REFRESHER GUIDE

Pensions and Divorce

Pension benefits are often a significant part of divorce settlements and can have long-term implications for both parties.

While there are several established ways pensions may be dealt with on divorce, each operates differently and can affect control, flexibility and outcomes depending on individual circumstances.

Offsetting

Pension values are factored into the overall settlement but not split. One person keeps their pension but receives a lower share of asset in return.

The Cash Equivalent Transfer Value (CETV) is included in the total value of the matrimonial estate to be divided on divorce, but it may not reflect the long-term value or income that pension benefits could ultimately provide.

One party retains their pension benefits, while the other may receive a larger share of non-pension assets, such as property or cash.

This approach can be suitable where a clean division of assets is preferred and suitable assets are available.

Attachment Orders

An agreed proportion of pension income (or lump sum) is to be paid to the ex-spouse whenever the member takes benefits.

In England, Wales and Northern Ireland, all pension benefits are liable for earmarking. The court can order the individual to take less of a pension income in order to receive maximum PCLS so that part of this can be paid to the ex-spouse. The court can also order that a % of the death benefits go to the ex-spouse if the member dies before retirement.

If the pension benefits are transferred before the earmarked benefits have been paid out to the ex-spouse, the receiving scheme must be given a copy of the order. The ex-spouse must be notified within 21 days.

In Scotland, only PCLS and death benefits would be earmarked.

The ex-spouse has no control over investment decisions or the timing of benefit crystallisation and remains financially dependent on the member's actions.

An attachment order will end on the re-marriage or death of the ex-spouse. As a result, the timing of when benefits are taken can be influenced by future life events outside the member's control.

Attachment orders **do not** create a clean break

Pension Sharing Orders

This separates the ex-spouse's entitlement from that of the scheme member at the time of divorce, allowing for a clean break.

The Court will decide how much of the pension rights should go to the ex-spouse. In Scotland this can a monetary amount or %. Outside of Scotland, it will always be a percentage.

The amount (or %) awarded is called a pension credit, and the scheme member's pension rights will be reduced by a corresponding amount (the pension debit).

In England & Wales, this must be done via Court Order. In Scotland it can be done by completing a registered Minute of Agreement

The Court instructs the scheme member to obtain a CETV for valuation purposes. If a CETV has been provided in the last 12 months, they don't need to provide a new one.

The existing pension scheme can choose to allow the ex-spouse to join the scheme in their own right or transfer to another registered pension scheme. In practice, it is likely that most schemes will only allow a transfer out.

There are two exceptions

1. The member's pension is being paid through a guaranteed annuity with a provider, the provider may insist that they use their pension credit to buy an annuity.
2. Assets cannot be readily realised, the scheme may decide that the ex-spouse needs to become a member of the scheme in their own right.

Planning considerations

When discussing how pension benefits are addressed within a divorce settlement, you may want to consider

- How central is the pension to your client's long-term position, compared with the other assets being divided?
- Is a clean break realistic here, or does this approach leave them financially linked for longer than intended?
- Who's really in control going forward, particularly around investment decisions and when benefits are taken?
- Do scheme rules or jurisdiction put practical limits on the options, and are those fully understood?
- If circumstances change later on, does this structure still feel appropriate?

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