was expecting has reduced from say, £100,000 to £80,000. Now, unlike a Money Purchase Scheme (e.g. a personal pension), where both parties in theory share the effect of a fall in value due to investments falling, the effect of an actuarial reduction in CETV is suffered by the beneficiary alone. The member, who retains their final salary pension entitlement within the scheme, does not suffer the effects of this reduction, since he or she is not transferring out.

How do you combat this? Well, this is not as easy as one would like.

Ideally, you could ask for a new CETV just before the FDR or Final Hearing, but you know as well as I do, that these can take weeks to arrive, and there may be an additional charge, since members are only entitled to one free CETV per year. I suggest that in the current climate, at the very least you approach the pension administrators / trustees just before the Hearing / Settlement, and ask whether they are currently applying any actuarial reductions on transfers out of the scheme (such as implementation of pension sharing orders). Hopefully, this question will not incur additional costs.

The alternative is not very palatable – you only find out about the deficit when your client comes back to you, 6 months after sending them their Decree Absolute, Consent Order, Pension Sharing Annex, complaining that the £100,000 pension credit they were expecting, only manifests itself as £80,000.

It is likely that this problem will get worse as more schemes have an actuarial valuation, and with assets at their current low level, are deemed to be in deficit.

Please give me a call to chat through any issues in connection with pensions and divorce.

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