

Judges hit 'silver splitters'

A JUDGEMENT over a disputed pension share in a divorce case could force more women to stay in unhappy marriages, it has been claimed.

Annie McDonald took her case to the Court of Session in Edinburgh after a sheriff ruled she was only entitled to a fraction of her ex-husband's pension.

She married miner Thomas McDonald in 1985 but only seven months later he was forced to retire on a full British Coal pension following an accident at work.

The couple, who separated five years ago, sold their family home and split the proceeds evenly but the divorce turned nasty when it came to the pension pots.

Although Mrs McDonald's pension was valued at £8,000 and his at £173,000, she argued that she was due £138,734 based on their 25 years of marriage.

But he said he had only been an active member of the scheme for a few months of the marriage and therefore his ex-wife was entitled to just £10,000.

After a sheriff ruled in his favour, Mrs McDonald appealed to the Court of Session and received the judgement this month.

Lord Malcolm and Sheriff Principal Abercrombie QC agreed with Mr McDonald but, unusually, Lady Smith disagreed, potentially leaving the door open for further action at the UK Supreme Court.

Family law experts yesterday described the ruling as "draconian" and said it could even halt the rise of the "silver splitters" – divorcing older couples in long-lasting marriages.

Denise Laverty, associate at Brechin Tindal Oatts Solicitors, said: "One theory for the increased numbers of these grey divorces or silver splitters is that women are no longer frightened they are going to be left without a pension or an income, but this could quite well reverse it.

"If a wife is in a position where a husband's pension was already in payment

By **Paula Murray**

through ill health, they might mistakenly believe it wouldn't matter because they would still be entitled to half of it.

"The later on in life you are, if you realise there is quite a lot to lose, you might decide to stick with it and get on with your marriage. It may not be a happy one but you would have that financial security.

"So this will have huge ramifications and I'd be surprised if we didn't see an appeal. Poor Annie is faced with a tough decision. Either she has to take it on the chin or take it to the Supreme Court, which is not cheap.

"I would like to see a clarification because I think there will be lawyers who will not be aware of this decision and therefore might be giving their clients wrong advice."

Ms Laverty said the ruling will have a particular impact on anyone who married after leaving the armed forces, as their military pension will no longer be regarded as a matrimonial asset.

She said: "It is a binding decision and does not only apply when a husband has

retired through ill health. What that case has said is that it is going to be the active membership that counts."

Leading family lawyer Marilyn Stowe said: "It is to be hoped this case heads immediately to the Supreme Court, where one would expect 'The Supremes' to put right a manifestly grievous wrong."

Ms Stowe, who hosts a 'Divorce Clinic' on ITV's This Morning, claimed the judgement was a "draconian outcome dictated by formula".

She added: "It is also a great pity the Scottish Appeal Judges didn't save a great deal of time, trouble and expense if there is to be a further appeal by coming down on the side of fairness and the same conclusion as Lady Smith."

'If there's a lot to lose, you might stick with marriage'