

KM v CV (no 2) (Pensions and Benefits)

IN THE FAMILY COURT AT MEDWAY

Case No ME19D90004 on appeal from BV15D22712

Neutral Citation: [2022] EWFC 174

Between:

K. M. Appellant/ Husband and

C.V. Respondent/ Wife

Before HHJ Richard Robinson on the 1st March 2022

JUDGMENT (Anonymised)

1. This Judgment is further to the Judgment I gave on the 25th February 2020. [Reported at [2020] EWFC B22]. Two years have passed, and I am only now able to conclude this matter. In part, this is caused by the difficulties of Litigants in Person dealing with complex issues and the attempt to obtain a Pension Report dealing with the issues. I have now at last been able to understand the positions of the parties within the uncertainties of predicting the future.
2. I said at paragraph 31 of my previous Judgment:

“The correct approach must be to conduct a comparative analysis of the parties’ respective income and needs in retirement, taking into account the s25 criteria, including health, needs and contributions, and the extent to which the wife’s pension should be apportioned. Only then can a fair decision be reached”.
3. I do not propose to set out the history since 2020 in detail. There have been a number of abortive hearings and directions hearings in an attempt to obtain a Pension Report. The former matrimonial home was sold, and all but £10,000 of the value was taken up with paying off the mortgage and costs. In practice, neither party has any capital. The Wife has substantial debts, but entered into an arrangement which requires her to pay £128 per month for many years.
4. I have been able understand the values of the pensions, and the Husband’s benefits, though obviously there are uncertainties as to the future.
5. The Pensions
I have seen correspondence with Mr Richard Nobbs of Excalibur Actuaries which has assisted my understanding. He has not conducted a pension report as he concluded that this would not be appropriate but has spent considerable time investigating the matter. He has waived his fee save for answering further questions. I am grateful to Mr. Nobbs. He has also attempted to deal with the Husband’s Benefits position, but points out that this is outside his area of expertise.

6. The Wife has two pensions, in the Police Pension Scheme 1987 and the Police Pension Scheme 2015. The details I have seen are out of date, but I am more concerned with the projected future benefits so this does not matter as much as it might. The most recent CTV is £137,000 but for the purposes of this case, it is the income they produce that is the real issue. She is now 52 years old. The projections show that if she remains working in the police, at age 55, she could either take lump sums of £67,426.97 and a pension of £9,775.39 or a total pension of £12,032.98 a year. At age 60 she could either take lump sums of £94,060.36 and pension of £14,549.20 or a total pension of £20,853.72 a year. I consider it unlikely that she will remain in the police until she reaches 60, given her health issues, but in any event she will not qualify for her state pension until she reaches the age of 68, when she is projected to receive £9,141.60 a year. Between her retirement and her state pension age she will almost certainly need to take another job to meet her expenses.
7. She has produced a spreadsheet of her expenses at various dates, putting these at £2,546 a month at present (which she can cover by her present take home income of about £2,500). The main expense is her rent of a 2 bedroom property for £1,500 a month. It includes £128 debt management. The figures for 2025 and 2030 are in proportion.
8. Mr Nobbs calculated that the equalisation of income would be inappropriate, with a loss of £90 to the Wife for each increase in income to the Husband of £10 a month.
9. The Husband's benefits at present are made up of Income Related Employment and Support Allowance (IR-ESA) of £198.60 per week, including £67.30 due to severe disability and 367.30 due to Disability Income Guarantee. He also receives, I accept, Personal Independence Payment (PIP) of £60 per week though this was not made clear to Mr Nobbs. In consequence his present income is £258.60 a week, or £13,442 a year as well as Housing Benefit which pays the rent on his flat of £600 a month, or £7,200 a year. He is 62 now. When he reached the age of 65 he will receive Pension Credit of £177.10 per week, not including PIP. Housing Benefit or Council Deduction. His PIP has to be reviewed and is not guaranteed, though given the severe nature of his difficulties, I consider that on balance it is likely to be renewed. This will leave him with £237.10 a week, a reduction of £21.50 a week, or £1,118 in a year.
10. His budget shows expenses of £255.86 a week, £2.44 a week less than his present income. I accept that when he reaches retirement age he will be worse off than he is now, by about £1,000 a year.
11. I conducted the case by establishing these basic figures and ensuring that they are accepted by both sides, before moving on to submissions.
12. The Husband's case is that he will be worse off, and there is scope for this to be met by some adjustment of pensions. Mr Nobbs suggested a pension attachment order for a lump sum, which would be much cheaper and more convenient than a pension sharing order.
13. However, he says, and I accept, that the Wife may not retire at age 55 (coincidentally the same year that the Husband reaches state pension age). He also warns that she could probably only draw down on her pension when she leaves the police, and though this is questioned, I accept that this is likely to be the case.

14. It is also said that the Wife could move to a one bedroom property or take a lodger (her son formerly lived with her). She is in a relationship but told me that she has no plans to cohabit. It is also said that she is likely to inherit from her mother, though I explained that this is not likely to be a consideration unless imminent, as her mother could leave her assets elsewhere or spend them all. It was also questioned whether the debt repayment would last until she is 71, but she said it is clear on the agreement.
15. The Husband seeks 2 payments of £10,000, the first for 9 years and the second until he is 82 years old. I make it clear that any out of court negotiations should not be disclosed to me and can play no part in my considerations.
16. The Wife points out on the other hand that the pensions are not large, and that she has had to manage debts. She reminds me about the findings as to contributions made by DJ Thomas, and which I have not overturned, and says that if the Husband had paid his way, the house would have been sold at a profit. She had to take responsibility for sorting out the house and the £10,00 it realised had to be paid back to her mother.
17. Attaining state pension age, as there will be a shortfall in her income. She will be faced with a difficulty between her retirement from the police and her pension age. She will need to supplement her income, and she has had her own health issues. She feels that her financial future is bleak. She also says that the Husband failed to disclose a payment he received of £9,000 for a medical negligence claim.
18. She asks me to dismiss the appeal, having now conducted the exercise I set myself.
19. This is not an easy case. The figures are not large, but matter a lot to the parties as they are on tight budgets. This is plainly not a case for a pension sharing order, but Mr Nobbs suggestion of a Pension Attachment Order is a constructive proposal. It would require the Wife to commute one or other of her pensions to fund a lump sum. Any periodical payments would be swallowed up by deductions from benefits.
20. Although it has been difficult to get to them, I accept that I now have figures which are good enough to work on. It does seem clear that the Husband will be worse off when he reaches retirement age. The Wife has no surplus income at the moment, and from when she leaves the police will have to find another source of income to meet the gap between her income and her outgoings which will not be easy.
21. I am reluctant to say that she should trade down her housing. She has been there for seven years and works from home some of the time. I accept that in recent times her contribution to the finances of the marriage, and sorting out the problems was greater, and cannot overlook this. Her Mother has supported her in the past, but there is no guarantee that she will inherit, and no evidence that she will cohabit. I do accept that when she leaves the police, if she has no other source of income, she could take a lodger, and she accepted this.
22. I take account of all the section 25 criteria, including the ages of the parties, their contributions, and their health and abilities. The most important single aspect is their respective needs and earning abilities. The wife is not wealthy and will have to continue

working until her retirement age. The Husband is unable to do so, and cannot be expected to supplement his income.

23. I do think that a sum of £10,000 on his retirement would make a significant difference to the Husband's needs. It would not count against his Benefits but any larger sum up to £16,000 would reduce them. I think that it is likely that the Wife will retire at 55, but I would not wish to force her to do so. When she does, she could clearly take a Lump Sum from the 2015 pension and pay a Lump Sum from it without compromising her future finances. I think that she will have the means to afford to pay this sum and balancing their respective needs and taking account of all the Section 25 criteria, I consider that it would be right to order her to do so.
24. I do not think that it would be right to order a second lump sum in the future. Too much speculation is involved, and I am much less clear about the Wife's ability to afford it or where it would come from.
25. I will order the Lump Sum to be paid by the 21st February 2025, failing which interest shall accrue at 5 per cent simple interest a year until payment, and it must be paid in any event by the 21st February 2030.
26. Having heard further from the parties after sight of this Judgment in draft, I consider that a Pension Attachment order would be unnecessarily complicated and expensive in proportion to the amount, and the Wife has agreed to Undertake that she will give the Appellant at least 28 days' notice before taking either of her police pensions, and will take a sufficient capital sum when she does to pay the Lump Sum ordered, and will use the capital sum to make the payment if it has not already been paid. I consider that this is appropriate in all the circumstances.

Richard Robinson

1st March 2022