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Changes pose threats to separating couples

Lesley Gordon

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As well as bringing changes for those planning for retirement, the new pensions regime will also alter the landscape for couples in the 55-plus age bracket who decide to separate.

At the moment there are certain options available to couples in a separation to help them arrive at a fair and reasonable division of assets. These are offsetting, earmarking and pension sharing.

Pension sharing is a good solution for many that allows the transfer out of a valuable pension of an amount (pension credit) into another pension for the spouse.

Interestingly, pension sharing can only be implemented after the divorce is granted. There are lots of our clients who for personal or cultural reasons would either prefer not to be divorced at all or would prefer to divorce sometime after a financial settlement.

One of the new options following the reforms will be cash drawdown from the pension schemes (except the gold plated final salary/defined benefit/public sector schemes). It will allow an agreement to be reached regarding pensions that will avoid the need to divorce.

Plainly the issue of cash drawdown will still be subject to the same risks and tax consequences that anyone approaching retirement planning should take in to account. However, we think the ability to draw down cash is likely to be appealing in certain cases. Cash drawdown done on a staged/annual basis could, for example, provide replacement income for a spouse and would offer a practical alternative to spousal maintenance.

The new pensions regime allows us to look at pensions as a source of capital and in theory if there was a need for capital to provide two homes, after a separation it could be used in that way.

In collaborative cases particularly, the families are often concerned about longer-term planning as part of the divorce. The inheritance options for new pension funds will undoubtedly be a factor for discussion in such cases.

If one party is to retain a valuable pension without making a payment to the other, this may be decidedly more palatable if done as part of a plan to ultimately benefit the children of the family. Their pension benefits can now be transferred in a tax-efficient way to their spouses or children's pension or into a trust with the potential to benefit the whole family.

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There is a serious risk if a large pension fund forms the single most valuable asset located in Scotland/the UK. The new drawdown regime means an unscrupulous spouse, intent on trying to defeat the financial claims of the other, will have the option to remove their pension by transferring it overseas.

This could make enforcement of a Scottish order extremely difficult.

Whilst a complete drawdown and transfer out of a pension is most unlikely to be recommended by a financial adviser we do come across cases where clients are intent on doing everything possible to stop their spouses' claims, so this risk cannot be overlooked.

It is therefore essential for people in this vulnerable group to seek immediate advice upon separation.

Lesley Gordon is partner in family law at bto Solicitors