Members (Partners)
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Pensions and Divorce: How are you affected?

The purpose of this document is to help you understand the effect that divorce proceedings can have on any pension scheme of which you are a member if your spouse wishes to make a claim against that scheme. It also explains the claims that you may have against your spouse's pension. You should, therefore, read through this document carefully as it contains much information which is relevant to your case and which may not be repeated in future correspondence.

1 Types of Pension

a) **Statutory schemes** are provided for those employed by the state e.g. the Civil Service, Teachers, Local Authority employees. These cover many public sector employees. They are invariably final salary schemes. They may be unfunded, funded or notionally funded.

Unfunded
Here the pension benefits are paid out of the treasury. There are no funds set aside to meet the pension promise made by the employer

Funded
These schemes set aside reserves each year to meet the eventual cost of the pension.

Notionally funded schemes
e.g. Teachers operate as though money has been invested by way of contributions paid into the scheme and are calculated on the basis of the performance of notional investments. However, no such assets are in fact set aside.

b) **Private pension arrangements.** These are provided by occupational schemes provided by employers or individually usually through personal pension plans. Generally these fall into two groups, occupational pension schemes and personal pension plans.

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 referable to either the employee's final salary (final salary scheme) or to the performance of the investment in the fund (purchase scheme).

Occupational pension scheme members are entitled to make additional voluntary contributions **(AVC)** to bring the benefits up to the maximum permitted by the Revenue. Some final salary schemes have arrangements under which AVCs can be used to buy additional years of pensionable service. Some AVC payments are made into the company pension scheme but scheme members may choose to make AVC payments to outside providers. In that case they are called freestanding AVCs.

Personal pension plans

Are available to the self-employed and employed people who were not members of occupational schemes are money purchase schemes. Any one under the age of 75 with taxable income from employment or self-employment can make contributions to a personable pension scheme but individuals cannot be members of both an occupational scheme and a personal pension scheme where contributions are from the same source of earnings unless either *the occupational scheme only provides a lump sum benefit on death in service or pensions for spouse and/or dependants; or the personal pension is to be used by a member of an occupational pension scheme for the sole purpose of contracting out of SERPS.*

2. Pension benefits.

a) The provision of a pension

The most common feature of a pension scheme is the provision of a pension. The maximum permitted by the Inland Revenue in a final salary scheme is two thirds of the employee's final salary. In many purchase schemes the amount available will depend upon the performance of the investments in the scheme.

b) Spouse's Benefits

Occupational pension schemes almost, always provides the spouse's pensions paid on the death of the contributor. However, there is no legal requirement to do so except in relation to any SERPS replacement. 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. The option to commute is an option and there is no requirement for the member to exercise it.

3. Pensions and divorce.

a) The disclosure of information

Different kinds of pension arrangements may mean that different questions need to be asked because different pensions provide different benefits. One person may have several different types of pension. Disclosure of a pension is a requirement under the Matrimonial Legislation in connection with financial applications. In any application for Ancillary Relief (Financial Relief) filed on or after 5 June 2000, the parties to the Divorce Proceedings will each need to complete a **Form E.** The Form E is a statement of financial information. This document must include, as well as a concise statement of the parties' means, all benefits under any pension scheme that that party has or is likely to have together with any other resources. The most important information is:

The Cash Equivalent Transfer Value (CETV)
This is the basis upon which the pension is valued by the court.

The value of death benefits
The amount to which a spouse of a member would be entitled in the event of the member's death.

b) Pensions as a matrimonial asset.

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 will have a 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.

4. 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 Payment 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.

5. 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. This is usually affected by means of a property adjustment order or payment of a lump sum. Offsetting is not simple as it can be difficult to put a value on the pension.

6. Holding up the Decree (Grave Hardship)

It is possible for the Court to refuse a Decree of Divorce and dismiss the Petition if the Divorce would result in grave financial hardship to the Respondent but *such an Order is only available to the Respondent where the Divorce Petition is based on five-year separation.*

The Court also has the power to stay the Decree Absolute in cases where the Petition is founded on *two or five year separation.*

Further, a former spouse who is receiving periodical payments from her former husband at the time of his death may be entitled to a continuing pension as a dependant. The pension scheme benefits must be checked in every case.

7. 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.*

8. 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. A spouse receiving periodical payments and who has obtained a Pension Attachment Order may be advised to insure his/her spouse's life so as to protect his/her against the possibility that s/he may die before him/her, thereby rendering the Order (for say, periodical payments) in-operative. 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.

9. Pension sharing.

Pension sharing is not available for Judicial Separation but only for Proceedings for Divorce, Nullity and Dissolution of a Civil Partnership. The rules do not operate retrospectively and will only apply to 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 will be final in relation to the pension shared and cannot be varied. It will apply only to the rights that have accrued to the date of the order. A Pension Attachment Order, on the other hand, allows the spouse to enjoy a share of all the benefits accrued up to the date of retirement assuming that the party with the pension rights continues to pay into the pension scheme.

Splitting a pension will be effected by means of **pension debits** and **pension credits**. The person receiving the pension credit (the transferee) may or will be obliged to take his/her credit out of the former spouse's scheme. However, if s/he is a member of an unfunded scheme (such as a Civil Service scheme) s/he will have to leave the credit in the scheme as there are effectively no funds to be divided. However, if the transferee is obliged to take his/her pension credit out of his/her spouses scheme, s/he will be able to transfer the money into a scheme of his/her own. S/he may, however, be able to leave the money in the scheme and in certain circumstances is likely to have a choice.

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

The way in which the CEV is treated and decisions about pension sharing are likely to be impacted by the Governments changes to pension drawdowns, as announced in the 2014 budget. The final details of these changes have not been released at the time of preparation of this Fact Sheet but it is understood that it is likely a member of an eligble pension scheme will be entitled to drawdown money from their pension in a lump sum or several lump sums and will receive 25% of each lump sum tax free.

At present, it is anticipated that these drawdowns will only be available once the pension member reaches 55. However, we understand that this age limit is likely to increase in future so that it is always 10 years in advance of state pension age i.e. a pension member who has a state retirement of age of 67 will be able to draw down money from their pension at 57.

Although these changes are due to come into effect in April 2015, it is not yet known whether the administrators of pension schemes in England and Wales will have the relevant procedures in place in time. We therefore strongly recommend that you keep up-to-date with any developments which will be announced on the news and in the press.