



/guide

Your questions answered

PENSIONS

This Stowe guide explains how pensions are dealt with during a divorce, how they can be shared and the legal options available.

The importance of pensions

Pensions are often ignored on divorce, particularly when people do not have legal representation.

However, ignoring or forsaking the marital pension pots can mean people are missing out on potential long-term income and future financial security.

How much of my pensions will be taken into account by the court?

The total value of the pensions you have each built up is taken into account. This means all your pensions, not just the ones you or your ex-partner built up while you were married or in a civil partnership.

However, in some instances, it may be possible to adjust the financial settlement to exclude pensions accumulated outside the period of the marriage (including the period you spent living together, provided there was no break, and it led seamlessly into marriage / civil partnership).

Pensions included cover:

- Personal pension schemes (including money purchase schemes, self-invested pension plans)
- Schemes you have through work
- The State Pension

While personal and occupational schemes can both be shared (see below) the basic State Pension is not shareable. But the court can still factor into its analysis the income that is expected to be received from the basic State Pension when considering the division of other assets and each party's future income needs.

How do you divide a pension?

The capital values, projected income in retirement and rules of the individual pension scheme will all help inform which of these options will work best for you. It is important that you get professional advice from a solicitor and financial adviser before you take any steps regarding dividing up your pensions.

The main options for dealing with your pensions are:

Pension sharing

You get a percentage share of any one (or more) of your spouses'/civil partner's pensions. This share will be transferred into a pension in your own name - either keeping you as a member of the fund that is being shared or being transferred out to an alternative fund.

Some schemes (such as the main public sector schemes like the NHS) require you to remain a member of that scheme, while others do not permit this and require a transfer out and some schemes offer an option.

There may be better benefits available from the pension if you can remain a member of your spouse's scheme. If the pension is transferred to you, and you don't already have your own pension, you'll have to set one up.

An independent financial adviser will be needed to assist with this and advise as to what the best option is for your individual circumstances.

If you decide pension sharing is the right option for you, it's important to know that it can only happen with a court order.

The pension sharing order sets out how much of a pension(s) will be given to you or your ex-spouse, and can only be made if your divorce or dissolution is completed, with the court pronouncing a final order.

Pensions offsetting

Pension offsetting is where one of the parties will retain a greater share of another asset, instead of receiving a pension share.

For example, you might get a bigger share of the family home in return for your ex-spouse keeping their pension.

It is vital to appreciate that it is not an easy exercise to compare the value of a pension, which is a future income stream, with the value of a property or money in the bank, which is immediately available to you.

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Additionally, the figures that many pension funds provide for an immediate capital value of the pension can be misleading and so advice from a lawyer and financial advisor is always required before agreeing to an offset of pensions.

What is a pension attachment order?

Effectively, some of your pension benefits are "earmarked" (attachment orders used to be called earmarking orders), so that you get some of your ex-partner's pension when it starts being paid to them.

You can get some pension income, the lump sum or both. But you can't get pension payments before your ex-partner has started taking their pension.

Unlike with a pension sharing order, an attachment order will terminate upon your ex-spouse's death. For this reason, they are rarely used in practice.

Accessing pension funds

You have to appreciate that in taking money now, you are sacrificing a pension, which you may also need in the future.

It is also important that the pension is properly valued by an actuary or pension adviser so that you are fully informed of your options.

Splitting your pension after you've retired

If you and/or your ex-partner have retired and your pensions are in payment, the pensions can still be split. It isn't possible to take a lump sum from your ex-partner's pension if it is in payment or has been used to purchase an annuity.

Do you need a court order?

Only a court can make a pension sharing order, pension attachment or earmarking order. Even if you decide to pursue the option of offsetting, we would always recommend getting a court order to ensure certainty and also enforceability should something go wrong.



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