

Pensions and Divorce

Company pension rights are an important asset in many marriages, 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;

- **Offsetting**
- **Earmarking**
- **Pension Sharing**

Offsetting

The value of a member's pension benefit is offset against other assets of the divorcing couple, for example the marital home. However, this will only work if there are other assets of a comparable size.

Earmarking

This involves the court making an order to pay a specified portion of a member's pension to their ex-spouse at retirement - in effect a form of deferred maintenance.

In the case of earmarking, the earmarked pension would be paid to your ex-spouse when **you** retire. Your ex-spouse has no control over when it's paid. The earmarking order ceases if your ex-spouse remarries or when you die. If you were to die before retirement, your ex-spouse could be left with nothing unless the earmarking order clearly stated what should happen in that event. In addition, their pension would be taxed according to your circumstances and not their own. Where an earmarking order is applied this has no effect on an ex-spouse's lifetime allowance. The member's benefits to be tested against his/her Lifetime Allowance* (see page 2 for more information) will include the portion to be paid to the ex-spouse. Earmarking is not seen as a satisfactory solution for most people who are looking for a clean break when they divorce.

Pension Sharing

This was introduced in 2000 to help achieve a clean break. The Courts have power to make a pension sharing order in divorce cases where proceedings started after 1 December 2000.

In such cases a transfer value of the member's pension rights is calculated at the time of the divorce. This transfer value is included in the overall assets of the divorcing couple and the Court may make an order specifying the proportion of the transfer value to be transferred into the ex-spouse's name (this is called a 'pension credit' for the ex-spouse and a 'pension debit' for the member).

In England, Wales and Northern Ireland, all pension rights built up to the time of divorce may be shared. In Scotland, only those benefits built up during the marriage can be shared. Any pension benefits earned for service after the date of divorce will not be affected.

Due to the complexity of sharing pension rights on divorce, it is commonly only used as a last resort in cases where the value of the pension rights of one partner are so large, that the joint assets cannot be divided without sharing those pension rights.

When testing the value of a member's benefits against their Lifetime Allowance, any pension debit is not included in those benefits. This is a favourable change over the rules before 6 April 2006.

Primary and Enhanced Protection: effect of a pension sharing order after 6 April 2006

Members who have registered for primary protection must notify HM Revenue & Customs (HMRC) if they receive a pension debit following a pension sharing order. Their enhanced Lifetime Allowance will then be reduced to take account of the pension debit.

A similar process applies for members with enhanced protection whose enhanced Lifetime Allowance will also reduce.

Lifetime Allowance

**From 6 April 2006, the total value of the pension benefits built up in your account will be tested against the Lifetime Allowance. The excess over the Lifetime Allowance will be liable to a tax charge of 55% if taken as a lump sum, or 25% if taken as a pension.*

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 (see page 3) 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.

What do I need to do now?

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 us at the earliest opportunity. This will allow us to comment before the final order is made to make sure it is workable.

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 Administrators using the details set out below.

Scheme Administrators
BASF UK Group Pension Scheme
Willis Towers Watson Ltd
PO Box 545
Redhill
RH1 1YX

Email: basf@willistowerswatson.com

You can call **Willis Towers Watson** on: **0113 390 7119**

You can download Scheme Guides and forms from the pension website at: <http://ukpensions.basf.co.uk>

Charges

Charges for a Scheme member not yet retired - about to divorce.

Procedure	Comments	Estimated Cost
Produce Cash Equivalent Transfer value quotation.	Standard annual entitlement under disclosure of information regulations	£0
Additional Cash Equivalent Transfer Value quotations.		£150 - £250 for each quote
Provision of other information.	If under disclosure of information regulations £0, otherwise depending on nature of request.	£0 up to £500
Receipt of pension sharing order or consent order.	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£1,300 - £1,950
Objections to order by Scheme.	Onus is on the draftsman of the order to ensure that it is correctly drafted prior to use.	Scheme to notify member / Solicitor that costs for dealing with inoperable orders will be passed on.

Charges for a retired member - pension in payment and about to divorce

Procedure	Comments	Estimated Cost
Assessment of the value of the pension in payment, including any contingent benefits.	Actual cost dependant on charges incurred for actuarial time.	£600 - £1,000
Administration cost of collecting and interpreting medical evidence in respect of divorcing couples.	The charges for supply of medical evidence will be the responsibility of the divorcing couple.	
Assuming all documentation is in place, settle a transfer out.		£1,550 - £2,450

need help?

go to...

<http://ukpensions.basf.co.uk> call... 0113 390 7119