

Pensions

on divorce or dissolution

Overview

Although a pension cannot be immediately cashed in and is held in one party's sole name - it is in a divorce or dissolution treated as an asset that can be divided between the parties. In this factsheet the expression 'spouse' will also mean civil partner.

Before negotiations can take place you will need to obtain a cash equivalent transfer value (CETV) from your pension provider. This is the value of your pension at the date you make the request and the value that your pension would be given if you were able to transfer it to a new pension scheme. If your pension is already in payment you will need to obtain a cash equivalent benefit statement from your pension provider, as well as letting us have your last three payment slips.

A summary of the current options available to you and the advantages and disadvantages of each of the options is provided below.



Once we have ascertained the value of your pension we will then be in a position to consider what your spouse's claim is likely to be and how this claim can be settled. If your spouse has a pension then this will also need to be valued and taken into account when considering your spouse's claim against your pension. There is no set criteria or calculation that is applied by the court to calculate your respective pension claims. All the circumstances of the case have to be considered, particularly the length of the marriage or civil partnership.

Option 1 - Pension Sharing

This is where a percentage of your pension is transferred to your spouse. Your spouse then holds a pension in their own name. It depends on the rules of your pension scheme as to whether or not your spouse is permitted to transfer the pension to another pension scheme of their choice, or whether the pension has to stay in your scheme.

A Pension Sharing Order takes effect from the date of the Decree Absolute, or if later, 21 days from the date of the order (unless the order is appealed and in which case the effective date will be the date of the order determining the appeal). The percentage transferred is a percentage of your pension at the date of implementation and not therefore a percentage as at the date of retirement. A Pension Sharing Order cannot be made if your divorce proceedings were commenced prior to 1 December 2000.

Advantages of Pension Sharing

- It achieves a clean break
- You receive a share of the capital, which may be needed to help you re-house or meet other immediate financial commitments
- You will receive the benefit of any pension contributions you make post implementation
- Remarriage, death or other change in circumstances will not affect the order
- Your spouse will have a pension of their own.

Disadvantages of Pension Sharing

- Your lump sum and monthly pension will be reduced
- The actual debit (the reduction in pension as a result of the order) will not be known until retirement
- An implementation fee will be payable to the pension provider
- Your spouse will not be able to receive the pension until the date specified by the rules of your pension scheme.

Option 2 - Deferred Pension Sharing Order

This is an agreement for the Pension Sharing Order to be implemented at a future date. This is usually used when the pension is already in payment and your spouse will not be entitled to receive the pension income for some years. If the Pension Sharing Order is delayed it means that you can receive an unreduced pension until such time as your spouse is eligible to receive it. If the pension share is delayed then if necessary an agreement can be reached as to the appropriate level of maintenance to be paid to your spouse. It is important to note that the valuation date is not the same as the date in which the order takes effect and therefore the value that you use to negotiate may not be the same as at the date of implementation. Some pension providers will also seek to recover any payments that should have been made had the pension sharing order not been delayed and if the pension was in payment, which is often known as "clawing back." It is therefore important that you consult with your solicitor as to the relevant scheme rules. A Pension Sharing Order cannot be made if the divorce petition was issued before 1 December 2000.

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Advantages of a Deferred Pension Sharing Order

- You continue to receive an unreduced pension income
- See also the advantages listed under the Pension Sharing section above

Disadvantages of a Deferred Pension Sharing Order

- An immediate clean break is not achieved
- If maintenance payments are agreed until the Pension Sharing Order is implemented your spouse may apply to the court to vary the level of maintenance. It does not therefore ensure the same level of certainty and finality as implementing the order straight away
- You could find yourself subject to the pension administrator "clawing back" potential benefits that should have been paid to the other spouse during the deferred period
- See also the disadvantages listed under the Pension Sharing section above.

Option 3 - Offsetting

This is where your spouse's claim to your pension is offset against your capital assets. For example if you own a house - rather than give up a share of your pension you can instead agree that your spouse has a greater share of the equity. If the pension is offset then it is usually accepted by the court that a discount should be applied to the amount that would have been transferred under a Pension Sharing Order to reflect the early receipt of the benefit. This is called the 'accelerated receipt' or 'utility' argument.

Advantages of Offsetting

- It achieves a clean break settlement
- Your lump sum and income on retirement are not affected
- Your spouse will receive immediate capital that can be invested or may mean that they can afford to remain in the family home
- There are no fees.

Disadvantages of Offsetting

- You may not receive capital to assist with your re-housing or other immediate financial needs
- There may not be sufficient non-pension assets to trade off against the pension.

Option 4 - Deferred lump sum

This is an order requiring you to pay an amount of your lump sum on retirement to your spouse. It is your responsibility to pay the lump sum and not your pension provider's. The order will simply state the date by which you will need to make the payment.

Advantages of a Deferred lump sum

- You receive a share of the capital, which may be needed to help you re-house or meet other immediate financial commitments
- It achieves a clean break
- Your pension income is unaffected
- There are no fees.

Disadvantages of a Deferred lump sum

- The amount of your lump sum is reduced
- Unless you have other means of paying the lump sum you will have to take your retirement at the time that the lump sum payment is due
- A future lump sum payment can be varied by the court.

Option 5 - Pension Attachment Order

This is an order requiring a proportion of your lump sum and/or pension income or your death in service grant to be paid to your spouse. Your pension provider is responsible for making the payments to your spouse. The order has to be expressed as a percentage or fraction and is different to a Pension Sharing Order as it applies to the value of your pension as at the date of your retirement.

Advantages of a Pension Attachment Order

- You receive a share of the capital, which may be needed to help you re-house or meet other immediate financial commitments
- It enables your spouse to receive a pension
- The order can be drafted so that it provides for your spouse to lose the pension in the event of their re-marriage.

Disadvantages of a Pension Attachment Order

- A clean break is not achieved
- Your pension provider will charge to implement the order
- As the order applies to the value of your pension on retirement your spouse will benefit from the contributions you make post your divorce settlement
- There is no certainty for your spouse as to when the pension will be paid. The court is unable to order that you retire by a certain date
- Your spouse will not receive any financial benefit if you die before the pension comes into payment (unless the order provides for payment of the death grant).

Please feel free to discuss your own position and concerns. Contact your nearest office on:

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