

Success Starts Here Free Information Guide

Services

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Family Law



This free information guide provides details as to how pensions are dealt with and the options that are available when reaching a financial settlement on divorce or dissolution of a civil partnership.

There are many different types of pension schemes such as occupational schemes, individual “private” pensions and state pensions.

Generally pensions are designed to provide a person with an income stream in retirement and often a tax free lump sum. The age at which a pension can be accessed, and the level of the lump sum that can be taken, will vary from scheme to scheme. The minimum benefit age for everyone is now 55 except for the uniform services and sportsmen.

How are pensions valued?

Pensions in this country can be valued and there is a prescribed method of valuing pensions for the purpose of financial settlements on divorce and dissolution of civil partnerships. This is called the CE (Cash Equivalent) value. For pensions that are not in payment, a person is entitled to one free valuation a year. A charge may be applied to provide this information if the pension is in payment.

A valuation can take some time to be produced and it is advisable to make a request for it as soon as you know financial matters need to be addressed. The pension company should provide the valuation within 3 months.

As well as the valuation of pension assets it is also helpful to have information about when the contributions to the scheme were made. Although there is nothing cast in stone, it is usually argued that some discount should be applied if part of the pension was accumulated outside marriage/civil partnership or co-habitation.

How are pensions dealt with?

There are 3 ways a pension can usually be dealt with in a financial settlement on divorce/civil partnership dissolution:

- Pension sharing
- Pension attachment
- Set off

This does not apply to the basic state pension which cannot be shared (unlike the additional state pension). On divorce or civil partnership dissolution you can apply to substitute your National Insurance record for that of your spouse or civil partner.

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Pension Sharing

This is only available where divorce, civil partnership dissolution or nullity proceedings were begun after 1 December 2000.

Pension sharing must be made by Court Order which stipulates the percentage of the pension that is to be shared. The order will also stipulate who is to meet the costs associated with implementing the pension share which will vary from scheme to scheme. This information is provided by the pension provider on request.

The person giving up part of his or her pension suffers a pension debit applied against the pension and the other acquires a pension credit. The person with the credit may be forced to leave the pension credit in the scheme (an internal transfer) or may have to move it to another scheme (an external transfer) or may have a choice of doing either. The options available will depend on the rules of the scheme and if there is a choice it is always advisable to obtain independent financial advice.

The result of the pension share is that each person will have their own separate pension pot which is not dependant on the other. Pension sharing orders cannot be made in respect of most overseas pension schemes and may not be available where there is a pension attachment order in relation to that pension.

Pension Attachment

An alternative to pension sharing is pension attachment. This is available where the divorce, civil partnership dissolution, judicial separation or and nullity proceedings began after 1 July 1996. Pension attachment is also effected by a Court Order but the order attaches to the individual benefits of the pension, for example a certain amount of the tax free lump sum, a certain amount of the pension income and sometimes against death benefits.

The pension remains the pension of the person whose it is but a proportion of the benefits is paid to the other. This means that the retirement date and the death of the member will have a significant effect on the benefits paid to the other.

Off set

A further alternative way of dealing with pensions is off set. Offsetting is the transfer of other assets or cash in return for not making a claim or a smaller claim against the other spouse's/civil partner's pension.

This is simple to effect and can be useful where pensions are small, the parties are young or there is restricted capital available and it is important, for example because of children, that one party keeps the family home.

The major difficulty with offset is quantifying the trade off as a pound locked in a pension fund is often worth less than a pound in cash, particularly if the parties are not close to retirement. Judicial guidance on this is not clear but usually some arbitrary discount is applied to take this into account.

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Family Law

Useful links

Pensions Advisory Service
<http://www.pensionsadvisoryservice.org.uk/state-pensions/divorce>

Pensions Advisory Service
<http://www.pensionsadvisoryservice.org.uk/workplace-pension-schemes/final-salary-schemes/divorce>

State Pension
http://www.direct.gov.uk/en/Pensionsandretirementplanning/StatePension/Basicstatepension/DG_10014671

What should I do now?

Following divorce or dissolution of a civil partnership, dealing with pension assets can be complicated and must be considered in any financial settlement. The detail as to what you can or cannot do in respect of a particular pension is often governed by rules specific to a scheme.

Sometimes outside assistance is required to advise on where best to invest a pension credit or which pension is best shared. Expert actuarial assistance is often required to look into valuations in greater depth and when looking at an arrangement which provides equality of income in retirement.

Fisher Meredith works closely with pension experts and can advise when such expert assistance is necessary. Pensions are often a valuable asset and it is important that they are dealt with properly.

If you would like more detailed advice on how your pension will be affected following divorce, or dissolution of your civil partnership, please call our Family Law Department.

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