Pensions and Divorce

There's no set formula as to how your assets and income will be divided.

If you end up going to court, they'll seek to achieve fairness. Generally, the starting point is a 50:50 split, but this can be adjusted if it doesn't achieve a fair result.

Each divorce settlement is different which means that the treatment of any pensions will also be different from case to case. In some cases, they could be ignored altogether if you and your ex-partner both have your own pensions.

For divorces, pensions can be taken into account in one of three ways:

1. Offsetting
2. Earmarking
3. Pension sharing

Offsetting

Under offsetting, the value of any pension is offset against the other assets. So, you'd keep your pension and in return, your ex-partner would receive a greater share of the other assets. The pension benefits are valued as a lump sum value in today's terms.

Offsetting isn't possible if there aren't enough non-pension assets.

Earmarking

Earmarking (also called a 'pensions attachment order') works by allowing the partner without the pension to receive income and/or lump sum payments from it in the future. The pension benefits are said to be 'earmarked' for their benefit.

The court can also order that some or all of any survivor pension and/or lump sum death benefits must be paid to the other partner if the pension scheme member dies.

There are some disadvantages to earmarking if you're the one without the pension:

You must wait until your ex-partner retires or dies to receive your earmarked benefits. You'll have no control over the investment decisions your ex-partner takes. If your ex-partner retires early or stops contributing to the pension, you may receive less than you expected. If you re-marry or your ex-partner dies, you may lose your right to a future pension. The original pension scheme member still pays tax on the whole pension income paid by the scheme, even if some of the income is received by their partner. The person with the pension earmarked for them pays no further tax, but the income will have already been taxed at their ex-partner's rate of tax, which may be higher than theirs.

Pension sharing

Pension sharing works by splitting the pension benefits at the time of the divorce.

The partner without the pension receives a share of the pension benefits which are transferred into their name. The partner gaining the pension benefits gets a 'pension credit' and the partner losing pension benefits gets a 'pension debit'.

In some cases, the partner receiving the pension credit will be able to choose whether to keep their pension in the existing scheme or whether to transfer it to a new pension. But some pension schemes may not offer both options.

Pension sharing achieves what is known as a 'clean break'. Both you and your partner will know at the time of divorce how much of the pension you'll receive or keep. Death or remarriage of either one of you has no effect on the sharing order.

You'd both pay tax on the pension income you receive from your share of the pension at your own rate of tax.

If you would like any further information regarding the above or would like to book an appointment to discuss the same, please do not hesitate to contact the Family Law Department on 01384371622 or email post@wjclaw.co.uk and we will be more than happy to assist you.
