

Options with Pensions

There are three main ways that pension assets are dealt with upon Divorce; a Pension Sharing Order, an Attachment Order, or Offsetting the pension assets against other matrimonial assets. The basic details of each of these options are set out below:

1. Sharing Order

- Value is crystallised at time of divorce, the Cash Equivalent Value is split in proportions agreed
- A share of the Pension is transferred to the ex-spouse, who sets up their own Pension policy

Benefits:

- Each party keeps control of their own pension pot, with flexibility to choose their retirement date
- Some Final Salary schemes offer the ex-spouse defined benefits within their scheme (this is usual with Public Sector Schemes and more unusual with Private Sector schemes)
- Clean break – no further association with each other's pensions required
- No restrictions on remarriage – parties free to do as they please
- Death benefits can be directed by the member with no association to ex-partner

Downside:

- If we are dealing with a Final Salary Scheme, the ex-spouse may be required to move the pension away from the security of such a scheme
- There is no link to future contributions, which could result in a lower pension for the ex-spouse

2. Attachment Order

- The ex-spouse is awarded an agreed proportion of the member's pension
- The pension will be linked to the future growth on the member's pension
- The ex-spouse's retirement date is determined by whenever the member decides to take the pension
- The tax free cash lump sum can also be split

Benefits:

- The ex-spouse benefits from the member's future pension contributions (if any) which could ultimately result in a higher pension
- If the ex-spouse is under 55 years of age at the time the member takes the pension, they will be able to access benefits earlier than would normally be allowed

Downside:

- If the ex-spouse remarries, the pension reverts to the member and the ex-spouse gets nothing
- If the member dies, the pension to the ex-spouse is lost
- The pension will be taxed as the member's income and then a proportion passed to the ex-spouse – if the member is a Higher Rate Taxpayer, then the ex-spouse may be paying unnecessary tax
- The ex-spouse has no control at all
- Contact has to remain between parties indefinitely

3. Offsetting

- The value of the pension rights is taken into consideration when splitting the marital assets. When offsetting, it is not unusual for the Courts to recognise that cash in hand has greater value than a future income payable over an extended period
- A higher proportion of the assets can therefore sometimes be given to the partner who is receiving pension assets (and therefore a future income) than to the partner receiving cash (with the flexibility of how to dispose of it)
- As pension funds are inaccessible until age 55 and the income payable is taxable, there is an argument for reducing the level of cash/non-pension assets to offset against pension benefits. It is therefore typical for a discount to be made to allow for the fact that the pension will be taxed
- In addition, you may also find that a reduction is made for utility, which can reflect a preference over whether or not to hold a non-pension asset, but this is not an actuarial argument and is a matter for negotiation
- There is no right or wrong answer with offsetting, as it will come down to whatever the two parties deem reasonable and whether the need for alternative assets, such as the home or a cash lump sum, takes precedence over a future pension income