



Pension sharing is a type of order which the court can make at the time of divorce (or more unusually nullity), which enables a pension to be shared (in other words, split). It cannot be ordered on a Legal or Judicial Separation. Proceedings must have been commenced after 1st December 2000.

To give an example of what “Pension sharing” means in practice, for example a wife could be made a member of a husband’s pension scheme in her own right (**internal transfer**) OR alternatively she could take a transfer of a sum from her husband’s scheme into her own pension scheme (**external transfer**).

Sharing does not automatically mean that it has to be 50%. It can be any percentage between 1% and 100%.

Pension sharing requires a Court Order. This means you cannot share a pension without a Court Order, although such a Court Order can be made through the consent of you and your spouse.

It is possible to share a pension which is already in payment.

If you are the recipient, it is important to ensure that the pension sharing order will reliably meet your future needs, or perhaps even enable a clean break to take place on that basis.

To this end, it is advisable to obtain projections from an independent financial adviser as to the likely pension and lump sum you will receive at retirement age. We can refer you to the Professional Financial Centre at 22 Southernhay East, Exeter, EX1 1QQ for this purpose if you wish.

Your spouse may seek to argue he or she should retain a greater share of the net proceeds of sale of the family home by way of compensation if a pension sharing order is made against him or her. This is called “off-setting”.

If a pension sharing order is made in your favour, you will have a pension which will benefit you regardless of your spouse’s death or retirement date. It does not matter if you remarry in the future, as the pension will remain yours. Your spouse cannot go back to court to vary the pension sharing order once it has been implemented. (However, an application for permission to appeal out of time might be attempted, although there are special rules in relation to appeals which severely limit such applications. The Appeal Court may not set aside or vary an Order if the person responsible for the pension arrangement has already spent time and money putting the Order into effect).

You will be able to make a nomination under your new pension arrangement to benefit a person of your own choosing in the event that you die before taking your pension benefits.

Similarly if a Pension Sharing Order is made against you, please note that Pension Sharing Orders are not variable if your spouse acquires a benefit from your Pension scheme, and then immediately after remarries or inherits.

The lump sum payable under your new pension will be tax free. However, the monthly pension payable to you will be subject to Income Tax in just the same way as any other pension.

If you are the recipient, you will only be able to make further contributions into your pension from earnings unless the part of your spouse's pension to be shared with you, is paid into a new type of pension called a Stakeholder Pension or a Personal Pension, in which event you will be able to make further contributions from your maintenance income up to an annually fixed limit. The Inland Revenue will top this up with a notional limited tax rebate. The Inland Revenue will advise you on both annual limits.

If you are already over 50 you may be able to draw the benefits of your new pension immediately. However, by doing this, the available benefits will not be as great as they would if you deferred drawing the pension.

If after proper investigation it is decided that a pension sharing order is right for you, you should establish whether you are eligible for your spouse's pension scheme or whether you should transfer a share of that scheme into a scheme of your own choosing. This is a matter about which a Lawyer would not necessarily be qualified to advise, and you should instruct an Independent Financial Adviser. We can refer you to the Independent Financial Advisers at the Professional Financial Centre, 22 Southernhay East, Exeter, EX1 1QQ who would be pleased to assist you. If, on their recommendation, you decide to transfer your share into an alternative pension arrangement, they will be able to advise on the appropriate choice of new arrangement. At the same time, they can advise on what charges will be levied for this. You can decide with the Professional Financial Centre whether to pay for their services at an hourly charge or as a purely commission based charge. Please note that the first meeting with a member of the Professional Financial Centre is free and without obligation.

Where you and your spouse are comparatively young and the pension will not become payable for many years (say, 20 years or more) the value of pension may not be taken into account by the Court in deciding what assets to divide, unless it is of great value, or comparatively great value. You and your spouse are still under a duty to obtain the valuation information and the court has a duty to consider it. However, in the court's decision making it may not at the end of the day be a matter of great relevance.

If you are on a low income, please note that receiving an income from a Pension Sharing Order may cause loss of benefits on retirement.

If your pension has been accumulated in part before your marriage, your spouse will probably have a weaker claim against this, as is the case for most property acquired before the marriage.

After a short childless marriage, little may have been accumulated in a pension fund during the course of such a marriage and a potential claim against such a fund may be very limited.

Also be warned that a Pension Sharing Order in respect of a small pension may not be proportionate in terms of the implementation costs against the actual value of the benefits to be gained from the pension share.

If a Pension Sharing Order is made against you, it is important to take advice on re-building lost benefits. You can re-build for the future by further contributions and additional voluntary contributions but you cannot make up for past losses. Your future contributions to the pension schemes will be subject to the same Inland Revenue limitations as any other person – sadly you receive no preferential treatment. You may have to look to other non-pension investments vehicles such as ISAs in order to re-build.

The cash equivalent transfer value (CETV) is the prescribed method of valuation, even if the pension is in payment. The CETV is the lump sum value of the rights under a pension scheme which have accrued to date to the scheme member, as measured by the amount which would be available in the event of a transfer being made to an alternative pension arrangement were a member to leave service or the scheme. CETV does not include death in service benefits, discretionary benefits and future expectations. These must be separately projected. The lump sum value accrued under the pension scheme depends very much on which date it is accrued to and how much has been paid into the pension.

The court prefers to look at the value of what has been earned to the pension fund during the parties' married life, rather than to look in future at the prospective value of what may be earned by the pension fund between separation and retirement age.

In relation to valuing a pension, we might have to obtain an actuary's advice during the course of any financial proceedings involving pensions. In certain cases, the CETV can be seriously misleading as a guide to a real value, and may undervalue or overvalue the pension, such as for example a Civil Service Pension and other such un-funded schemes.

It is not usually appropriate to trade off the CETV of a Pension Fund pound for pound against the other more liquid assets. This is because the Pension Fund is not present capital, but instead a right to financial benefits on future retirement, and only rarely can 100% be taken in capital terms as more usually a percentage is taken as an annuity stream.

If you obtain any financial advantage in legal proceedings, whether by winning or preserving any asset, and you have had the benefit of CLS Funding (Legal Aid) the **Statutory Charge** normally applies. This means that you must re-pay your state funded costs to the Legal Services Commission in full.

Where the **Statutory Charge** applies, you could be liable to repay your legal costs from **any and all** applicable assets received or preserved in your proceedings.

However the Statutory Charge only applies to Pension Attachment Lump Sum and Pension Sharing Lump Sum Orders.

This means the Statutory Charge does not apply to: -

- Pension Attachment Periodical Payments Orders
- Pension Sharing Periodical Payment Orders

Actuaries advise that in virtually every case where one Party has little or no pension and the Other Party has a pension with a CETV greater than £20,000, **an independent actuarial report** should be sought.

By the same token, the CETV can normally be accepted at face value in cases where the pension value is so low that the usually high cost of an actuarial valuation would be disproportionate to the value of the pension.

Kindly let us know if you would be prepared for us to incur this expense on your behalf.

A Pension Sharing Order may not be made where there is in force a Pension Attachment Order (see our Fact Sheet) in relation to that same pension.

A Pension Sharing Order can also be made if you or your spouse applies to the Court to vary a periodical payments (maintenance) order made in divorce proceedings commenced after 1st December 2000. The purpose of these Pension Sharing Orders is to capitalise maintenance (that is, to “swap” future maintenance for a Pension Sharing Order instead). This can be useful in cases where at the time of the original financial Order there was small Pension Fund that was not worth sharing, however by the time of the variation application, the fund has grown to such a degree that a Pension Sharing Order is now practicable. Additionally, this approach can be helpful where the recipient of the Maintenance Order has or can reasonably achieve greater independence and the payer of the Maintenance has been freed or can be freed from any continuing maintenance obligation.

Indicators against pension sharing are:

- A pension of comparatively small value such as not to justify the costs of pension sharing.
- A young couple or a short marriage
- The party without pension rights is likely to remarry or inherit
- A foreign pension

In such cases off-setting or a Pension Attachment Order may be preferable.

Pension sharing is broadly the appropriate solution where:

- The pension is the only or main resource and off-setting is impossible.
- The party with pension rights is seriously ill
- The party with pension rights seeks to retain the non pension resources such as the family home.
- The pension is in payment. Pension sharing will create a dependant’s pension surviving the death of a transferor whereas attachment cannot.
- The party without pension rights is aged over 50

The advantages of a Pension Sharing Order, is that it can allow a “clean break” where previously it would have been impossible. For example:

- a) In a case where the husband is the bread winner and the wife is the home maker, the pension fund can be used to provide an income for the wife in retirement, where previously the wife, particularly after a long marriage, would have had continuing maintenance rights instead.
- b) Where a husband, for example, with a large pension fund can trade off a slice of that fund rather than losing some or all of his immediate cash savings.
- c) If for example a husband has a very large pension fund, but more restricted immediate capital, a wife’s claim might be “bought out” by an unequal division of the pension fund in her favour. This may allow the wife to commute at perhaps an early age, say 55, which may give her capital to enhance her ability to re-house herself that might not have otherwise been available. This also allows the husband to continue working and restoring some of the value of the pension fund, without having to lose too much of his immediate capital, that he might otherwise wish to retain.

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Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.