Briefing Note for Lawyers involved in Ancillary Relief

Hold fire on Settlements involving Public Sector Pensions....

I sent an e-mail last year advising you of forthcoming changes in Public Sector Pensions, and how administrators will be dealing with Pension Sharing Orders. Now for an update on the situation.

First of all the proposed changes. Hitherto, the beneficiary of a Pension Sharing Order (PSO) of a public sector scheme (NHS, Teachers, Armed Forces, Civil Service, Police, Fire etc) has had to implement their PSO internally, and become a member of the same scheme over which the PSO has been made. (This is because these schemes are *unfunded* and a large number of transfers out due to divorce would cause a serious liquidity issue for the Government.) There is no change in this aspect of public sector schemes. What will change from 6 April 2009, is that those with pension credits as a result of having received a PSO, will be able to take their pension before the scheme's retirement age – i.e. effectively take early retirement.

This has been a contentious area for some years. Husband, let's say, is a retired Army Officer, and in receipt of his pension. He and his wife get divorced, and his ex wife receives a PSO which she implements. Because she has yet to attain scheme retirement age of 65, hitherto she has been forced to wait a number of years until she could draw her pension, notwithstanding the fact the ex-husband continues to draw his pension, albeit diminished by the extent of the PSO.

The following is an extract from the Armed Forces Pension Scheme website, and similar announcements are being made on other public sector scheme sites:

"Currently, the earliest age a Pension Credit Member (PCM) can draw their pension resulting from PSO is age 65. For all PSOs sealed after 6 April 2009, PCMs can draw their benefits from age 55. Any PCMs who had their PSO sealed before 6 April 2009 can apply to have their pension actuarially reduced and paid from age 55.

"Factors are not yet available to work out the actuarial reduction and when these become available more details will be posted with details as to how to apply."

An increasingly common type of Instruction is to calculate the PSO required to achieve an outcome of equality of income. When this involves public sector schemes, we have historically had to assume the ex-spouse retired at either 60 or 65, and that in the interim, take into account the fact that husband's pension income would reduce. This will no longer be the case.

We are expecting the new early retirement factors very shortly, and I suggest that due to the imminence of their issue, it may be sensible to hold fire on public sector pension settlements until we do have them, especially if the parties are either retired or close to retirement.

As always, please give me a call should you wish to discuss the content of this Briefing Note, or indeed any other aspect of Pensions and Divorce.

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