

Pension Sharing on Divorce



It is a sad fact that a breakdown in some relationships can end up in the dissolution of marriages and civil partnerships.

So, here, we provide the basics about pension sharing on divorce in a simple Q&A format:

Q. Do pensions have to be shared when a marriage or civil partnership is legally dissolved?

A. No. It is necessary for the couple to divide their 'matrimonial property', and pension rights form part of that property but, if the couple can agree a split which does not involve pensions, the court will not normally intervene. If, however, the couple cannot agree, the Court will decide.

Q. Will all of my pension be taken into account?

A. In Scotland the pension component of matrimonial property is limited to that earned or purchased during the marriage or civil partnership. This limit does not apply in the rest of the UK.

Q. Is it just my pension that will be shared?

A. No. All occupational pension benefits of all parties will be taken into account.

Q. So what sort of Order might be made?

A. There are three commonly awarded Orders:

- an Attachment Order (AO) in England, Wales or Northern Ireland;
- an Earmarking Order (EO) in Scotland;
- A Pension Sharing Order (PSO) which is applicable throughout the UK.

Q. And the difference between them?

A. An AO can be for a lump sum and/or periodic payments. Nothing is paid until the pension benefits are payable to the member and they stop when the member dies. The tax liability for these payments remains with the member. The EO provides the ex-spouse with a share of the member's pension lump sum when it becomes payable. Both Orders can be revisited and varied. PSOs provide a clean break settlement and cannot normally be revisited once implemented. The tax liability for the share paid to the 'ex' falls to the 'ex'.

Q. How is a Pension Sharing Order (PSO) share quantified?

A. Under Scottish law the value of the PSO is a specific monetary value whereas in the rest of the UK it is expressed as a percentage of the member's pension rights. The expression of the PSO as a percentage causes confusion. It is generally believed that a 50% share will result in the couple each receiving half of the original pension in the bank each month. This is not necessarily the case because various factors need to be taken into account when calculating the share.

Q. I have heard that sharing an AFPS 75 pension is not very straight forward. Why so?

A. Splitting an AFPS 75 pension is not as straight forward as splitting benefits in a standard final salary pension scheme. This is because of the Immediate Pension (IP) offered by the scheme – entitlement to a pension as early as age 37 for an Officer or 40 for an Other Rank is not something enjoyed by members of most other occupational pension schemes – and, when the pension comes into payment, the reduction to the share of the Pension Debit Member (as the person whose

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pension is shared is called) will be calculated differently, depending upon whether the PSO was applied before or after the IP point and the difference can be substantial. Our suggestion is that, if your AFPS 75 pension is to be shared, find a lawyer who understands how AFPS 75 works!

Q. Does the 'ex' always get 50%?

A. No. It depends upon what you agree or what the Court orders.

Q. A clean break – how does that work?

A. Once the PSO is implemented, your 'ex' becomes a Pension Credit Member (PCM). A PCM is a member in their own right, but in a limited way. They cannot add to the value of their pension share, join it with another pension or transfer it out. In the event of their death, the value of the pension share is NOT restored to you.

Q. So I am not tethered to the PCM in any way?

A. No. You are not tied to the scheme by PCM and your rights under the pension scheme are not inhibited. You can leave the scheme, transfer the benefits out or retire on a pension without reference to, or the permission of, the PCM. Further, you will no longer have tax liability for the value of the pension which is now the property of PCM.

Q. When will the PCM's pension be paid?

A. At the preserved pension age for your scheme but they may be claimed as early as age 55 at a reduced rate.

Q. How will the Court know how much my pension is worth?

A. The Court must be provided with a statement of the Cash Equivalent Value (CEV) of your pension rights. Applications for this special valuation must be on an [AFPS Form 19](#) and the current cost is £180

Q. My solicitor has told me that a 'free CEV' will do so why should I pay £180?

A. We know that some lawyers do tell their clients that the free CEV is fine for divorce purposes but do bear in mind that if the court refuses to accept it, you will be building in a delay. The free CEV is not specifically designed for disclosure in divorce cases.

Q. We are having a 'friendly' divorce and I still want my 'ex' to receive any lump sums due in the event of my death. Can this still happen?

A. AFPS 75 does not allow you to nominate anyone to receive such lump sums but both AFPS 05 and AFPS 15 do. Your divorce will invalidate any AFPS 05 or AFPS 15 nomination in place when the divorce is finalised – but there is nothing to stop you submitting a fresh [AFPS Form 2](#) naming them as your nominee after that date.