

What you need to know about...

PENSIONS AND DIVORCE

When a couple divorces, one of the key functions of the process is to split the assets fairly. Usually, the Courts will look at the family assets as a whole, such as the family home, and anything else of value such as includes pension plans. This is an issue because it is common for one spouse to hold larger pensions than the other, either because their earnings were greater, or because the other spouse stopped work to raise children.

What happens to pension assets on divorce?

Both sides in the divorce proceedings will need to value their pension assets, just like with the other assets of the marriage. They will attempt to come to an agreement for a fair division of these assets. This can be via agreement between the parties, or ultimately by Court order.

This is an important consideration, because in many cases one party will hold vastly more in assets than the other. Also, there are many other considerations such as children of the marriage, which may mean that a division of assets is not a simple 50:50 split.

It can be difficult to come up with a valuation of a pension scheme, bearing in mind that there may not be a definite pot of money assigned to a person's entitlement.

This has led to 3 main ways of dealing with pension assets on divorce:

Pension offsetting

This is where pension assets will be balanced against other assets, such as the family home. Thus, in this case, one party might get the

house, and the other will get to keep their pensions.

There can be problems with this approach because the assets may not be equal in value, or the pension may be worth far more than the family home.

Example

Alan and Mary have 2 major assets: the family home and Alan's pension scheme. The house is worth £100,000 after the mortgage, and Alan's pension is worth £100,000. They could decide that Alan keeps the pension, and Mary the house. The pension asset offsets that of the house.

Earmarking

The Courts can make an order that when one party's pension comes into payment, a part of this income will be paid to the other.

In theory this is a neat solution, but can lead to problems. For example, the person with the pension plan will still retain control over the assets even though the other party will be receiving some of the benefits. There may be conflicts as one spouse has full control over

Continued overleaf...

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the investment decisions.

Also, the former spouse with the pension asset has control over when to decide to take their benefits (i.e. to retire). This could be at a date convenient for them, but not their former spouse! Another drawback is that the pension payments will stop when the owner of the scheme dies, which could be many years before the former spouse. Finally, earmarked benefits cease on remarriage. These problems have meant that this is now a little-used option.

Example

Tim and Julie decide that Julie should be entitled to 25% of Tim's pension scheme. Julie will be entitled to this amount, but only when Tim decides to retire, and this will stop when he dies, or Julie remarries. Julie has no control over Tim's choices with the pension scheme.

Pension sharing

This approach allows the parties to split the pension benefits to give the former spouse their own share of the pension pot. This allows a clean break, and gives the former spouse complete control over their new pension asset.

The former spouse gets a *pension credit*, which can remain invested in the same scheme; alternatively, they can transfer the pension credit to a scheme of their choice.

This is a much more straightforward choice than earmarking; if offsetting cannot be agreed, then pension sharing is usually taken.

Example

Bob and Sarah decide that Sarah can keep the family home, but Sarah should also have 25% ownership of Bob's large pension scheme. The Court can issue an order for Sarah to have this amount, which can be transferred to a scheme of her choice, giving her full control over the scheme.

Advice in this area

This is a complicated area, since it combines a relationship breakdown with a difficult legal maze and convoluted pensions legislation.

There are many types of pension, and each type will need to be treated differently with each solution. This means that both sides in a divorce situation should take advice from a financial adviser *before* committing to any option. Your solicitor will be qualified to advise you on the legal aspects of the solutions, but not the financial implications.

We can help you to understand the implications of your choices, and what to do with your pension assets.

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