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PENSIONS FACT SHEET

The Law.

In the past Courts always took account of pensions when dealing with financial matters but had no power to share pension interests as such; all they could do was to give one spouse, usually the wife, the greater share of the overall capital to compensate her for the fact that her husband would then retain his pension. This is called “off setting”.

A couple divorcing can still choose to deal with their pension interests by “off setting” although the problem comes in deciding how much more capital the wife should receive in order to fairly compensate her for a pension that her husband will retain.

The Courts also acquired the power to make what is called a “Pension Attachment Order” this Order allows the pension benefits themselves to be shared at the point they are received by the person who owns the pension interest. This type of Order is not popular with the Courts due to the fact that on the death of the person that owns the pension interest the pension dies with them and there are no longer pension benefits available for the surviving former spouse to share.

The only type of “Pension Attachment Order” which is commonly made is one in respect of death in service benefits element of a pension; a husband might be asked to transfer a percentage of those benefits to his wife and children; he may also want to preserve a percentage of it for the benefit of any future partner or children.

The most popular way of sharing pension benefits in divorce is for there to be a “Pension Sharing Order”. This is an Order directed to the organisation that provides the pension, requiring it to debit a percentage of the cash equivalent transfer value from their member and credit the amount of cash equivalent transfer value to the member’s spouse. The spouse will either become a member of the pension scheme in their own right (if this is allowed under the rules of the scheme) or would need to export the cash equivalent transfer value to transfer to them into a separate pension scheme or plan of their own.

The advantage of this arrangement for the spouse who receives the pension transfer is that they are in control of the pension scheme or plan into which the transfer value has been transferred. They will be able to draw their benefit from it even if their former spouse dies.

Calculating Pension Sharing Orders.

When calculating Pension Sharing Orders what is transferred is the cash equivalent transfer value. Actuaries for some types of pensions initially provide transfer values that may not indicate the true value of the pension benefits that will be received; it is therefore necessary in some instances to instruct an independent pension actuary to obtain a fair figure for the transfer value.

If some of the pension interests were built up outside of the marriage then in certain cases, but not all, it may be appropriate to disregard that part of the pension value.



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There are two main approaches to calculating the percentage of the transfer value that should be transferred; (a) equalising the pension incomes in retirement and (b) equalising the pension funds. If you are hoping to achieve an equalisation of the retirement incomes we will most likely advise that a pension actuary should be instructed to carry out detailed calculations in this regard. Often this will be done by both parties Solicitors jointly instructing the pension actuary so as to share the costs involved in preparing the report.

A common occurrence is that a wife may be younger than her husband, and as a woman her life expectancy is likely to be greater than that of her husband. A wife may therefore require more than half of the pension fund to enable her to draw the same income for a longer period than she is projected to live.

Pensions are a complicated area and one that often requires detailed advice.