

Pension split on divorce

Family

In many cases the pension is one of the most valuable, if not, the most valuable asset available for distribution and maximising income in retirement is often of great concern. Provided the pension is sufficiently large (probably in excess of £50,000) the chances are that one of the types of Orders referred to below will be made by the court.

Types of Court Order

There are two types of Order that the court can make in relation to your pension:

- It can make an Attachment Order, where you make a payment of a proportion of your pension income to your former partner after you start taking the pension, or
- A Pension Sharing Order, where a percentage of your pension fund is transferred to your former partner and they can retain that interest to provide for their long term security.

Attachment Orders have never been particularly popular because they can be changed and they end in the event of the recipient re-marrying, whereas Pension Sharing Orders cannot be changed so that once a proportion of your pension has been transferred to your former partner it will remain there indefinitely whatever the change in your circumstances.

It is important to ascertain the value of the pension benefits. Often the figure provided by the scheme administrators is not a realistic market value and so particular care needs to be taken over this issue. It is likely that we will obtain the advice of a specialist pensions actuary about this.

General Principles

Every case depends upon its own circumstances but a few general principles are worth bearing in mind:

- If your marriage is short and you are both young and in good health the chances are that the court will not be interested in making any form of Order against pension assets, except in exceptional circumstances.
- In the case of a long marriage, it is likely that the court will want to make an Order which will equalise income when you both retire.
- The most likely type of Order is going to be pension sharing, unless there are particular reasons why it is not appropriate.
- It is possible to trade-off the value of a Pension Sharing Order for extra capital in the right case, but you must be careful to ensure that the correct figure has been allocated to the value of the pension share. There are all sorts of traps for the unwary in this area. If you dissolve a marriage without having dealt with the pension assets you could lose out. This is because if there is no Court Order and your ex-partner dies before you, you will no longer benefit under the terms of his or her pension as next of kin.
- As a result of the changes implemented in 2015, in many cases it may now be possible to access a pension fund once you have attained the age of 55, but remember that you will be treated as having earned the sum that you have drawn down in that tax year so there may be significant tax consequences for trying to access all of the funds in one go.

It is because of this complexity that advice from a pensions specialist is almost always required so that you can make an informed decision about the type of Order that you seek.