

Do I have to share my pension on divorce?

It sometime surprises clients to learn that like any other asset such as property or cash savings or investments, pensions can be shared on divorce. This is usually done by way of a pension sharing order, in which a percentage of the payer's pension is debited from their pension fund, and is credited to a pension fund in the name of the receiving party. The receiving party will then have full control to manage their new pension fund as they see fit and decide how they take their pension benefits on retirement, subject to the pension scheme's rules. It is important to note however that basic state pensions cannot be shared.

Although pensions can sometimes be overlooked there are some cases including those with modest assets, where the pensions are the most valuable of the assets. Equality is the starting point when considering pension sharing but there may be arguments to deviate away from this such as the needs of one of the parties. For example it may be that one party is older and due to retire imminently, whereas the other younger party will have the time to build up their own pension provision without the need to have full recourse to the other's pension.

Where there are enough other resources sometimes it is possible to offset your spouse's pension entitlement so that they receive a greater share of the other liquid assets in lieu of taking a share of the pension. It is however very important to understand the real value of the benefits that are being traded off.

Given the complexity of pensions it is possible that an independent actuarial pensions expert will need to be instructed to report on various options for dividing the pensions that are likely to achieve fairness between the parties. Their instruction is sensible and often imperative for a number of reasons including:

- From a technical perspective there are different ways of assessing equality when dividing pensions.
- Where there are a mix of different types of pensions including both defined benefit and defined contribution pensions – these are not directly comparable so an expert may be needed in order to deduce a fair division.
- Where there is an age difference between the parties an expert may be needed to calculate the size of the pension share to achieve a fair division.
- Sometime the true value of a pension fund can be underestimated, such as can be the case with defined benefit pensions where the transfer value on paper can on occasion be far lower than their actual value in reality.
- Where there is significant pension provision over and above certain level (known as the lifetime allowance) there may be additional tax considerations.
- Where an offsetting calculation is required given that pensions are not directly comparable to receiving cash as pensions are subject to tax.

A shortage of pension provision on divorce statistically affects women disproportionately as often they take time away from the workplace to raise children, may earn less and therefore have less income to contribute towards their own pensions

Given the wide-ranging implications it is important to take legal advice particularly where there are pensions to be considered.

For information about Family Law Matters, please contact Heather Weavill at Alison Fielden & Co on 01285 653261 (hweavill@alisonfielden.co.uk).