Burley
Financial
Services

pensions and divorce faq's

The Welfare Reform and Pensions Act and pensions and divorce

The Welfare Reform and Pensions Act (WRPA) introduced the need for all pension benefits to be taken fully into account during divorce to enable a fairer share of the overall matrimonial assets. Each pension, including state pension entitlement, needs to be valued and the pension scheme trustees will provide what is termed a Cash Equivalent Transfer Value (CETV), this is how much the pension benefits built up in the pension scheme are worth in today's terms. This amount will then from part of the overall matrimonial assets to be divided. Under the new rules there are a number of different ways in which pension benefits can be separated.

Often the simplest option is to use 'offset' where one partner retains the house and liquid assets and the pension scheme member retains the pension rights. Whilst this may appear simple, the spouse receiving the property should remember that they have foregone all rights to any income from the pension in the future and they will need to start making their own provision for their retirement income or may even have to sell the house at a later date to provide themselves with an income.

Alternatively, the non member can have pension benefits earmarked in their favour under an attachment order awarded as part of the divorce settlement. Whilst the pension benefits remain wholly owned by the ex spouse who is the scheme member there is a formal promise in place that the non member ex spouse will receive a share of the pension benefits when the member ex spouse retires. A word of warning though, these orders can be altered in the future and benefits can in certain circumstances be lost.

Finally, the non member ex spouse can receive a share of their ex spouse's pension in their own right. With some pension schemes the ex spouse will be invited to become a member of the pension scheme and in others they will be given a lump sum payment to invest in their own pension plan. This provides both parties with control over their future pension planning and can lead to a truly equitable share of the matrimonial assets.

Your Questions Answered

My husband's pension is worth about the same as the equity in our house should I just accept the house instead of any pension rights?

Whilst this may seem the simplest option available you could consider some alternatives. By accepting the house you must remember you are losing ALL your future rights to the pension provision built up by your husband, this will mean you will have to create your own retirement income either by saving now or possibly by selling the property or releasing equity in the property at a later date. You could consider offering your husband a share of the equity in the house under a Mesher or Martin order, this means that whilst they are awarded a percentage of the equity in the property on divorce, they will only be paid their share of the equity when the property is eventually sold, either when your children have left home or on your death. This will mean that you can also then receive a share of his pension to help create your own retirement income. By sharing the equity and the pension you are both able to benefit from two different types of assets and both able to secure your own retirement income whilst also gaining from the growing equity in your home.

I've been advised that the Cash Equivalent Transfer Value I've received may not reflect my true pension benefits why is that?

Sometimes the CETV provided by pension scheme trustees may be different from the actual value of your pension benefits, if you have a scheme where you are building up a fund value to buy an annuity at retirement (defined contribution scheme) the CETV may be less than the investment in your pension if there are early withdrawal penalties applied to the fund value or if you are in a scheme which invests in with profits funds. If you have a defined benefit scheme (where you are building pension based on the number of years you work for your employer) then the CETV may not include all the discretionary benefits your scheme provides or for some schemes such as the armed forces, police and fire schemes may not reflect the increased benefits you will receive at retirement based on your overall pension service.

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My husband is already in receipt of his pension – what are our options?
You have two key options available in relation to your husband's pension. Firstly you could arrange for your husband to pay you an income for the rest of your life from his pension using a maintenance order, your husband would retain the full pension benefit and each month would make a payment to you. Alternatively you can 'unbundle' his existing pension payment and both create your own pension income. This is done by capitalising the current value of your husband's pension income and allocating part of that lump sum to each of you to then reinvest in your own pension annuity to provide you with separate incomes. This has the benefit that you will have complete control over your future income and full security of payments together with enabling you to use your own personal tax allowances. However buying two incomes from the one capitalised lump sum often means that the two incomes combined will not be as much as the current income your husband is receiving so you should both take independent financial advice to assess the implications of using this route.

I'm worried about losing my rights to the death in service benefits which come with my ex spouse's pension scheme, is there any way of protecting these rights?
Death in service benefits and other protection benefits are often lost on divorce however you can protect these benefits by using an attachment order. Whilst this won't make you a member of your ex spouse's scheme you have an order placed with the pension scheme trustees which allocates all or part of the pension rights your ex spouse has built up to you and this can include part of the death benefits provided. Care should be taken however as you can lose these rights should either of you remarry so you may want to consider an alternative way of protecting future maintenance payments either maintaining any existing protection policies and ensuring that the benefits are written in trust to you or taking out a new protection policy on your ex spouse as a 'life of another' policy meaning that any benefits will come directly to you.

I've been told to send away for a valuation of my state pension and SERPS benefits, why?
Valuing your pension rights without valuing your state pension entitlement and SERPS/S2P benefits is like valuing your house but forgetting to take into account the garage and conservatory. You are able to equalise your state pension benefits by transferring National Insurance credits between you and SERPS/S2P benefits can often be worth significant sums. Whilst SERPS/S2P benefits can not be shared you can take the value of these benefits into account when sharing other pensions and matrimonial assets.

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