<u>Case Study 3 - Offsetting Pensions</u>

The decision of HHJ Lord Meston QC (sitting as a deputy High Court judge) in *WS v WS* (2015) EWHC 3941 (Fam) provides a considerable overview of offsetting pensions and financial remedy orders. This is an area of family work where there is precious little guidance and a diversity of view.

Facts of the Case

The husband was 61. His pension comprised a defined contribution pension held in a self-employed personal pension as well as a small money purchase pension in plan. He had taken the 25% tax-free element, leaving funds worth £970,696. In light of the recent pension reforms, he was able to take the remainder of his pension funds as cash, subject to tax.

By contrast, the wife was 56 and had a pension from employment with a bank. It was a defined benefits scheme based upon her final salary. She had taken the 25% tax-free lump sum and the remainder of the pension was in payment, linked to the RPI. It provided a gross annual income of £92,086.

In February 2013 the wife produced a cash equivalent value for her pension of £2,433,969. In October 2015, she produced an updated cash equivalent statement giving a revised figure of £3,064,154. The pension administrator explained that the increase was due to the decline in the long bond yield.

A pension sharing order was not an option in the present case as such an order would take the husband well over the lifetime allowance with severe taxation consequences. The agreed approach was an offsetting lump sum, although the issue in dispute was the level of that lump sum.

Use of cash equivalents

On behalf of the wife it was understandably argued that the increase in her cash equivalent was perverse and illustrated the artificiality of using cash equivalent values. Despite the wife having received some of her pension entitlement, the cash equivalent had increased by £600,000.

Furthermore, as the wife’s pension was a defined benefit scheme, regardless of the cash equivalent value, the pension could never be equivalent to or converted to cash in her hand. The cash equivalent value therefore represented no more than the rights accrued under a pension scheme and used to calculate the benefits only in the context of a transfer to another scheme. It was therefore argued on behalf of the wife that the cash equivalent value was of little or no use for calculating an offset payment.

Comparing the pension of the husband and wife was like comparing apples and pears. The wife cannot encash her pension, but can only take income which ceases upon her death. By contrast, the husband can withdraw his funds in full whenever he chooses, subject to the payment of tax. The wife, however, will enjoy an index-linked income guaranteed for life from her pension, whereas the husband is subject to the vagaries of the Stock Market.

David Connor, Director