

Pensions on divorce or dissolution

If you are going through divorce or dissolution proceedings, then pensions can play an important part in the settlement that you reach with your spouse or civil partner. For simplicity in this fact sheet the expression 'spouse' will also mean civil partner.

In many cases, a pension is the second largest asset after the home. Essentially the approach of the courts to pensions is the same as the courts approach in relation to other assets, for example the family home or an endowment policy. Pensions are different however, primarily because the pension benefit cannot be received until the pension holder retires, and the value of the pension is lost or diminished if the holder dies prematurely.

It is important to note that in establishing a spouse's claim in respect of a pension, there is no set formula when calculating the benefits. The circumstances will vary, particularly in relation to the length of the marriage/partnership.

Generally, pensions are valued by obtaining a Cash Equivalent Transfer Value (CETV). This is the value your pension would be given if you were to leave your current pension scheme and transfer your benefits to a new scheme. Your CETV can be obtained from your pension scheme trustees. This is not the figure that is quoted on your annual benefits statement.

There are particular types of pension, where the CETV may be understated. This is particularly the case if your spouse has a pension in a public service scheme. There are also some private schemes that this applies to. Your fee earner will advise you if your spouse's CETV is likely to be undervalued and how to obtain a more accurate valuation.

At present there are four options available to a court when considering how to deal with a pension.

Option 1 – off-setting

Off setting is where the pension remains with the pension member, but its value is taken into consideration when dividing the assets. The pension member's spouse will receive a greater proportion of the non-pension assets, for example the house or savings.

Whether this option can be used will depend on there being sufficient non-pension assets to trade off the spouse's claim on the pension.

Advantages of off setting

- It achieves a clean break settlement at the date of divorce or dissolution.
- Pension scheme trustees do not become involved and therefore it is often the cheapest way to proceed.
- It may allow the spouse with children to remain in the family home. This avoids the children being uprooted and can prevent further hostility.
- This option can be very attractive to a spouse as they receive the benefit of the additional assets straightaway. If they receive a pension sharing order, they will not receive the benefit until they reach the schemes retirement age (usually 60 for women), regardless of the age at which the pension member retires.
- The pension member's lump sum and pension income will not be diminished upon retirement if the whole of the spouse's pension claim can be off set.

Disadvantages of off setting

- The spouse with the pension will not receive capital to assist with their re-housing or other immediate financial needs.
- The success of this option will depend on whether there are sufficient non-pension assets to trade off. If there is very little equity or savings then it is likely that the other party will still have a pension claim.

Option 2 – deferred lump sum

This type of order will direct that when the pension member retires, a fixed amount is paid to the spouse from their lump sum. For example, if it is agreed that a spouse is entitled to £20,000, then the order will state that when the pension member retires, the first £20,000 of their lump sum will be paid direct to the spouse. It is the duty of the pension member not the pension scheme trustees to ensure that the lump sum payment is made.

Advantages of a deferred lump sum

- If a pension member needs capital at the date of the divorce or dissolution then this option may allow them to receive their share of the non-pensionable assets immediately. A need for capital now may be far greater than it is likely to be in the future. For example, if he or she has debts to pay or help with re-housing.
- It allows a clean break to be achieved.
- It is cost effective, as once again the pension scheme trustees are not involved.

Disadvantages of a deferred lump sum

- The amount of the pension member's possible commutation (lump sum) is reduced.
- The lump sum is still payable if the spouse remarries. This may therefore make it an attractive proposition to the spouse in negotiations.

Option 3 – pension sharing

This option allows for a share of the current cash equivalent transfer value (CETV) to be transferred to the spouse, therefore providing a pension in their own name. For example, it may be ordered that 30% of the pension members CETV be transferred into a pension in the spouse's name. This has the overall effect of reducing the pension member's pension on retirement. For someone with short service, this may not be a problem, however, a pension member who has built up a significant pension through many years of hard work could face disappointment from a reduced pension in retirement. A pension sharing order is most appropriate where it is intended that the parties have a clean break and it is thought desirable to provide the spouse with a share of the pension member's entitlement to give him/her their own pension.

Depending on the pension scheme, the spouse's pension either has to remain in the pension member's scheme, or it can be transferred to a scheme of their choice.

Advantages of pension sharing

- It enables a clean break to be achieved. The pension share is applied immediately to the value of the pension at date of implementation. The pension member will therefore solely benefit from any contributions after implementation.
- It enables the pension member to receive some of the non-pensionable assets to pay off debts or to rehouse.
- It may be possible to rebuild a pension through taking out a private pension investment.
- Remarriage, death or other change in circumstances will not affect the order.

Disadvantages of pension sharing

- The pension member's lump sum and monthly pension payment will be reduced. The actual debit (the reduction in pension as a result of the order) will not be known until retirement.
- This option involves the pension scheme trustees and will therefore involve charges.

Option 4 – pension attachment (earmarking) order

Pension attachment is an order where the pension on retirement (either a proportion of the lump sum, income or both) or any death in service grant is paid direct to the spouse by the pension trustees. The order will be expressed as a percentage or fraction. For example the order may state that 25% of the total lump sum is to be paid to the other party and the balance paid to the pension member.

Advantages of a pension attachment order

- Once again, this is beneficial if the pension member requires capital now to assist with housing or to pay off debts. The spouse's entitlement is paid when the pension member retires.
- If there is a prospect that the spouse will remarry, then a pension attachment order may be advantageous, as the benefit will be lost on remarriage (provided this provision is included in the order).

Disadvantages of a pension attachment order

- A spouse may always be linked to the pension member and therefore a clean break may not be achieved.
- An order will involve the pension scheme trustees and this will incur a charge for implementing the order.
- The order will apply to the value of the pension at date of retirement. The spouse will therefore benefit from any increase in the value of the pension following the divorce or dissolution.
- The spouse will only benefit when the pension becomes payable. The court is unable to order that the pension member retires by a certain date and therefore if he/she chooses, they can work beyond their normal service and the spouse cannot demand payment. Additionally, the court has no power to order that payments are made to increase the value of the pension.
- A spouse will not receive any financial benefit if the pension member dies before the pension comes into payment (unless the order provides for payment of the death grant).

Information required by your fee earner

To assist your solicitor in advising you in relation to a pension claim, you will need to provide the following information:-

- a) The cash equivalent transfer value (CETV) of your pension. This figure can be obtained from your pension scheme trustees. You should advise them that it is for divorce/dissolution purposes. Please be aware that some schemes charge for providing more than one valuation during the course of a twelve month period.
- b) The date you joined the pension scheme in question.
- c) Confirmation of the lump sum which you are likely to receive at the date of retirement (should you choose to commute).
- d) Confirmation of the monthly pension you will receive upon retirement (both if you choose to commute or not).

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