

Back to work...

By Mark Penston BSc, Dip PFS, MEWI

Our occasional update for matrimonial lawyers endeavours to briefly remind and update those involved in the financial aspects of the division of assets on divorce.

Pension vs Cash

How to 'trade' money in a pension fund for money outside a pension fund remains a hotly debated issue. The starting premise is that, due to tax relief, to get £1 in to a pension fund will cost a basic rate tax payer 80 pence and a higher rate tax payer 60 pence. So for a basic rate tax payer, £1 of pension fund can be kept in exchange for 80 pence of cash. While this is a simplistic starting position and does not consider other aspects such as accessibility of the money (often referred to as the 'Utility argument') this is often a good position to start from.

Changes to public sector schemes

Many readers will be aware that problems can occur when sharing some public sector schemes where external transfers are not allowed and recipients of the pension share can only draw benefits from age 60 or 65 even if their spouse has earlier access to their benefits. This has occurred where, for example, a husband has drawn his army pension at age 55 yet the pension share to the wife cannot commence until age 65.

A welcome amendment via the Occupational, personal and Stakeholder (Miscellaneous Amendments) Regulations 2009 that came in to force on 6th April 2009 now allows, but not obligates, such schemes to pay benefits from normal minimum retirement age.

Many schemes have changed their rules to allow earlier retirement and I'm sure most will follow. (Note that actuarial reductions may apply where benefits are taken early). It may, however, be prudent to clarify the position with the scheme trustees before agreeing on a pension sharing order and if necessary defer matters until the position becomes clear.

Getting Tax-Free cash while you can...

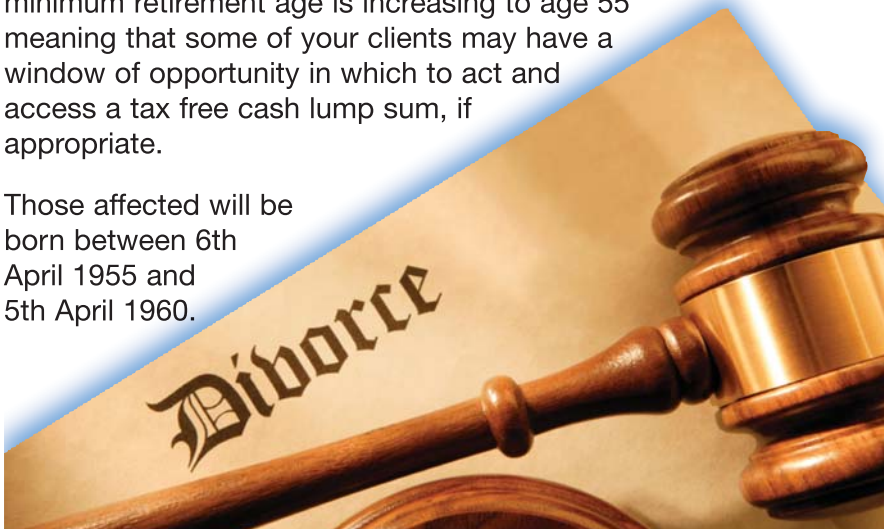
On receipt of a pension credit a tax-free cash lump sum can normally be paid, if the originating member had not started drawing benefits from the fund.

Current legislation allows access to tax-free cash as early as age 50 with the ability to defer commencing a pension income.

Creative solutions can allow access to much needed cash during a divorce settlement by accessing tax-free cash from pensions either before or after sharing where scheme rules allow.

It is important to note that with effect from 6th April 2010 the minimum retirement age is increasing to age 55 meaning that some of your clients may have a window of opportunity in which to act and access a tax free cash lump sum, if appropriate.

Those affected will be born between 6th April 1955 and 5th April 1960.



Protecting maintenance payments

Protecting maintenance payments through a life assurance policy makes good financial sense although premiums can be costly if finances are tight.

Too often we see clients who have come to us after they have cancelled all their life assurance policies, some of which may have been arranged many years ago and benefited from cheaper rates. Where possible, clients should be

urged not to cancel or change policies until they have received further advice as their existing policies may be of use later on in proceedings by assignment or putting in trust to a nominated beneficiary.

Dealing with contracted out benefits

On 6th April 2009 the concept of safeguarded rights (pension funds derived from a member being contracted out – often termed protected rights or GMP) passed into history. This has simplified the pension sharing rules and brought a welcomed increase in pension planning flexibility. Essentially all externally transferred pension credits are now dealt with as one sum creating greater simplicity and flexibility for the recipient of a pension share.

Cross gender annuities

A recent enquiry related to the separation of a transsexual person from their partner. As the result of a pension sharing order being made an annuity needs to be purchased.

The question then arises as to what sex a transsexual person is for annuity purchase purposes.

We found that most annuity providers based their annuity rates on the acquired gender as evidenced by the Cross Gender Certificate and not gender at birth.

As annuity rates for females are lower than those for males, a female to male transsexual will benefit from the better male annuity rates even though one assumes that their life expectancy will remain that of a female.

It would follow then that those considering applying for a Cross Gender Certificate should seek advice relating to the timing of their procedure and the purchase of an annuity.

Services from



- Pension sharing reports
- Actuarial services and reports
- Implementation of pension sharing orders
- Mortgage affordability statements
- Technical assistance on financial matters
- Attendance at Collaborative meetings
- Training via **WORKSHOPS TO YOU**
- General independent financial advice

Please note that in order to convey points as succinctly as possible a significant amount of detail has been omitted from this update. As such none of this article should be construed as financial advice.

WORKSHOPS TO YOU

We continue to produce briefing update workshops to matrimonial departments for those that wish to keep abreast with financial aspects of divorce.

The sessions generally last approximately 1 hour, and are currently without charge. The aim of these workshops is to refresh knowledge of the basics of pension and financial products and to provide details of relevant updates and development. Where possible case studies are used to illustrate points and provide discussion matter.

Please contact our offices if you would like to discuss arranging a "Workshop to You" session.

For technical assistance and advice call:-

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