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BASF UK Group Pension Scheme

Divorce & Pensions

Pension rights are an important asset in many marriages (or civil partnerships), often greater in value or second in value to the marital home. The Courts take these rights into account when determining divorce settlements.

There are three ways in which the Court can take account of pension rights on divorce. These are described below along with additional information about the impact of divorce on benefit limits and protections.

Offsetting

Pension offsetting provides a clean break between all parties, as assets of similar value are allocated to the ex-spouse or civil partner, to avoid pension sharing. This may be an appropriate option if there are overseas pension assets that need to be split, as these cannot be shared via a UK court order.

On divorce all assets of both parties are considered as each party retains their pension assets, but these are then offset against the other assets. For example, if one person has a large pension pot, the other may receive the house (assuming it has a similar value).

As it can be hard to value some assets and as their values may change at different rates, it can be difficult to fairly split assets using pension offsetting, especially as the value of pension benefits may, in the long run, be their most valuable asset.

In situations where there may not be many assets or assets have high values, pension sharing and pension earmarking may be used rather than pension offsetting.

Earmarking and Attachment Orders

Earmarking used to be available throughout the UK but is now only available in Scotland. In England, Wales and Northern Ireland earmarking has been replaced by pension attachment orders. A Pension attachment order redirects part or all of the member's pension benefits to the ex-spouse or civil partner when it comes into payment. Previous earmarking orders made in England, Wales and Northern Ireland will still apply at retirement. This doesn't provide a clean break, as an ongoing link with the ex-spouse or civil partner will remain.

On divorce (or dissolution of a civil partnership), all assets are considered. When opting for a pension attachment or earmarking order, when retirement benefits are paid, part or all of them are paid to the ex-spouse or partner. The Court instructs the scheme administrator or pension provider to make these payments to the ex-spouse or partner or vice versa.

In England, Wales or Northern Ireland, these payments can be made from **pension income** and/ or, the **Pension Commencement Lump Sum (PCLS)**.

In Scotland, they can only be made from a **Pension Commencement Lump Sum (PCLS)**.

While earmarking is simple to understand, they can have some problems:

- On death before retirement, the ex-spouse or partner may receive nothing
- The ex-spouse or partner does not receive anything until retirement benefits commence
- On changing contributions or retiring early, the ex-spouse or partner may receive less than expected
- On death after retirement, any income payable to the ex-spouse or partner also stops
- Courts prefer a 'clean break' approach to divorces and the dissolution of civil partnerships

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Pension Sharing Orders (PSOs)

PSOs provide a clean break between parties, as the pension assets are split immediately. This means that each party can decide what to do with their share independently.

If you decide to opt for pension sharing on your divorce or dissolution of your civil partnership, the Court will issue a PSO which states how much of the pension the ex-spouse or partner is entitled to receive.

The amount is expressed as a percentage of the transfer value of the pension that is to be split (Scottish PSOs may be expressed as an amount). Each transfer value is worked out the day before the PSO comes into effect.

Pension Sharing and implications for the Lifetime Allowance (LTA)

Pension sharing as part of a divorce settlement can affect either party's LTA. Any LTA impact depends on if the person is giving up pension rights (a pension debit) or receiving them (a pension credit).

Pension Debits (giving up pension rights following a PSO)

A pension debit doesn't usually affect the LTA, but debits may affect members with some form of pension protection (Primary, Enhanced, Fixed or Individual protection).

For those without protection who are looking at making further pension funding after a pension debit, the available LTA needs to be considered. There's no adjustment to the amount of LTA that's already been used up by funds that were crystallised before the pension debit. However, generally, further pension funding can be made to 'replace' uncrystallised funds that were transferred to the ex-spouse, as the transferred funds will now be tested against the ex-spouse's LTA.

Pension credits (receiving pension rights following a PSO)

In some circumstances, a pension credit recipient may claim an increase in their LTA. The treatment of the pension credit for LTA purposes depends on whether the pension credit rights were acquired before 6 April 2006, or after 5 April 2006 (and, if so, whether the member was already receiving the pension). Please note that the situation can also be different if the member has some form of pension protection.

The extra benefits in respect of the pension credit will count towards the recipient's LTA.

Pension credit acquired after 5 April 2006

A person with a pension credit from a PSO made after 5 April 2006 can only claim an increase to their LTA if the original member's pension came into payment after 5 April 2006 and was in payment when the pension sharing order was made. If the individual has any of the fixed protections or individual protections in place at that time, they will substitute their own protected LTA for the standard LTA in the calculation.

Pension credit acquired before 6 April 2006

It was possible to claim an increase to the LTA based on a PSO made before 6 April 2006, but the claim had to be made before 6 April 2009.

Disqualifying pension credits

Any part of a pension credit that came from a pension already in payment is called a disqualifying pension credit. No tax-free cash can be paid from disqualifying pension credits.

This means that care must be taken around the order in which benefits are crystallised for individuals who are likely to exceed the LTA. Taking funds which represent a disqualifying pension credit before taking other pension funds could restrict the amount of tax-free cash available, because it will use up some (or possibly all) of the individual's available LTA.

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Pension sharing and enhanced protection

Receiving a pension credit

If the pension credit is paid into an existing pension arrangement of the recipient, enhanced protection is not affected (and can be transferred to a new arrangement).

If a new arrangement is set up to accept the pension credit directly from the original member's pension, the recipient will lose their enhanced protection. This means that advisers should take great care when giving advice on securing pension credit rights for clients with enhanced protection.

In certain circumstances it's possible to claim an LTA enhancement factor when receiving a pension credit.

Being subject to a pension debit

Enhanced protection is not affected by a pension debit, but the ability to rebuild the rights that have been lost will depend on the type of protection and the type of pension scheme the member has.

Pension sharing and primary protection

Receiving a pension credit

The effect on primary protection of receiving a pension credit on divorce depends on where the pension credit comes from. If the credit is from an uncrystallised pension, or a pension that was already in payment before 6 April 2006, then there's no change to the amount of primary protection the recipient has.

It is possible to claim an LTA increase (known as a pension credit factor) to existing primary protection if the pension credit comes from a pension already in payment to the original member and the entitlement to that pension arose after 5 April 2006.

Being subject to a pension debit

If someone has primary protection and their pension benefits are reduced following a PSO, their LTA enhancement factor will be recalculated. HMRC need to be told of the PSO and will issue a new primary protection certificate based on the revised calculation.

Pension sharing and fixed protection

Receiving a pension credit

The effect on fixed protection (2012, 2014 or 2016) of receiving a pension credit on divorce depends on how the rights are secured, so advisers should take great care when giving advice on securing pension credit rights for clients with fixed protection to avoid losing it.

Being subject to a pension debit

Fixed protection is not affected when pension benefits are reduced as a result of a pension debit under a divorce settlement, but the ability to rebuild the rights that have been lost is limited, with different rules applying depending on the type of schemes concerned.

Pension sharing and individual protection

Receiving a pension credit

The effect on individual protection (2014 or 2016) of receiving a pension credit on divorce depends on where the pension credit comes from, so advisers should take great care when giving advice.

Being subject to a pension debit

If someone with individual protection has their pension benefits reduced via a pension debit, their LTA enhancement factor has to be recalculated. The original valuation for individual protection purposes will be reduced by the amount of the pension debit (but the value of the debit can sometimes be reduced).

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Trustee's policy on pension sharing orders

The Trustee has decided that any transfer value awarded to an ex-spouse following divorce proceedings will be transferred out of the BASF UK Group Pension Scheme to an external pension provider of the ex-spouse's choice.

The Administration costs relating to the pension sharing will be charged to the divorcing couple.

The policy to transfer an ex-spouse's benefits out of the Scheme and charge the cost of the transfer to the divorcing couple are in line with those of similar pension schemes.

The treatment of pension rights in divorce is a complicated area and can involve assets of substantial value. Therefore, the Trustee strongly recommends that you consult your Solicitor for advice if you are involved in divorce proceedings.

Administration costs will be confirmed by the Scheme Administrator.

Contacting the Administrator

When you are going through divorce proceedings, you should instruct your Solicitor to forward a copy of any proposed pension sharing consent or order to the Scheme Administrator at the earliest opportunity. The administrator will check the details and confirm if the order can be implemented.

If your Solicitor has asked you to obtain a value of your pension benefits, you should request this in writing, or by email to the Scheme Administrator using the details set out below.

:	Buck (Bristol) PO Box 319 Mitcheldean GL14 9BF	:	BASF@buck.com
		:	0330 123 0647

You can download Scheme guides and forms from the pension website (ukpensions.basf.co.uk).

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