

# Pensions 2

Pensions represent a complex area of family finance law. Different pensions can have different values. The court adopts a scheme whereby pension providers do a calculation which is set down by Parliament. The provider comes up with a “cash equivalent value” or CEV.

In theory the CEV can be used to compare how much pension each party has. It is however, not as simple as that to come to a fair solution. For example:

- The parties may be of very different ages so £100,000 of CEV for one party may be worth more than to the other party;
- The parties’ pensions may be different in nature. For example one party may have a “final salary scheme” and the other may not.
- Certain pension funds provide lump sums on retirement whereas others do not.

For all of these reasons it is very wise, where significant pension sums are involved to take professional financial advice from a regulated financial adviser.

## What can the court do?

The family court can make a pension sharing order. This is an order that one party’s pension be divided between the parties e.g. 50/50. This comes as quite a shock to some people. Many people think that because their pension funds are “locked away” and that they cannot access them, neither can anyone else. That is incorrect.

When the court makes a pension sharing order a “pension debit” is applied to the pension of e.g. the Husband. In such a case a “pension credit” arises. Depending on what sort of pension is involved, the Wife can take her pension credit and can have either:

- (a) An internal transfer where she has her own pension with the same pension provider as the Husband; or,
- (b) An external transfer where she receives a pension with another provider.

The basic state pension cannot be shared under a pension sharing order; an additional state pension however, can be shared.

In theory a court can also make a pension attachment order. This is an order that the pension provider pay a proportion of the pension to the other party directly. These orders are now rarely used in practice. The reason is that a pension attachment order dies with the owner of the pension. If the pension is the Husband’s; when the Husband dies the Wife would be left without any income from the pension. From the Wife’s perspective it is therefore much preferable for there to be a pension sharing order instead.

## How do the courts approach the question of how to deal with pensions?

A pension is an asset of the parties to be considered when the court comes to divide up the assets.

Where the parties have been married for a long time a court is likely to regard the parties' pensions as assets to be divided in the same way as properties or savings.

The fact that the pension was contributed to by e.g. the Husband through his earnings which he earned during the marriage is irrelevant following the decision in *White v White*, and the fact that the court will not discriminate between the roles which the parties adopted during the marriage.

In a long marriage the fact that a small part of a pension was created before the parties got together is unlikely to affect how a court carries out the exercise.

In a case where the parties are older, the court will be very much focused on meeting the parties' income needs and a pension sharing order will be one way of ensuring both parties have enough income to manage on.

In theory, in a case involving a short marriage, the fact that a pension was mostly accrued before the parties got together might be given some weight by the court.

Where the parties are younger e.g. in their 30s, the court might be persuaded to "offset the pension" by giving the party who doesn't have a pension some more of the other assets. Pension offsetting is however, not an exact science or perhaps even a science at all.

Where the pensions are large or where assessment of their value is difficult, a court may allow the parties to obtain an expert report from an actuary or another financial expert in relation to how to equalize the parties' incomes from the pensions. Bearing in mind the size of these sorts of assets, an actuary's report is very often a good idea. It allows the parties and the court to make their decisions in an informed way.

The cost of an actuary's report will depend upon the complexity involved in the exercise. They tend to cost from £900 and upwards per report. The cost of such a report is usually shared between the parties.

The court will have regard to the fact that a pension is not the same as cash in hand. Thus £100,000 in a property is not the same as £100,000 of CEV in a pension fund. A party who adds all the assets together and includes the CEVs of pensions in these figures is in error. They are different types of assets.