Pensions on divorce and dissolution

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When a marriage or civil partnership breaks down and there are negotiations about finances, any pensions which either party has, will be a relevant asset, and often a valuable one. Calculating pension values and how to split them can be extremely complicated. This guide is meant only as an overview. Every case is unique and there will be different solutions depending on the circumstances. We would always advise that specialist advice is taken when deciding on how to deal with a pension.

Valuing a Pension

The value of the pension is called a CEV (cash equivalent value). The CEV is the amount that the pension scheme would transfer to another pension in the event of a member transferring funds to another scheme. It can be lower than the fund value, as the CEV will include any costs to be incurred if the pension is transferred to another scheme. However, it only provides a snapshot of the valuation at that moment and is not guaranteed. Sometimes expert advice is needed to determine the accurate value.

Types of Court Orders

The Court can deal with pensions in one of three ways:

Offsetting: this involves balancing the pension against another asset. This could mean that one party takes the pension, while the other party receives a greater share of the house. This is a widely used method but can be at the expense of retirement security later in life. Where offsetting is used, it is important the pension is properly valued.

Example: Kate and Will are divorcing. Will has a pension which has been valued at £200,000. There are savings totally £10,000 and the family home has been valued at £290,000. (This is the value after the mortgage has been taken off.) There are no other assets or liabilities, so the pot to be divided is £500,000. The Court has decided there should be a 50/50 split so Kate and Will are each to receive £250,000.

- Will wishes to keep his pension (£200,000), so requires £50,000 from the remaining pot. He takes the savings (£10,000) and £40,000 from the family home. If Will is under 55, he will still have to wait until he can take his pension
- Kate keeps the family home raising £40,000 to give to Will.

Attachment: a proportion of the pension is set aside to be paid to the other party upon retirement. The pension funds remain in the member's pension until payment.
There are risks as benefits can be lost if the former spouse remarries or dies.
Attachment Orders are not used frequently and this option is becoming increasingly rare.

Example: Charles and Camilla are divorcing. As part of the financial agreement between them, Camilla has agreed to a pension attachment order of 25% in Charles's favour. This means when Camilla retires, and not before, Charles, will receive 25% of the lump sum and income from Camilla's pension. If Camilla receives a lump sum of £100,000 and an income of £500 per month, then Charles will receive a lump sum of £25,000 and an income of £125 per month. It is possible for an attachment order to attach only to income or only to the lump sum. It does not have to apply to both, unless agreed.
If Camilla were to die or remarry before she retires then this will affect the amount Charles will receive.

Sharing: where the Court makes a Sharing Order, the partner will receive a share of the member's pension, called a Pension Credit. The Pension Credit will be a percentage of the pension, and the amount will depend on the circumstances of the case. The pension is essentially split into separate pots for the future. If the pension scheme allows the share to be transferred out, then the share is either transferred into a new pension or ring-fenced as part of the former spouse's pension scheme.

This option offers a clean break because each party has their own separate pension and are not therefore bound to retire at the same time.

Example: Elizabeth and Philip are divorcing. Philip has agreed to a pension sharing order of 45% in Elizabeth's favour. This means that 45% of Philip's pension will be transferred out of his pension scheme and into a pension for Elizabeth. If the scheme allows for Elizabeth's share to be transferred out, then Elizabeth can either set up a new pension or transfer the 45% share into her existing pension scheme. If Philip's scheme does not allow a transfer out, then 45% of Philip's pension will be ring-fenced for Elizabeth, which she will receive on her retirement. If Philip's pension is valued at £300,000 at the time the Pension Sharing Order is made, then Elizabeth will receive £135,000 to invest into her pension. Elizabeth will not receive this money as a cash lump sum. It is the value invested into her pension fund.

All these options carry certain risks and it is important to take specialist advice.

Splitting a pension after retirement

If either or both parties have retired, the pensions can still be split, but the rules are different. The Pensions Sharing and Pensions Attachment options are available as possible options. However, it is not possible to take a lump sum from the pension if the former spouse is already receiving an income from it.

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