

## Divorce, Dissolution and Separation: Impact on pensions

This spotlight looks at the issues you should consider, when a relationship that you're in comes to an end in respect of your pension benefits.

**The Pensions Advisory Service is unable to give individual specific advice and you should seek alternative tax or regulated financial advice.**



### When a relationship ends

Breaking up is never easy. It can be a very confusing and distressing time for all involved. There are a lot of things to think about and, for many, pensions are the last thing on their mind.

While there is a requirement for pensions to be included in a divorce financial settlement, many people do not realise this and can face serious implications on their income in later life.

**If you are unmarried, and separate from your partner**, you would not automatically be entitled to a share of his or her pension. Couples who have lived together for more than 2 years may be referred to as being in a “*common law marriage*”. Many couples believe that this gives them the same legal protection as a married couple or civil partnership; this is not true.

**If you are married or in a Civil Partnership and separate** without legally divorcing or dissolving your civil partnership, you would not be able to formally share your partner's pension. You may still be entitled to a spouse's pension or lump sum when they pass away. This is discussed further on the next page.

**If you are married or in a Civil Partnership and divorce or dissolve your civil partnership** you may be entitled to some, or all, of your partner's pension.

## What options do I have when I divorce or end my civil partnership?

If you're married or in a civil partnership and you decide to divorce or dissolve your partnership, the court should take any pension rights into account. There are three different ways for dealing with pensions on divorce or dissolutions. You can reach an agreement on your pension between yourselves, although you will have to go through a court to obtain one of the two Orders below.

**Pension Offsetting** – This option allows an individual to keep their pensions by giving up other assets to the value, or partial value, of their pensions – for example one person keeps their pension benefits intact, in exchange for giving up their share in the family home (assuming it has a similar value).

**Pension Earmarking / Attachment Order** – This option allows the pension scheme member's ex-spouse or ex-civil partner to receive a percentage of the member's retirement benefits. If you decide to opt for pension earmarking/attachment order, then only when the member starts to draw retirement benefits will part or all of them are paid to their ex-spouse or ex-civil partner.

**Pension Sharing Order** – With this option the pension is split at the point of divorce/dissolution. At this point both parties will get the agreed share of the pension put into a pension pot in their own name. This offers a clean break and allows both parties to decide what to do with their share independently.

The Pensions Advisory Service offer a telephone appointment for anyone who is about to start divorce proceedings which covers the pension options and the things you may wish to consider. To find out more please visit our website: <https://www.pensionsadvisoryservice.org.uk>

## What happens to death benefits?

Some pension arrangements provide death benefits such as a lump sum or a spouse/civil partner's pension. Each scheme will have their own rules on what benefits are to be paid and to whom. So, if you are financially dependent on your partner, or you have not legally divorced or dissolved your civil partnership, you may still be entitled to a pension when they pass away. The pension scheme will look at the circumstances of your relationship and the scheme rules to help them decide if you are entitled to any pension benefits.

Some schemes may also pay a pension or a lump sum to the member's dependants, such as children or financially dependent adults. You will need to speak to the pension scheme, or pension provider to find out what benefits are payable, and who they are payable to.

If you are receiving death benefits through a pension, these will not be shareable.

## Delays and Pension Sharing Orders

If you decide to apply for a pension sharing order, the pension scheme or pension provider has up to 4 months to implement the order - although they should implement it within a reasonable time period. If you believe the scheme has taken longer than necessary to implement the pension sharing order - even though this might be less than 4 months - then you can still complain.

It may be useful to keep in mind that this 4 month timeframe will only begin once the scheme has everything they need to implement the pension sharing order. If there is a delay it may be because the scheme is waiting for information from a third party who are not subject to a time limit – for example a lawyer, financial adviser or your ex-spouse or ex-civil partner.

If you believe that there has been a delay please contact us and we may be able to help.

Under a pension sharing order, all pension benefits must be given a value, which is known as a cash equivalent value (CEV). Calculating a CEV can be a complex task and sometimes calculations can go wrong. If you believe that there has been an error in the calculation it's important to act quickly, as once the pension sharing order is implemented, you may need to seek legal advice if the difference is significant.

If the CEV calculation is incorrect this may lead to an under or over payment for the member, or their ex-spouse or ex-civil partner. By law, if the scheme or provider has made a mistake, they're required to put things right. In cases where there has been an underpayment, you may receive additional funds. However, if you have received an overpayment, you will usually be required to pay it back.

Whether you're the scheme member, or you are receiving a share of your ex-spouse or ex-civil partner's pension, once the pension sharing order has been implemented you should check your new pension benefits to ensure that the right amount has been shared. If you have any queries contact your pension provider who can review your pension benefits.

Once the pension sharing order has been implemented you can ask your pension provider, or pension scheme for a statement of your benefits – some schemes will automatically send you a benefit statement each year. You can check the benefit statement regularly, and, when you come to take your benefits – either at retirement or if you transfer to another pension scheme - it is worth checking again.

If you believe that a mistake has been made when implementing your pension sharing order you can contact us and we may be able to help.

### Things that could go wrong: Earmarking / Attachment Orders

**Pension Freedoms** – Since April 2015 the way members can take their retirement benefits has become more flexible. Earmarking/attachment orders which were issued prior to April 2015 may not reflect the new pension freedoms and might not offer you the flexibility that you're expecting. If this is the case for you, you will need to take legal advice and may need to go to court to get a variation on your earmarking order. Any variation will need to be agreed by both the scheme member and their ex-spouse or ex-civil partner.

**Reduced pension benefits** – If the member has a final salary pension, the income they receive in retirement could be less than what they expected it to be when the divorce or dissolution was finalised. Their pension may be reduced if they retire earlier than expected, reduced their salary, or the scheme entered the Pension Protection Fund (PPF). If the member's pension income is reduced the ex-spouse / ex-civil partner will also receive a lower pension income.

If this happens you should take legal advice as it may be possible to get a variation on the earmarking order.

**Life changes** – The earmarking/attachment order is effective while your ex-spouse or ex-civil partner is taking benefits from the scheme. If your ex-spouse or ex-civil partner dies before taking their benefits there may be no payments made to you, if no earmarking/attachment of death benefits has taken place. Additionally, if you die before the benefits come into payment there is nothing payable to your estate or your beneficiaries and your ex-spouse or ex-civil partner will receive the full pension.

Rules of the earmarking/ attachment order usually state that if you remarry or enter into a new civil partnership the earmarking order will be cancelled in relation to regular payments, although lump sum benefits may be protected. In this case your ex-spouse or ex-civil partner would potentially receive the full pension, and any regular payments made to you would end.

If your spouse or civil partner's pension is already subject to an earmarking/attachment order from a previous divorce you will need to seek professional legal advice.

## What things should I consider?

**Pensions which are already in payment** – It is possible to share a pension which is already in payment e.g. if the member has already retired. If you are receiving a share of your ex-spouse or ex-civil partner's pension in payment you will generally not be entitled to take a tax free lump sum. However, if the member has not taken their full pension entitlement, for example they have only partially retired; there may be some pension benefits still to take which may include a tax free lump sum. You can check with the pension scheme or pension provider to see if there is any tax free cash available.

**Public sector pension schemes** such as the Civil Service, NHS, Police, Army and Firefighters do not allow members to transfer their pensions to another pension provider. This means that if a member is subject to a pension sharing order, the pension will be split and the ex-spouse or ex-civil partner will become what is known as a 'deferred member' within the scheme. The Local Government Pension Scheme will allow a transfer out as it is a funded scheme.

**Overseas pensions and divorce** – The UK courts have no jurisdiction on overseas pension schemes. This means that if you're divorcing or dissolving your civil partnership in the UK, the courts would not be able to instruct what happens to any overseas pension schemes. Similarly, if you're divorcing or dissolving your civil partnership overseas, any settlement has no authority over UK pensions, so you may need to make an application for what is known as 'financial relief' in the UK courts. In these circumstances we recommend you seek regulated legal advice.

**Change in cash equivalent value (CEV)** – It is possible that the CEV will change between receiving the quote and when the pension scheme or pension provider implements the pension sharing order. The CEV may go up, or it may go down.

**Lifetime Allowance** – If the pension has been split following a pension sharing order, you and your ex-spouse or ex-civil partner will each have a pension entitlement which will count towards your individual lifetime allowance limits.

If the pension is subject to an earmarking/attachment order, the whole pension entitlement counts towards the member's lifetime allowance, and not that of the ex-spouse or ex-civil partner.

**Lifetime Allowance Protection** - If you have any form of lifetime allowance protection it is important that you seek guidance on how it might be affected by a pension sharing order or earmarking/attachment order.

## Where can I find more information?

You may find our 'Saving into a Pension' spotlight useful if you need to build up your pension savings. To read the spotlight [click here](#) or visit our website

If you want to find out about the tax relief limits for pensions you may find our Annual Allowance spotlight useful. To read the spotlight [click here](#) or visit our website

As previously mentioned in this spotlight, your lifetime allowance can be affected by divorce. If you need to find out more on the lifetime allowance you can [click here](#) or contact us

For further details on the divorce options generally and on booking a divorce appointment, please visit our website: <https://www.pensionsadvisoryservice.org.uk>

You can find all of our spotlights at [www.pensionsadvisoryservice.org.uk/publications/category/spotlights](http://www.pensionsadvisoryservice.org.uk/publications/category/spotlights)

## About Us

The Pensions Advisory Service (TPAS) works to make pensions accessible and understandable for everyone. We provide independent and impartial information and guidance about pensions, free of charge, to members of the public.

We help with all pension matters covering workplace, personal and stakeholder schemes and also the State Pension. We answer general questions, help with specific queries and offer guidance for people with complaints about their private pension scheme.

### Contacting us



Pensions Helpline  
(Monday- Friday 9:00am- 5:00pm)

**0800 011 3797**



Online enquiry form

[www.pensionsadvisoryservice.org.uk/online-enquiry](http://www.pensionsadvisoryservice.org.uk/online-enquiry)



Web chat live

[www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk)



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