

## Pensions & financial settlements

It is important to consider pensions in any financial settlement following divorce or judicial separation. A person's pension can often be the largest asset of the marriage and it is therefore essential that pensions are not ignored when considering a financial settlement. Pension information can be slow to obtain as providers can take up to 3 months to provide pension information including an up to date cash equivalent value (CEV). This is needed to consider the current value of all pensions involved and this should be requested at the earliest opportunity. Your pension scheme is required to provide one CEV per year free of charge provided the pension is not in payment. If your pension is already in payment then you will be charged for this information.

Sometimes the CEV vastly understates the true value of the pension scheme if all the relevant facts are not considered, i.e. continuous employment and accrued benefits, death in service benefit etc. In such cases, a pension expert (an Actuary) is required to prepare a report to give the true value of the pension. The need for an Actuarial Report should be considered where either party is employed by the Police, Fire Service, Armed Forces, Prison Service and NHS. This would involve additional costs and time but the difference in the CEV and the true value of the pension usually outweigh the cost of the report. Here at KBL we have good links with a number of pension experts and we would be happy to arrange a report if one is required. Generally, if an Actuarial Report is required, it will be with a view to agreeing the appropriate expert with the other side and instructing them as a single joint expert, which means the cost of any pension report will be shared equally between both spouses.

### There are three ways to deal with pensions:-

#### 1. Pension Sharing Orders

The Court can order the pension scheme to transfer a percentage of one spouse's pension fund to the other spouse providing them with a separate pension of their own. The Order will state the percentage to be debited from the pension and credited to the other spouse. It is therefore of no relevance when each spouse retires, remarries or dies, as each person will have their own separate pension fund. Once the pension is set up, both parties may contribute to their own pensions should they wish to do so and they can each choose when to retire (subject to conditions of their particular pension scheme). A pension in payment can still be shared. However, Pension Sharing Orders are only available following divorce and are not available following judicial separation proceedings.

Pension Sharing Orders can only be obtained by way of a Court Order and not by way of an agreement. The share must be expressed as a percentage of the fund, not a specific amount to be taken from the fund. A Pension Sharing Order cannot be made in relation to the basic State Pension or in relation to a pension that has already been subject to a Pension Sharing

Order or an Attachment Order. There are generally fees paid to the pension scheme being shared to cover

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the cost of implementing a Pension Sharing Order. These vary from scheme to scheme.

### There are two methods of pension sharing:-

#### Internal Transfer

The person obtaining a share of their ex-spouse's pension will have a pension in their own right but that pension would remain within their spouse's pension scheme. Each spouse will have a completely separate fund within the scheme. Public Sector schemes, e.g. Teachers Pensions usually only allow internal transfers but not all pension providers allow this. The rules of the pension involved in your financial settlement need to be checked.

#### External Transfer

The benefitting spouse would take their share out of their spouse's pension scheme and transfer it to a completely new pension provider. In such cases, it is essential that independent financial advice is sought to ensure the best scheme is chosen for you.

Here at KBL we have good links with a number of independent Financial Advisors and we will be happy to make a referral on your behalf if you so wish to ascertain which method and which pension scheme would best suit you.

### Costs of pension sharing:-

The costs can be met by either the pension holder, the benefitting spouse or shared between both parties, either in equal shares or unequal shares. Fees are usually paid in cash up front, but sometimes the fees can be paid by way of a debit from the pension scheme itself. The pension scheme may only recover reasonable administrative expenses that have been incurred or are likely to be incurred but these can be substantial and can be as high as £3,200. It is for this reason that Pension Sharing Orders are often only used when the pension has a relatively high value (CEV over £50,000) or if there are no other assets to offset.

#### 2. Pension Attachment Orders

These are extremely rare because since 1<sup>st</sup> December 2000 the Court has had the power to make Pension Sharing Orders on all divorces issued after this date.

With Pension Attachment Orders the Court can order the pension scheme to pay a part of one spouse's pension income and/or lump sum upon retirement to the other spouse, however, the pension remains in the pension holder's sole name. This means the other spouse remains financial dependent upon them and has to wait for them to retire before they get their share of the income or lump sum. In the meantime, the spouse holding the pension may apply to vary the Order or if the dependent spouse remarries, they are no longer entitled to their share of the pension. Finally, it needs to be taken into consideration that payments would also cease on the death of either spouse.

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### 3. Offsetting

This is where one spouse is compensated for the other keeping their pension in full e.g. one spouse keeps more equity from the house whilst the other keeps their pension. This method is often used where the value of the pension is small or where the marriage is short as it is the most cost effective method. However, offsetting will depend upon the value of other assets involved in addition to the pension and will also depend upon the needs of the parties.

#### **Which method for you?**

Once all of the pension information is known and a report from an Actuary (where relevant) has been obtained, specialist legal and financial advice will be required to determine which method is right for you. Dealing with pensions is complicated and it is important that you are in receipt of the correct information and advice before proceeding with a financial settlement.

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