Essay competition:

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Essay:

"Paternalism" in pensions –how far should the law go in regulating pensions saving behaviour

INTRODUCTION

Whilst Ninety is the new Eighty, and Eighty is the new Seventy, Sixty Six is still the old Sixty Six when it comes to pensionable/retirement age! The key question is whether or not we need to be treated like children in regard to our pension saving behaviours all our lives to pay for what some consider to be our second childhood, which likely exceeds in duration, our first? Is it all about avoiding the seeming dreaded 'burden syndrome'? Popping our rolling remuneration residual in a very volatile, but functioning pension fund was always to be encouraged with promises of upwards only interest trends with equally eye popping potential returns to keep you in clover/comfort in your final quarter so to speak. 'Celtic cubs looked to private pensions to pursue their latter life paradise. The Celtic cubs crashed as did the economy in 2008, and all pensions plummeted. The state stepped in with increasing regulations to ensure stability, encourage re-growth, and to inspire investor confidence through prisma and other risk regulated Pension Retirement Bonds (PRBs). Rules around retirement from such bonds are set in stone. One cannot simply take their cut and run.

The state stepped up to our pension plate somewhat paternalistically to further govern the operation of our precious pension funds. '*Paternalism may be considered the policy or practice on the part of people in authority of restricting the freedom and responsibilities of those subordinate to or otherwise dependent on them in their supposed interest.' (Oxford) and 'understood as an infringement on the personal freedom and autonomy of a person (Britannica)'.* Is it for our own good that we cannot touch our pension piggy till we reach the magic age of Sixty Six say the State Pension Regulatory authority. Would we really not look better in that sports car now? The State won't let us starve at Sixty Six if we've spent our pension early will they? Would that turn us into the 'burden' we dread? Who cares? We've paid our dues/taxes all our lives and sunny climes await, or do they?

The government are alive to the multi-faceted issues arising from long term pension schemes and their governance of same. In an attempt to provide us, the investors, with a sense of control over our own investments, bless, the state allows us complete a risk assessment questionnaire before opening our pension retirement bond. On a scale of 1 to 5, one being 'couldn't agree more' and five being ' are you having a laugh' colloquially speaking, how do you feel about losing all your money in a high risk Approved Retirement Fund (ARF) and so forth. We have some control have we not? Our Pension Advisor is regulated and the fund is approved, whatever that means. We are asked at least 20 questions, so the state, the Pension Broker and Fund operator knows now we are risk averse. We want our money back at the end of the day, or the forty years I should say, with a pot load of interest.

Where do we sign? Nowhere it seems…that's not one of the options….so what is? You can take your money early after 50 years of age seemingly, if your ARF allows. That's a relief is it not? No seems to be the answer to that question on the basis that the government can then pop their paw out for 40% tax. Is that all? No. They want your Pay Related Social Insurance Contribution on the lump sum. Is that all? No. They want the requisite Universal Social Charge on the total sum. You've lost half of your money in one foul swoop. It's called early exit penalisation. If you jump ship, the Pension Administrator charges you varying percentage penalties additionally, so you're pension fund of €100,000 for example is now cashed in on your big half a century/50th birthday giving you 50 percent of your money, and many happy returns to the State with your other €50,000.

Protesting to this paternalism in or out of pandemic times is futile, because the state will not let you be a burden on them in your latter years and that is what we all wanted after all is it not? It is a compulsory saving scheme during your working life to invest in your pension. Companies are incentivised to match your contributions. So where is your money being held while you count time for the watch and the annuity returns? Sleep tight, because if you are risk averse, then at least 25% of it is resting in, yes, you've guessed it, 'Government' bonds. The state are minding it for us. That's good of them? If you are deemed a risk taker, then your money is vesting (hopefully) in equities, and alternative pies to include gold bullion, metals, oil and the up and coming lucrative commodity of water. I call it the heart-warming global warming hot house effect'.

Guess what? You are guaranteed to be warm in your old age too. Remember 76 is the new 66 and the paternal nature of the state refuses to let you forget it, by ring fencing €63,500 of your pension pot in what's known as an Alternative Minimum Retirement Fund (AMRF) to be held till you reach the ripe old age of 75 with exclusions to include up to 4% per annum withdrawals. Red air out guys! I bet you never thought of a con of advances in medical science till now did you? Till death do us part!

This brings me to the next thorny issue of parting spouses and former loving cohabitants on separation/divorce. Those halcyon days of the care free love of 'normal people' setting up home together, having a family, tender moments of trust and devotion. Now everything including the kitchen sink and the all important Pension Trust is being divvied up. In yester years, women were forced upon marrying, to leave their employment oftentimes in pursuit of happiness at that very sink, whilst the man became the sole breadwinner and contributory pension holder, under his employer's pension scheme and paid for through his contributions. In more recent years, while the gender divide and glass ceiling has been addressed somewhat, child rearing it seems, falls largely to the mother, which may result in her leaving paid employment and perhaps having a reduced or no pension of her own going forward. Settlement agreements and court orders for proper provision for the ex spouse/partner usually includes a 50/50 split on the pension fund from precedent and anecdotal evidence. The working man cannot therefore high tail it early to the sunset, or can he?

My right brain is about as sharp as my left brain thankfully, but it appears that when the love goes out the window, the pension holder's right brain gains super powers, which even the state may not be up early enough to counter. To coin a phrase differently, 'what's hers is mine and what's mine is my own' the ex husband may now protest. Now this is where pension lawyers and more specifically family law lawyers need to pay careful attention. I will demonstrate how an order for an equal split of, for example, an ex husband's employment pension with his ex wife under a court ordered pension adjustment can leave the husband with a pension pot of €600,000 and the wife with a mere €200,000. This is done by a sharp shrewd and purposeful deceptive negotiator, who perhaps dupes the wife's counsel into accepting reduced maintenance payments in return for half of the his employment pension.

Let's call the Husband Tom and the wife Kate. Tom works for 'Celtic Cubs Cars' and he agrees to give Kate half of his 'Celtic Cubs Cars' pension, which she believes to be worth €400,000 pension fund to her as she knows her husband's total pension fund is valued at €800,000. She has been married since 1990 to him and is now divorcing 30 years later in 2020. The Pension adjustment order states that she is entitled to half of Tom's Celtic Cubs Cars pension which began on 1st January 2005 when he became an employee of that company to the 31st May 2020, that being the date of their divorce. She is awarded €200,000 by way of her entitlement and he is off with the other €600,000.

You are asking how did this happen? It is all in the detail. She presumed that she was entitled to half of his full pension pot as he began selling cars for 'Crafty Cars Incorporated just days after they married in 1990. He always paid into his pension fund, but 'Crafty Cars' had been taken over by 'Celtic Cubs Cars' on the 1st January 2005. Tom's service had therefore, never been broken, but he did however invest his 'Crafty Cars' pension in a separate ARF on company takeover, which sum had not been captured by the Celtic Cubs Cars Pension, unbeknownst to Kate at that time. Where is the State in this state of affairs?

Nowhere, is the short answer to that question sadly for Kate. She now found herself strapped and stuck to that somewhat slightly worse for wear kitchen sink as she watched her ex-dearly beloved head off into the sunset with 75% of their supposed combined pension pot. What's in a word they say? Well for Kate €200,000 was in the three words: Celtic Cubs Cars. If she had just agreed to half of his pension, as opposed to half of his Celtic Cubs Pension, then she would have been on the pig's back, no pun intended! Where was the state in vindicating the rights of the mother, who held such an important role in the home? Nowhere I suspect, because their 'paternalism' only told Tom how to save for his future, not how to spend now on the very highly esteemed person at the sink in his home.

Now let's take it a step further if you will. Tom is undergoing a midlife crisis call it what you will, but he's up that aisle faster than you can say ' sports car'. Eve, his new wife is 20 years his junior, so with a spring in his step, he cashed in 25% of his pension fund under a government scheme by way of a tax exempt lump sum at his tender age of 50. Well it is the new 40 after all. However, just as he is about to drive off into the proverbial, or the Netherlands to be more specific, he pops his clogs. His beautiful new bride is stunned to discover that she can retire early under the state espoused death in service contingency to the grieving spouse by way of an early pension lump sum. Tom's previously mentioned pension sum of €600,000 is secured for her to take in tax free annual chunks.

Additionally, If her newly acquired Mercedes sports car needs fine tuning or upgrading, she is now good to go and go she did. Eve bites the bullet and heads for Pandemic Porsche's showroom (formerly Celtic Cubs Cars), where she falls head over heels with more than the red sporty number with five wheels. She also falls for the red salesman sporting the keys named Percy. As luck would have it, he wasn't as risk averse as you and I, evidenced by his positive response to her leap year marital proposal 3 weeks later. Eve and Percy married shortly after, though he cannot quite put his finger on what most attracted him to her, but I and you could hazard a guess. Percy's piggy under Pandemic Porsche's pension scheme has soared, whilst Eve spends most eves at the sink making bottles for their newborn triplets.

CONCLUSION

Whilst you are busying yourselves spotting the pattern, you may be wondering whatever happened to Kate, that is Tom's estranged first wife, who was tricked out of her full half of his pension when he divorced her. She sought a new pension adjustment order to reflect her equitable right to half of her ex husband's full pension of €800,000 and a further €200,000 was awarded to her from that pension fund. She receives annual dividends and gives this money to a charitable trust set up to educate pension lawyers in Ireland. She married the pension lawyer who got justice for her in the end. Kate believes that the State's paternalism in regulating her first husband's pension saving behaviour didn't do him much good, but the mere sight of her second husband at her shiny new sink is worth it's weight in 'GOLD'!

THE END