



pension sharing on divorce

In divorce proceedings in the event of the marriage being dissolved the court has power to arrange for the sharing of a spouse's pension. Pension sharing is a type of order which the court can make at the time of divorce which enables a pension to be shared. It cannot be ordered on a legal separation. The proceedings must have commenced after the 1 December 2000.

Sharing does not automatically mean that it has to be an equal share. It can be shared in any percentage between 1% and 100%.

The pension sharing is required to be by way of a court order which can be by consent of the parties through a negotiated agreement.

It is possible to share a pension which is already in payment.

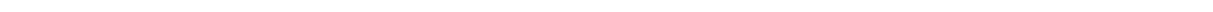
It would be necessary to ensure that any pension sharing order would reliably meet the future needs of each spouse.

It is often advisable to obtain from an independent financial adviser assistance in providing sufficient information upon which to base an assessment of a reasonable and fair pension sharing arrangement. For example, to obtain projections on the likely income from the pension and the lump sums which a spouse would be entitled to receive in the future.

A pension sharing order effectively splits a pension fund by debiting the fund and crediting a pension fund for the spouse. This can be done either by transferring the pension credit to a fund within the same scheme or the pension credit can be paid into a scheme of the benefiting spouses own choosing. Again, expert advice from a financial adviser is recommended. If the independent financial adviser recommends a transfer of the pension sharing credit into an alternative pension arrangement the IFA will be able to advise on the appropriate choice of the new arrangement with a alternative pension fund provider. At Knights solicitors llp we work closely with recommended independent financial advisers who will give you details of their charges before they are instructed.

A second option is known as "off setting". This means that the court looks at the transfer value of the pensions and decides that the spouse without significant pension should receive an equivalent payment in capital from other financial assets and resources. This is only possible where there is spare capital available after re-housing of the parties.

A third option which is rarely used is known as pension attachment, formerly known as "ear marking". The courts have power to order that a proportion of the pension, once retrieved, both out of the annual income and lump sum should be paid to the other spouse. The court has the power to order that a proportion of the death in service benefit should also be paid to the other spouse. There are problems with payment and attachment orders including that in the event of re-marriage there will be no continuing annual payment





made. If the spouse with the pension changes job then that will mean that an order regarding a death in service benefit will no longer be effective.

Pension sharing on divorce is a complicated area and we would highly recommend obtaining legal advice on your particular circumstances as almost every case is different.

We would invite you to telephone our dedicated family helpline 01782 338848 or arrange an appointment to see one of our family lawyers, either Catherine Longshaw, Barbara White or Jim Jones.

get in touch

To find out more about what we can do for you contact:

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