

Pensions on Separation or Divorce

Harry Crummy, Pension Consultant and Certified Financial Planner examines the implication for pension holders who separate or divorce.

Although the legislation facilitating the splitting of pension assets has existed for over 20 years, the topic can still cause difficulty for separating couples.

Pension entitlements are valuable assets and in many cases will be the largest asset after the family home. The dividing of pension assets are only possible by means of a court order and can only be made following a judicial separation or divorce. It is therefore prudent to engage a solicitor to represent your interests and to advise and assist with the legal process.

Court Orders are made under the Family Law Act 1995 or the Family Law (Divorce) Act 1996 and are referred to as a Pension Adjustment Order (or **PAO**).

Role of Scheme Trustee

The scheme trustees hold the legal title to the pension assets. Any order in relation to those assets is therefore made on the scheme trustees not the pension member. It is the responsibility of the trustee to carry out the order.

You will need to know who the trustees are before an order can be drafted. This will depend on the type of pension arrangement you have. In the case of an Occupational Pension – usually the employer, or nominated trustees, or professional trustee, check your scheme booklet. With a Personal Pension / PRSA / Buy out Bond it's usually the life company or pension provider.

The Trustees may be involved in providing information to the member, and non-member. The Trustees will also have to approve a draft of the PAO prior to the court hearing.

Retirement Benefits and Contingent Benefits

Retirement benefits relate to the accrual of pension rights, or the accrual of a pension fund. Contingent Benefits usually relate to Death in Service benefits.

A separate PAO must be made for retirement benefits and contingent benefits. Furthermore, a separate PAO must be made for each different pension arrangement in existence at the time of judicial separation or divorce.

As you can see, the paperwork can become quite complex and a full understanding of different pension arrangements is essential.

How to Divide Pension Assets

The court is not obliged to make any order in relation to pension benefits but may do so on application by the non-member.

The PAO will contain two pieces of important information

'The relevant period' usually refers to the period from joining the scheme (or date of marriage if later) up to the date of decree of separation / divorce. This period can be shorter if required. Only pension benefits earned, or contributions made during the relevant period will be taken into account under the PAO. Meanwhile, **'The relevant percentage'** refers to the percentage of benefits awarded to the non-member.

What to do after the PAO is in place

Pension consultants are often asked to provide advice to non-members in receipt of an award under a PAO. There is no set answer here as it depends on the pension arrangements in place.

The basic options are; Do nothing and wait to receive benefits when the member retires or take a transfer value into a pension plan in your own name.

This is straight forward when the plan in place is a defined contribution (DC) scheme, as it is only a divide of an accumulated fund value. There are advantages as the non-member will now have control of the fund, have an input into investment decisions, and control over when benefits are payable.

Where the scheme is a defined benefit (DB) it becomes more complicated. The DB scheme is a promise of pension benefits at some point in the future. If a transfer is requested, a cash value is put on the accumulated pension promise. It is generally accepted that a transfer value from a DB scheme does not represent good value. However, other factors such as the solvency position of the scheme and the ability of the sponsoring employer to maintain the pension promise will have to be considered.

In conclusion, while pension schemes and pension arrangements can be complex enough on their own, when you add legislation and additional options on separation, there is a real need for qualified advice. Do your homework and know your entitlements.

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