Police Pensions on divorce after retirement

Sarah Thompson discusses your options should you get divorced whilst your pension is in payment and explains what option would best suit your situation.

On retirement police officers have the option of taking a tax free lump sum worth up to 25% of the cash equivalent transfer value (CETV) of their pension, the remainder is then paid out on a monthly basis and is taxed as income. However should you get divorced whilst your pension is in payment there are generally two options available to you – off-setting or a Pension Sharing Order.

Off-setting

Off-setting means that your ex-spouse would receive other marital capital in lieu of their claim against your pension income. The off-set would purely be the income element of your pension because you will have either already had your commutation paid to you, or you will have chosen not to take a commutation and instead, take an increased level of income.

In order to successfully off-set a claim against your pension income, there will need to be sufficient other capital with which to compensate your ex-spouse. Therefore, if the commutation was used to clear marital debt and/or the commutation has been spent, then unless you have sufficient other assets, there is unlikely to be sufficient capital with which to off-set your spouse's claim.

The key question, when looking at off-setting, is how much capital is required to off-set the value of your pension in payment. The first figure that you will need to obtain is the cash equivalent value (CEV) – also known as cash equivalent benefit (CEB).

The CEV of your pension is an academic figure, it isn't a fund within the police pension scheme as the police pension scheme is an unfunded scheme. What the figure does do is represent the amount of money required to provide a retired police officer with a pension for the rest of their life.

I raise a note of caution at this point, as the figure for the CEV should not be looked at as pound for pound the same as cash in the bank. Any capital given to your ex-spouse in lieu of a claim against your pension would need to be reduced, due to the fact that your ex-spouse would have the benefit of what is known as accelerated receipt. This means your ex-spouse would be receiving capital now, rather than over a long period of time.

Therefore, it is not a case of simply obtaining the CEV of your pension, dividing it by two then giving your ex-spouse marital equal to 50% of your CEV. The amount by which the lump sum to your ex-spouse is reduced will vary depending on several factors, including the age of your ex-spouse and the length of the marriage. Off-setting has the distinct advantage of leaving your pension income intact, however, it will invariably mean that you will receive significantly less capital now, in some cases you may find you receive no capital at all if you decide to go with this option. If you require capital immediately with which to re-house, then it may well be that off-setting is not the option best suited for you, it depends on how much other capital is available in your particular marital pot.

Pension Sharing Order

A pension sharing order means that the CEV of your pension is debited and a pension is set up within the police pension scheme for your ex-spouse. Your ex-spouse will not be able to transfer their part of the pension out of the scheme, nor will they be able to contribute to it. Your pension will pay out to your ex-spouse upon their 60th birthday, regardless of the fact that you have retired.

As your pension will be in payment, the effect on your pension income of a share being implemented will be immediate. This means that even though your ex-spouse may not be in receipt of their pension (because they are yet to turn 60) your pension income will reduce immediately.

A deferred pension share, avoids this scenario and would mean that the pension sharing order would only be implemented upon your ex spouse's 60th birthday. A word of warning, deferred pension sharing orders are controversial. The government have talked about closing this particular loop-hole and there are several Courts who refuse to make deferred pension sharing orders as they do not consider it to be within the spirit of the legislation and as such, it do not consider it within their power to order. Because they are complicated to calculate and draft, they are consequently more expensive in terms of legal fees, insurance arrangement fees and if necessary, actuarial fees.

Invariably, the preferred option when it comes to a pension sharing order is for it to be implemented at the conclusion of your case and on Decree Absolute being made. The issue is how much of a pension share there should be and this would normally be calculated by an actuary (a specialist in pension calculations). The question we would normally ask an actuary is how much of the pension should an ex-spouse receive in order to provide them with equality of income, based on the pension accrued during the marriage.

Every marriage and family is different and consequently so is every divorce. What worked for a colleague or friend may not be the best option for you. It is always best to speak to someone who understands police pensions and can advise you fully so that you can make an informed decision as to what is the best option for you.