

Pensions

This guide has been produced to provide basic information relating to pensions. This is a complicated area and further elaboration and discussion will be required.

1. Why do I need to consider my pension position?

A person's pension can be quite substantial, particularly if they have been paying into it over many years. Save for the family home, a pension fund is, for many people, largest financial investment they will make. This can be a major asset which, in a sense, will be lost by the non-pension member upon divorce. It is therefore important to consider both spouses' pension provision when reaching a just and equitable settlement. Upon divorce, the non-member spouse may lose the right to death benefits and the right to share in the pension i.e. the monthly payment which the member receives from their retirement date and the lump sum which, in many schemes, is awarded on retirement.

2. Is the division of accrued pension rights always 50:50?

No. It is not always appropriate for an order to be made in respect of a person's pension, for example, if the separating couple are very young or it has been a short marriage. Where it is appropriate to consider pensions, it is up to the two spouses with the help of their solicitors to agree on a mutually acceptable percentage or proportionate split. Ultimately, as always, if such agreement proves impossible, it will be for the Court to determine what, in their view, is the equitable method of settling the claim.

3. What options are available for dealing with the pension?

There are various options available for dealing with a pension and it will depend on the particular circumstances of each case as to which solution is the most appropriate. As with most things, there are advantages and disadvantages to each of the following solutions. It must be emphasised that the following solutions are not available or indeed appropriate in every case.

Solution 1 - Do not divorce

This may be suitable for those approaching a retirement where neither party wishes to remarry. Financial affairs may be regulated by a Deed of Separation or a Decree of Judicial Separation.

Solution 2 - Offsetting

This has historically been the most popular way of dealing with the pension issue. Offsetting involves a spouse receiving money or assets in order to compensate for loss of pension rights. This is useful where there are sufficient funds or assets available to compensate. This will allow the person who receives the set off to use the money or assets as he or she pleases at the time of the divorce. The pension member will retain their pension fund intact.

Solution 3 - Pension Sharing