

Pensions and Divorce

Breaking up is hard to do!

Divorce and pensions are very significant. A pension could be a couple's most valuable matrimonial asset, in some cases worth more than the equity in the family home. As such, it is important that pensions are considered in the financial settlement if a couple decides to divorce or dissolve their registered civil partnership. All the money you've saved into it (except for your basic State Pension) will be taken into account when your assets are divided.

IMPORTANCE OF TAKING PENSIONS INTO ACCOUNT

Pensions vary in complexity. Some are relatively straightforward whilst others, in particular public sector or other final salary schemes, can be much more complicated. When a marriage breaks down, a couple might not appreciate the importance of taking pensions into account as a key asset – and perhaps even the most valuable asset – on divorce. It may be that you're a long way from retirement, and how you're going to manage then may not seem the most pressing issue. However, it's important not to underestimate or overlook pensions and consider how this could eventually impact on your retirement.

The courts have long had the power to take pensions into account in dividing up the matrimonial assets. Over the years, you may have paid into a number of workplace and personal pension schemes, as well as the additional State Pension. You'll need to obtain a valuation for each one. This will be based on what your pension would be worth if you moved it elsewhere. Typically, the total will be below the current fund value because any charges or penalties for transferring out of the scheme will be included.

If you live in England, Northern Ireland or Wales, you will need to obtain a statement that gives you the cash equivalent transfer value. If you live in Scotland, your pension value will be based on what was paid in after you married or entered into a civil partnership, up to the date of separation.

HOW YOU DIVIDE THEM BETWEEN YOU

Once you've obtained the value of all your pensions, you need to think about how you will

divide them between you. It is important to realise that there is no automatic entitlement to pension sharing. People often seem to think that just because they have been married, they are entitled to half of everything – including the pension. That is not the case. Divorce pension entitlement is more subtle than that.

When disputes arise within families, emotions run high and rash decisions can be made. This is why divorce is an arena fraught with acrimony. But seven in ten couples don't consider pensions during divorce proceedings, leaving some women short-changed by £5 billion^[1] every year. Research shows that more than half of married people (56%) would fight for a fair share of any jointly owned property, and 36% would want to split their combined savings.

WOMEN ARE LESS WELL PREPARED FOR RETIREMENT

Yet fewer than one in ten (9%) claim they want a fair share of pensions, despite the average married couple's retirement pot totalling £132k – that's more than five times the average UK salary (£26k)^[2]. In fact, more married people would be concerned about losing a pet during a settlement than sharing a pension (13% vs 9%).

Overall, women are less well prepared for retirement than men, with 52% saving adequately for the future compared with 59% respectively. This figure falls to below half (49%) for divorced women, with nearly a quarter (24%) saying they are unable to save anything at all into a pension – twice the rate of divorced men (12%) saving nothing. Furthermore, two fifths of divorced women (40%) say their retirement prospects became worse as a result of the split, compared with just 19% of men.

Even if pensions are discussed during a divorce settlement, women are still missing out – 16% lost access to any pension pot when they split with their partner; and 10% were left relying completely on the State Pension.

WHAT HAPPENS TO PENSIONS WHEN A COUPLE GETS DIVORCED?

Almost half of women (48%) have no idea what happens to pensions when a couple gets divorced, which may explain why so few couples consider them as part of a settlement. A fifth (22%) presume each partner keeps their own pension, and 15% believe they are split 50/50, no matter what the circumstances.

In reality, pensions can be dealt with in a number of ways on divorce.

PENSION SHARING

Divorce courts can and often do order a pension to be shared when considering financial arrangements during a divorce. Other options however include offsetting which is where the pension fund value is 'offset' against other matrimonial assets, such as the house. To offset a pension or part of a pension against another capital asset has to be done carefully because of the different nature of capital assets and pensions. Pensions are not liquid assets; they can only be turned into cash at retirement.

When a pension is divided or shared, this does not mean that you will receive a cash lump sum – although in certain circumstances where the recipient is over retirement age, that can be the case. A pension or part of a pension that is ordered from one party to another still remains a pension and has to be invested in a pension plan.

PENSION OFFSETTING

The value of the pension is weighed against another asset, such as the family home. If you choose this option, your ex could be awarded a larger share of the property in return for you keeping your pension. However, they will have to make their own retirement arrangements. If they're close to retirement and haven't made any pension arrangements of their own, they may not agree to offsetting.

PENSION EARMARKING

Pension earmarking means one of you receives a lump sum or income from the other person's pension when they start to draw on it. However, the pension holder may decide not to take their pension straight away or carry on working, leaving the other person without a retirement income. If you're dependent on pension earmarking and you remarry, you will lose your right to carry on receiving the pension – and if your ex dies, your income is likely to stop.

DEFERRED LUMP SUM

You receive a lump sum when the pension holder retires. This option is not available in Scotland.

DEFERRED PENSION SHARING

If your ex is below the age at which they can receive a pension and you are already receiving one, you can ask the court to make a Deferred Pension Sharing Order. This allows you to receive an unreduced pension until they reach the age at which they can start to receive a pension too. This option is not available in Scotland.

If you're retired, you can still split pensions if your ex has already retired, but it won't be possible for a tax-free lump sum to be taken from their pension – even if they took a lump sum. ■

Source data:

[1] The research was carried out online for Scottish Widows by YouGov across a total of 5,314 nationally representative adults in April 2017. Additional research was carried out by Opinium across a total of 5,000 nationally representative adults in September 2017.

[2] ONS Earnings and working hours
www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours

[3] Based on Ministry of Justice figures showing there were 11,503 'pension sharing orders' in the year to March 2017, and ONS data that shows there were 107,071 divorces in 2016.

OBTAINING THE RIGHT GUIDANCE AND SUPPORT IS VITAL

Obtaining the right legal and financial guidance and support is vital when dealing with pensions (and indeed the other assets and financial issues) in the event of a divorce. Pensions may vary in complexity but can be confusing at the best of times, and the details need to be addressed carefully. To find out more or to discuss your situation, please call us – we look forward to hearing from you.

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