

Divorce myth: How are pensions split in a divorce?



There is often the preconception that pensions are split 50/50 during a divorce. This is not always the case as the court's overall objective when looking at pensions on divorce, along with the finances as a whole, is to reach a fair outcome for both parties.

In order to reach this outcome, the court will consider the particular circumstances of your case, in particular:

- does the split of assets meet the needs of any children?
- What about your needs and the needs of your ex-spouse?
- Has there been an unequal financial contribution to the marriage?
- How long was the marriage?
- Are your respective pensions dissimilar in value?
- How close are you and your ex-spouse to retirement?

These are just a sample of the court's considerations.

In English divorce, one size does not fit all. And whilst fairness and equality are often thought of as the same, they are not. In particular circumstances a 50/50 split would be unfair and would be inappropriate.

For example, in a reasonably short marriage, pensions may not even enter the realm of being split. Also, if you and your spouse have a similar pension pot, it may be that you end up with what is already in your name.

On the other hand, in the case of a long marriage, where one party has stayed at home with the children and not built up a pension, the split of pensions will be a key consideration, as to fail to divide the pensions in such circumstances would clearly lead to unfairness.



Even if pensions are taken into account, this does not mean that the pensions will be automatically split.

How pensions are dealt with during a divorce

There are three main ways that pensions are dealt with during a divorce – offsetting, earmarking or pension sharing, with offsetting and pension sharing being the two most commonly used.

Offsetting a pension

If a pension is 'offset', you may keep your pension in return for giving your ex-spouse a greater share of other capital assets.

For example, one spouse might retain the former matrimonial home whilst the other's pension remains intact, or one spouse might keep all the funds in the bank account and take a reduced share of the other's pension. This option can be useful when housing needs are the priority.

However, given the gender pension gap (Fintuity reported that men accumulate £135,000 more than women for their pension by the time they are ready to access it), women who make this decision may be losing out significantly and leaving themselves without an income in retirement. This is why obtaining advice from both your solicitor and independent financial advisor is so important.

Pension sharing

Pension sharing works by splitting the pension pot at the time of the divorce, with a percentage being transferred into the non-pension holding party's name.

If the parties wish to have an equal income in retirement, the split will often move away from 50/50. This is because annuity rates (which are often used to calculate the amount of pension received on retirement) and life expectancies differ between men and women.

As women typically live longer than men, they may require an income for a longer period. This means that their share of the pension pot may need to be larger to account for this and, therefore, result in a bigger share when the pension is split.

Splitting of pensions fairly is not usually a simple 50/50 calculation. It is affected by a number of factors and only when you know what you are dealing with – what is in the matrimonial pot – will you have an idea of how the pensions can be used.

Pensions are an incredibly complex area and should not be ignored or underestimated. It is not a straightforward process and specialist pension and legal advice are always recommended.

How can we help

Our expert family team are here to help you and advise whatever your situation may be. Find out more about our [family law](#) areas of expertise or [contact us](#) when you are ready.



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