Standard Life
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Podcast series
Pension Adjustment Orders

Podcast transcript

You don't need to be an expert on Pension Adjustment Orders. They don't come across advisers' desks often. But when they do, they're at an important time in your customers' lives. This is our guide for financial advisers on what you need to know to support your customers with confidence, and how we'll support you through the PAO process.

I'm Stephanie Garrigan from Standard Life's Business Services Team, and today I'm joined by Sinead McEvoy, manager of the Technical Solutions Team, to talk about PAOs.

Stephanie: Sinead, let's start at the beginning.

Sinead: Thanks Stephanie.

After the family home, pension benefits are generally the next biggest asset which has resulted in pension benefits becoming more central to financial settlement negotiations in the case of a marriage breakdown.

The retirement planning for an individual can be much more complicated where a Pension Adjustment Order (PAO) has been granted – it may create a shortfall in retirement funding or cause a chargeable excess tax. By identifying and managing the issues an adviser can significantly improve the outcome for those involved.

Stephanie: Tell us, what is a PAO?

Sinead: PAO as we know stands for a Pension Adjustment Order. It's an order made by the court in the case of

- judicial separation
- divorce
- dissolution of civil partnership
- or the ending of certain qualified cohabitants

What the PAO does is it designates part of the pension benefits of one member of the couple to a spouse or dependent child.

An order should be served on the scheme trustees/administrator of the Pension Scheme - each scheme requires a separate order.

Stephanie: What types of pensions and benefits do PAOs apply to?

Sinead: Pension adjustment orders can in general be made on all pension products but not on social welfare pensions.

PAOs can apply to:

- Occupational Pension Schemes
- Additional Voluntary Contributions
- PRSAs
- Buy Out Bonds
- Personal Pensions
- Annuities
- Trust based RAC's

Stephanie: You didn't mention ARFs or AMRFs there – how are they handled?

Sinead: ARFs and AMRFs are correctly adjusted via what's known as a Property Adjustment Order which is a much simpler type of order and directs, for example that 50% of the ARF is to be transferred to the non-member.

Stephanie: Given the various types of pension arrangements, you might give a bit of a breakdown to explain the differences.

Sinead: Sure. There are two types of Pension Adjustment Orders

- A 'Contingent Benefit Order' covers lump sum death in service benefits and spouses/children's death in service pensions
- While a 'Retirement Benefit Order' covers all other benefits under the scheme i.e. pension, lump sum, death in retirement pensions

It is important to note that separate PAOs must be made for retirement benefits and contingent benefits.

Stephanie: I know there's a common misconception that a PAO gives one member of a couple the right to say half or all of the other person's pension. Tell us how the calculations actually work.

Sinead: Yes exactly. There are two main things to keep in mind here – 'Relevant Period' and 'Relevant Percentage'.

Both of these pieces of information are contained in a Retirement Benefit Order and that's what's used to calculate what is due (if anything) to the non-member spouse

- The relevant period is the period of service to be taken into account when calculating the benefit to be paid to the non-member spouse. The end date here cannot extend beyond the date of decree
- The relevant percentage is the percentage of the benefit to be taken into account. This can be any figure ranging from 0.001% to 100%

So let's say for example, the relevant period is 1 January 2009 to 1 April 2019, and the relevant percentage is 50%. The non-member spouse in this example will get 50% of the retirement benefits accrued or built up by the member in the particular arrangement during that period. The PAO does not extend to any contributions paid before 1 January 2009 or after 1 July 2019.

Stephanie: That's a big range from 0.001 to 100% – where do these tend to fall in your experience?

Sinead: The majority of orders received into Standard Life are 0.001% orders which are known as nominal or trivial orders. They are made because Nil Orders are not possible under current legislation and the intention behind them is nothing is due to the none member.

Where it is agreed by both parties to disregard the pension or ensure that neither party has an interest in the other party's pension, a Trivial PAO (also known as a Nominal PAO) will be made for 0.001% over a 24 hour period.

A Trivial PAO is generally coupled with what's known as a non-variation order. This attempts to remove the right of both parties to revisit and vary the initial order in the future where there is a change of circumstances for either spouse. In essence protecting the members pension.

Stephanie: So once the order is made on a pension policy – what happens? Can the non-member transfer their entitlement into another pension policy?

Sinead: That's right Steph, once a certified PAO has been received by Standard Life, we will advise the non-member that an order has been made in their favour. In this letter we will also advise the non-member of the transfer amount available and the options available including the right to establish an independent benefit in their own name i.e. transfer their entitlement to a Buy Out Bond, PRSA or personal pension as appropriate.

The Default position is leaving the benefit in the scheme which can be accessed when the member retires. This is known as an ear marked benefit.

1. Where the designated retirement benefit is earmarked, the timing of accessing the retirement benefits under the PAO by the non-member will be decided by when the member decides to take their retirement benefits.

   If the pension fund is DC in nature, the non-member will have no control over how their entitlement is invested which remains under the control of the member or policy owner.

2. If the pension scheme which the order relates to is DC in nature then the cleanest option is to establish an independent benefit in the non-members own name via a BOB, PRSA or personal pension as appropriate.

   This allows the non-member to decide when they take retirement benefits and the investments. The non member can generally access the retirement benefits in the new arrangement at the earliest time the member can access his or her benefits e.g. age 50 for retirement benefits transferred from an occupational pension scheme and the non-member will also have control over how their entitlement is invested.

   Where an order is made on a DB arrangement, then it may not be the best option for the non-member to transfer their entitlement out as there is a loss of DB benefit - good financial advice is needed here.

Stephanie: Does a PAO affect the tax free entitlement?

Sinead: Both the tax free lump sum limit of €200,000 and €300,000 lump sum charged at standard rate tax applies to both parties when they take their respective lump sum retirement benefits.

Stephanie: So how does a PAO affects the calculation of benefits?

Sinead: It's important to keep the Revenue Maximum Benefits in mind.

Under occupational pension schemes the maximum benefit which a member may take from a scheme is exactly the same whether or not part of the benefit is the subject to a PAO. The existence of a PAO does not affect maximum contribution limits.

On the flip side the benefit arising from a PAO is not regarded as a retained benefit for the purposes of calculating maximum benefits for the non-member.

Then there's Threshold limits to think about..

Until 31 December 2014, for the purpose of the Threshold limits and calculating any Chargeable Excess Tax (CET), the existence of a PAO was treated as never having been made. This meant that all chargeable excess tax fell on the member spouse.

With effect from 1 January 2015, Chargeable Excess Tax arising must be apportioned by the administrator of the pension arrangement, having regard to the terms of the PAO, so that both the member and the non-member share the tax charge. The liability follows them to wherever their transfer values have been paid.

However, and especially when advisers are dealing with non-member clients, it's important to be aware that:

- A Chargeable Excess Tax charge could arise for the non-member from the member's actions in the future - as the non-member has no control over the order in which benefits are matured, growth on funds or when benefits are crystallised
- This means that the Non-member could mature benefits which appears to be under the Threshold limits at the time e.g. €1 million PRSA, however in 10 years' time when the member matures their benefits a CET could be recovered from the member's maturity proceeds

Stephanie: And what about if your client is the non-member spouse or dependant seeking a PAO?

Sinead: Obviously whichever situation you're in, you're looking to get the best outcome for your client.

Some things to be aware of are

- Threshold limits and chargeable excess tax which I just mentioned
- As I already said, both the tax free lump sum limit of €200,000 and €300,000 standard chargeable amount limits applies to both parties when they take their respective lump sum retirement benefits
- That a PAO cannot be made if the spouse applying for the order has remarried
- The non member will need to inform the trustees or provider of any change of address

Stephanie: Where can people go for more information?

Sinead: For advisers, we have a webinar and pension posts available on **brokerzone.ie**

We don't have customer specific documents as clients should always be getting their own legal tax advice. However once a notice to trustees is received into Standard Life we provide a draft PAO for assistance purposes.

More information can also be obtained from the Pensions Authority.

And finally, but I hope most importantly to the adviser network, we have the Technical Solutions Team. We're available to guide and assist and the best way to get started is to drop us an email at **technicalsolutions@standardlife.ie**

Stephanie: Thanks Sinead.

There's a lot in that, and I think it's clear that proper financial advice will help an individual to understand the value of the pension benefits, both before and after any settlement is made.

Hopefully it's given advisers some more insight on PAOs. If you need the fine detail, visit the Technical Solutions section on Brokerzone where you'll find all the facts you can rely on to help deliver better outcomes for customers.

All that's left to say is that this podcast was recorded on 3 April 2019. All information is correct at time of recording. This podcast is intended for financial adviser use only and does not constitute advice. Standard Life International dac is regulated by the Central Bank of Ireland.