
The purpose of this document is to help you understand the effect that divorce proceedings can have on any pension scheme.

i. Types of Pension.

- a. Statutory schemes** are provided for those employed by the state e.g. the Civil Service, Teachers.
- b. Occupational pension schemes:** Employees may make all, some or none of the contributions towards the pension. Employers may or may not contribute. Benefits can be based on either the employee's final salary (final salary scheme) or the performance of the investment in the fund (purchase scheme).
- c. Personal pension plans** are available to the self-employed and employed people who were not members of occupational schemes. They are money purchase schemes.

ii. Pension Benefits.

- a. The provision of a pension**

The most common feature of a pension scheme is the provision of a pension
- b. Spouse's Benefits**

Occupational pension schemes almost, always provide a spouse's pensions paid on the death of the contributor. Personal pensions often do not provide such benefits.
- c. Dependant's Benefits**

These are common in occupational schemes and provide pensions for children and often for partners.
- d. Lump sums**

Most schemes make provisions for the payment of lump sums. The provision of the right to exchange or commute part of the pension for cash is often included.

iii. Pensions and divorce.

Disclosure of a pension is a requirement in matrimonial proceedings. The most important information to be provided is the Cash Equivalent Transfer Value (CETV). This is the basis upon which the pension is valued by the court.

A pension is an asset to be taken into account by the Court when considering what other matrimonial property should be divided. Just as there are no hard and fast rules for dividing other assets or liabilities, there are no hard and fast rules for dividing pensions or compensating for the loss of pension rights. There is **no automatic right to a share of a scheme member's pension on divorce.**

However, the scheme member's spouse has the right to make an application to the Court for a share of the pension but whether or not that application will be successful will depend on all the circumstances of the case. When considering an application for a share of a spouse's pension the Court must first consider whether another type of Order (such as periodical payments or a lump sum) would be more appropriate.

Pension valuations are, at best, a guide and any apparent certainty is an illusion.

iv. Pension Attachment Order.

The Court can make the following Earmarking or Pension Attachment Orders ***(but only where the divorce, judicial separation or nullity Petition has been filed on or after 1st July 1996)*** for: -

- An Order that the pension scheme trustees or managers pay all or part of the member's pension to his spouse as a Periodical Payments Order (maintenance). Such an Order will come into effect only when the scheme member takes his pension. It comes to an end when the pension scheme member dies.

- An Order that the scheme member commutes his pension benefits to a lump sum on retirement up to the maximum allowed by the pension scheme and that the scheme pays all or part of that benefit to the former spouse. Again, this only becomes effective if the scheme member is alive at retirement.
- Death in service benefits. Where a pension scheme provides death in service benefits for a member who dies before retirement the Court can make an Order, which requires the pension scheme to pay all or part of the death benefits to the other party.

v. Offsetting.

This involves compensating the spouse who is not a member of a pension scheme by giving that spouse a larger share of the matrimonial assets. Offsetting is not simple as it can be difficult to put a value on the pension.

vi. Pension Sharing.

Pension sharing is not available for Judicial Separation but only for Proceedings for Divorce and Nullity and for Petitions filed with the court after December 2000.

It is not possible to make both a Pension Attachment and Pension Sharing Order in relation to the same pension, in the same Divorce. Pension Sharing and Pension Attachment will be calculated on a percentage basis.

A Pension Sharing order gives you a share of the pension that exists at the date of the order.

A Pension Attachment order gives you a share of the pension at the date of scheme members retirement.

The **cash equivalent transfer value** is the basis on which the pension is valued.

vii. Inheritance Act claims.

A spouse who is receiving periodical payments at the date of his/her husband's death may be entitled to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975 if the deceased spouse has not made provision for him/her in his /her Will.

viii. Insuring your spouse's life.

Before the Decree Absolute is granted each spouse has an insurable interest in the other. This means that a spouse is entitled to insure his/her spouse's life without that spouse's consent. Such insurance must be taken out before the Decree Absolute if it is to be done without the other party's consent. However, an Order relating to death in service benefits will have the same effect.