



Pensions and Divorce

Divorce proceedings are a traumatic time for those involved, and can be made all the more difficult when it comes to the division of assets. Many people will immediately consider how to split finances, the family home and furniture. What may not spring to mind, however, is pension sharing. Nevertheless, this is something that must be thought about, as courts do now have the power to apportion pension rights.

What are your options?

When considering the details of a divorce settlement, the court is now required to take the pension rights of each party into account.

Therefore before a divorce settlement, it is often necessary for each person to obtain a valuation of their own pension pot, whether this pot is through a 'money purchase scheme' or an equivalent value in a final salary pension.

Once a valuation has been sought, a court will be able to incorporate pension rights into the divorce settlement. This can be done in one of three ways:-

1. Pension Offsetting

Pension offsetting sees the party with the pension pot keep it in its entirety, without it being diluted in any way. The other party is then given the right to another asset (for example, the right to the matrimonial home) thereby balancing the value of the pension.

However, this method has been criticised for failing to achieve fair results.

Indeed, there may be a large discrepancy between the value between a pension and a property. Furthermore, the worth of a pension often fluctuates, and can increase or decrease over time. Also a pension income is usually first taken between the ages of 60 and 65. Thus one party may turn out to have a much better deal than the other.

2. Pension Attachment

Pension attachment was introduced under the 1995 Pensions Act, and was applicable as of 1 July 1996. When one spouse's pension pot comes into payment (when they retire or die) the other party will receive a specified sum. This will either be awarded as a lump sum or via regular payments. The attached amount to be taken from the pension will be instructed by the court at the time of divorce.

Either party can, however, make an application in the future to have this changed. There are some issues with the option. Firstly, the ex-spouse does not receive any money until the other party retires, therefore denying each person the chance of a 'clean break.' Secondly, the payments may stop if the party receiving the pension remarries, or the party who owns the pension dies.

2. Pension Sharing

Pension sharing came in under the Welfare Reform and Pensions Act 1999, which was enforced as of 1 December 2000. Since then it has become one of the most popular options for divorcing couples, as it allows pension rights to be split between each party at the time the divorce financial settlement is made.



Pension sharing works in the following way:-

- The court issues a Pension Sharing Order, creating a Pension Debit Member (the party with the pension pot) and a Pension Credit Member (the other party).
- The Pension Credit Member will then be awarded a specified percentage of the Pension Debit Member's Cash Equivalent Transfer Value (CETV). For example, if a pension pot stands at £40,000 and it is decided 50% should be awarded, the ex-spouse will receive £20,000 from that pot to put into a new pot in their name.
- Because pensions rise and fall, the CETV is calculated immediately before the Pension Sharing Order takes effect. This is normally the date on which the final Decree of Divorce is pronounced.

How pensions on divorce should be dealt with is a complex area and legal advice is essential. If you have a query regarding pension sharing after divorce, contact us today. Whether you would like advice on your rights, more information on the different options available, or you are simply in search of guidance, our team of legal experts are here to help.

These notes are for general guidance only and are not intended to replace proper legal advice. We accept no liability for their application to particular circumstances.

What is the next step?

Please call [01242 235202](tel:01242 235202) to speak to us, fill in the [free assessment form](#) on our website or email family@davisg.co.uk

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