

The PAG Report & Treatment of Police Pensions upon Divorce

The report of the Pension Advisory Group ("PAG"), "a Guide to the Treatment of Pensions on Divorce" was published in July 2019.

Three recent decisions by the Family Court concerning the divisions of pensions have all referenced the PAG report as being influential on judicial decision making.

The judgment of HHJ Robinson in **KM v CV [2020] EWFC B22** and **RH v SV [2020] EWFC B23** along with HHJ Hess' judgment in **W v H (divorce: financial remedies) [2020] EWFC B10** can be drawn together to provide the following authority regarding the treatment of pensions:

- Expert evidence from a Pensions on Divorce Expert or "PODE" where proportionate and affordable is invaluable and often essential to provide evidence on the pension claim on divorce to achieve equality of income.
- The court is to determine the claim to a Pension Sharing Order taking into account the income – yield of pensions, as well as their capital value (CE), particularly in small to medium money cases, where needs are an issue. It will often be fair in such cases to aim to provide the parties with similar incomes in retirement by way of a Pension Sharing Order, rather than a simple division of CEs.
- When needs take precedence, the court will give less weight to contribution based arguments and excluding any portion of a pension as "non-matrimonial" is unlikely to be justified where pensions are

the sole or main asset to meet the parties' post-retirement needs.

- Pensions cannot be compared as like for like value with other capital assets. Mixing categories of assets by way of offsetting, risks unfairness and often the appropriate method is to divide the pension separately from other assets.

How does this effect the claim on a police pension upon divorce?

The police pension is an unfunded final salary occupational pension scheme and the income from within the scheme per £ of CE is generally higher than annuity income outside the scheme per £ of CE. As such, subject to the CE being valuable, in a case where retirement is on the horizon and the case being one in which needs arise, the guidance from the PAG Report is that the fair outcome would be for the Pension Sharing Order to be based on an equalisation of incomes on retirement and this approach requires expert evidence from a PODE. This is different to adopting the approach of simply dividing the pensions by equality of capital value (CEs). Therefore, in the majority of cases, before the claim to a Pension Sharing Order can be determined, it's now more likely than ever that there will need to be a joint instruction to an expert Pension Actuary (at joint expense) to prepare a pension report and to calculate the Pension Sharing Order to equalise incomes.

Further, it's certainly not clear cut, nor guaranteed that the portion of the police pension accrued prior to cohabitation/marriage will be automatically ring-fenced from the pot for

division. Where the pensions concerned represent the sole or main mechanism for meeting the post-retirement needs of both parties and where the income produced by the pension funds after division falls short in meeting needs, the court's approach is likely to be that no portion of the pension should be excluded and that all the pension provision, regardless as to when it accrued, should be taken into account in determining the Pension Sharing Order.

This is not to say that practitioners should stop asking the PODE to calculate percentages for Pension Sharing Orders on the basis of both the entirety of the pension provision as well as only that pension that has accrued during the relationship, but unless the latter calculation meets the needs of the receiving spouse, the likelihood is that the Judge will order a Pension Sharing Order that is higher, thereby dipping into the pre-marital/post-separation pension contributions.

Whilst there's no "one size fits all" to the answer as to how pensions should be treated upon divorce and every case is decided on its own facts, at the discretion of the Judge, the comments on pensions in recent case law, referencing the PAG report should be treated as authoritative and persuasive.

When going through a divorce, it's imperative that you seek advice from a divorce specialist experienced in dealing with police pensions.

If you'd like specialist advice from a family lawyer please contact Slater and Gordon on **0808 175 7710** and we'll be happy to help.

