Your guide to pensions on divorce

Overview

Pensions form part of the assets that can be distributed between a couple on divorce. This guide will provide you with an overview of how pensions are valued on a divorce, the methods of division, as well as an overview of pension freedoms and taxation.

What pensions can be shared?

- Defined benefit/final salary schemes (for example public sector schemes).
- Defined contribution/money purchase schemes (for example personal pensions, SIPPS and some occupational schemes).
- Additional state pension. If you reached state pension age before 6 April 2016 your additional state pension can be shared. This is the amount paid on top of any basic state pension.
- Protected payment element of the new state pension. If you reach state pension age on or after 6 April 2016 your protected payment can be shared. This is the amount paid on top of the standard weekly rate of the new state pension.

Where can I find details of my pensions?

To help find contact details for workplace and personal pension schemes and lost pensions visit **Find pension contact details.**

To obtain your state pension forecast apply online using Form BR19 Application for a state pension statement or check your state pension forecast at **Check state pension forecast.**

To obtain details of your additional state pension or protected payment apply using Form BR20 **Additional state pension.**

You can also check your national insurance contribution history online at **Check your national insurance record.**

How are pensions valued?

Pension administrators are required to provide a 'cash equivalent value' (CEV), sometimes also referred to as the cash equivalent of benefits or cash equivalent transfer value. These are all essentially the same and mean the capitalised value of the pension benefits. The value is notional, based on what the value of the pension would be if transferred to a new scheme. It is calculated on the basis that the member leaves the pension scheme on the date of the calculation; no account is therefore taken of future membership.

Pension administrators can by law take up to three months from the date of your request to provide your CEV. If pension administrators are notified that the information is needed in connection with proceedings, they should provide the information within 6 weeks or within such shorter period as specified by court order. Pension administrators will not normally make a charge for providing the CEV statement unless it is required earlier than the three-month period, or you have already been provided with a valuation in the last twelve months or you are not a member entitled to a CETV under the provisions of Regulation 3 of The Pensions on Divorce etc (Charging) Regulations 2000.

If a pension sharing or pension attachment order is likely to be made you should also ask your pension administrators to complete the Pension Inquiry Form (Form P).

If financial remedy proceedings have been issued the CEV must be no more than 12 months old prior to the first directions appointment.

Although the CEV is the prescribed method of valuation on divorce it is not the only one and, in some instances, it may not be a fair basis for valuing the pension benefits. A pension on divorce expert (PODE) can be instructed to help you value your pensions and work out how to share them.

You will also need to evaluate whether you want to achieve an equalisation of income on retirement or an equalisation of capital. Whether a pension should be viewed as deferred income or capital depends on the circumstances of the case rather than on the type of pension. If it is likely that tax free lump sums will be withdrawn, they are usually seen as capital and the balance of the funds viewed as a deferred income, whereas a pension in payment is only viewed as an income stream. In some cases it may also be appropriate to apportion the pensions to the period of the relationship and 'ring fence' the contributions made prior to the relationship or post separation.

What methods of division are there?

There are three main methods of settlement: pension attachment, pension sharing and offsetting. A combination of offsetting and pension sharing can be used to achieve a settlement.

It is not possible to make a pension adjustment or pension sharing order against a foreign pension and English pension providers neither recognise nor implement pension sharing orders made in foreign courts.

Pension sharing

Pension sharing orders divide the rights under a pension so that each spouse has a share of the pension. A pension sharing order must be expressed as a percentage. Some schemes only offer an internal transfer which means the spouse receiving the pension credit has to keep it in the same scheme, whilst other schemes permit a spouse to transfer the pension credit to an alternative scheme of their choice.

Pension administrators will usually make a charge to implement a pension sharing order. These charges do vary from scheme to scheme and should therefore be checked before concluding any agreements.

A pension sharing order takes effect from the later of 7 days after the period of appeal following the making of a financial order, or the date of decree absolute. The period of appeal is usually 21 days, so the earliest a pension sharing order can take effect is 28 days after the order has been made by the court. The pension administrator must implement the pension sharing order within 4 months of the date the order takes effect or, if later, 4 months from the date they receive all required information to proceed with implementation (this will include the pension sharing order, decree absolute and payment of the implementation fee).

Pension schemes are not bound by the CEV at the date of the order. The CEV is recalculated at the time of implementation.

Offsetting

Offsetting is the process by which the right to receive a present or future pension is traded for present capital.

Difficulties can arise in deciding the value to place on the pension rights because pension funds are not directly comparable with other assets. Pension experts can be instructed to advise on the appropriate amount and generally apply three methods: the cash equivalent value; a figure based on calculations for equality of income or capital; or a figure based on the value of the pension holder's present or future benefits.

In recognising that a pension has different investment and taxation characteristics to capital, consideration can be given to discounting the pension value to reflect these differences. For example, a discount could be agreed to reflect the tax that the pension member will pay once the pension is in payment. There may also be other reasons to apply a discount or an enhancement to the value. Whilst pension experts can advise on the valuation method and adjustments, it is ultimately a matter for the parties to decide or, failing agreement, a matter of judicial discretion.

Pension attachment order

A pension attachment order provides for a proportion of the pension income, lump sum or death in service benefits to be payable to a spouse. These orders are rarely used since the introduction of pension sharing orders.

What are pension freedoms and the lifetime allowance?

Since 2015 pension freedoms have enabled people to access their pension funds subject to tax from age 55. This increased freedom also applies to recipients of pension sharing orders.

Occupational and personal pension rules were overhauled in 2006, with pension funding being controlled by two primary restrictions - how much can be contributed or accrued annually (Annual Allowance) and how much can be accumulated over a lifetime (Lifetime Allowance).

The Money Purchase Annual Allowance (MPAA) prevents people cashing in their pension and reinvesting in a pension to gain tax advantages. The MPAA is triggered by taking any income under a flexi-access drawdown, taking an uncrystallised funds pension lump sum, or taking income from capped drawdown in excess of the cap and triggering flexi-access drawdown.

The Lifetime Allowance (LTA) was designed to restrict the amount an individual could accumulate in registered pension schemes over their lifetime before LTA tax charges are imposed. LTA charges apply where an individual's pension benefits are crystallised (taken) in excess of the LTA, with the LTA test being applied only at the point of crystallisation. There are several different crystallisation events where the LTA test is applied.

The value of pension benefits in a UK registered pension scheme for testing against the LTA is not necessarily the same as the CEV.

You can check the current allowance rates by using the following link **Pension scheme rates.**

Instructing a pension on divorce expert (PODE)

Valuing pensions on divorce is not easy and there may be complicating features to take into consideration. We recommend you seek specialist legal advice as well as consider the instruction of a PODE. A PODE can provide valuations and expert opinion to assist you with understanding the pension issues and to help you achieve a fair division of your assets.

The tax regime is also complex and if being considered we recommend taking specialist financial advice.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.