

What are my pension rights in a divorce?

Pensions are often one of our most valuable assets, so it is important to understand your rights if you are getting divorce.

Many of us now retire with multiple pension pots from different employers and some may have private schemes as well. Some preparation therefore needs to be done before you can divide your pensions in a divorce or dissolution of civil partnership. When negotiating a financial settlement the value of all funds should be known so that the value can be taken into account.

There are two types of pensions:

- State pension – provided by the Government, which you contribute to through National Insurance payments.
- Private pensions - these include occupational or workplace pensions set up by your employer and pensions set up yourself. There are many types of private pensions that are set up and managed in different ways. They generally however fall into two types – defined contribution and defined benefit pensions. This difference is important when it comes to valuing pensions which you need to do in the divorce process.

Defined contribution pensions are the most common types of private pensions. They are also called money purchase schemes. The pension pot is “defined” by the contributions you make to it. Its value is based on how much is paid in, how long it has been invested for and how well the investments perform. What you get when you retire is not set in advance. As there are a range of different types of pensions that could come under this category it is important to understand the particular features of your pension or pensions.

Defined benefit pensions – these are work place pensions run by your employer. The pension pot is not “defined” by what you pay in but by what benefits the pension promises to give you when you retire. These pension plans are sometimes called “final salary” or “salary-related” pensions but there are other types too such as Career Average schemes. Some company pensions come under this type of pension. All public sector work pensions are defined benefit pensions. Defined benefit pensions often have other benefits. The rules of these pension schemes can be complex. For example pensions from work in the Armed Forces, the Civil Service, the NHS, Teaching, the Police and Firefighters and Local Government are all defined benefit pension schemes but the benefits from each type can vary.

How is the pension split in a divorce?

There are various options to split pensions as part of the divorce or dissolution of settlement. The right one for you will depend on the pension scheme that you are splitting as well as your age and employment status. The options that may be available depending on the circumstances are:

1. Pension offsetting

Here the pension is not actually split at all. Instead it is offset against the value of other assets. So for example you may get a bigger share of the family home in

exchange for a share of your ex-partner's pension. The value of a pension fund (a right to get an income and/or capital in the future) is very hard to compare with a totally different type of asset such as the family home and careful consideration should be given to this.

2. Pension sharing order

This allows a percentage share of the member's pension to be transferred into a pension scheme in the ex-spouse's name. In some circumstances (normally with Public Sector Schemes), the ex-spouse becomes a "Pension Credit" member of the pension scheme in their own right. In the majority of cases the pension share has to be transferred into a private pension arrangement of the ex-spouse's choosing and advice is normally required. What happens depends on the rules of the scheme. Pension sharing for those divorcing who are already retired is still possible but the rules are a little more complicated. If your ex-partner is already receiving an income from a pension the tax man will not allow you to take the 25% tax free lump sum to which pension holders over 55 are generally entitled.

3. Pension attachment

A percentage of the member's pension is earmarked for the other member of the divorcing couple. They only start to receive it when the former spouse or civil partner starts taking the pension. The benefits are not necessarily watertight and will be lost if the ex-spouse remarries or the member dies.

Contacting a financial advisor and/or a solicitor before your attempt to split a pension is advisable as the rules can be complex. In some cases the use of a pensions on divorce expert who is jointly appointed by both parties is advisable.

For advice in relation to family law matters please contact Heather Weavill, Alison Fielden & Co Solicitors, telephone number: 01285 653261