

# Police pensions on divorce and dissolution

When considering a financial settlement the police pension is an asset, which is taken into account when dividing the finances. Usually in police cases, the pension is the second most valuable asset in the marriage/civil partnership after the family home. In some cases it is the most valuable asset. For simplicity in this fact sheet the expression 'spouse' will also mean civil partner.

A police pension is very different from private sector schemes. It is unfunded and regulated by an Act of Parliament. It has a number of unusual features, and it is essential that it is correctly understood by your legal advisor.

Essentially the approach of the courts to police pensions is the same as the court's approach in relation to other assets, for example the family home or an endowment policy. Pensions are different however, primarily because the pension cannot be released 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 claims in respect of a police pension, there is no set formula when calculating the benefits. The circumstances will vary, particularly in relation to the length of the marriage/civil partnership.

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

## Option 1 – off-setting

Off setting is where the pension remains with the police officer, but its value is taken into consideration when dividing the assets. The officer's spouse will receive a greater proportion of the non-pension assets, for example the house or savings. Whether this option is the right one for a particular officer 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.
- The Police 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 are 60, regardless of the age at which the officer retires.
- The officer'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 officer may not receive capital to assist with 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 police officer retires, a fixed amount is paid to the spouse from his or her lump sum. For example, if it is agreed that a spouse is entitled to £20,000, then the order will state that when the officer retires, the first £20,000 of his lump sum will be paid direct to the spouse. It is the duty of the police officer not the pension scheme trustees to ensure that the lump sum payment is made.

## Advantages of a deferred lump sum

- If an officer needs capital at the date of the divorce or dissolution then this option may allow him to receive his share of the non-pensionable assets immediately. An Officer's 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 to 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 officer's commutation is reduced.
- The lump sum is still payable if the spouse remarries. This may however 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 officer's CETV be transferred into a pension in the spouse's name. This has the overall effect of reducing the officer's pension on retirement. For an officer with short service, this may not be a problem, however, an officer 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 officer's entitlement to give him/her their own pension.

### 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. An officer will therefore solely benefit from any contribution after implementation.
- It enables an officer 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 officer'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 administration charges to implement the order.
- A spouse will not receive the benefit of the pension until he/she is 60, regardless of the age at which the officer retires
- The pension must stay within the police scheme and cannot be added to by the spouse. It will however be index linked in line with inflation.

### Option 4 – pension attachment order

Pension attachment is where the pension payable 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 officer.

### Advantages of a pension attachment order

- Once again, this is beneficial if the officer requires capital now to assist with housing or to pay off debts. The spouse's entitlement is paid when the officer 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 financially linked to the officer 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 the date of retirement. The spouse will therefore benefit from any increase in value following the divorce or dissolution.
- The spouse will only benefit when the pension becomes payable. The court is unable to order that the officer retires by a certain date and therefore if he/she chooses, the officer can work beyond his/her 30 year service and the spouse cannot demand payment. Additionally, the court has no power to order that payments be made to increase the value of the pension.
- The spouse will not receive any financial benefit if the officer 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 fee earner in advising you in relation to your police pension, you will need to provide the following information:-

- a) The cash equivalent transfer value (CETV) of your pension. This is the value used by the court to determine party's pension entitlement. The CETV is the value of your pension if you were to leave the police service and were able to transfer your pension rights to a new scheme. To obtain your CETV you will need to contact your forces pension department. A list of all pension departments and their contact details can be found on our website at [www.policedivorce.co.uk](http://www.policedivorce.co.uk). You are entitled to one free CETV in any 12 month period.
- b) The date you joined the Police Pension Scheme
- c) Confirmation of the lump sum which you are likely to acquire 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).

## G O R V I N S

FAMILY LAW

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