Pensions in practice

This whole area can be mind-bendingly complicated. So it helps to take a couple of steps back and ask yourself "what am I actually trying to achieve?".

Pensions are particularly important when dividing assets on divorce. Retirement may seem remote, but it takes many years to build up enough money to live on.

On divorce, discussions about money focus hard on the financial needs of the family. As well as housing needs, there are the income needs – making ends meet on a day to day basis in the short and medium term. Beyond that, there are the long term income needs – of making ends meet on a day to day basis once you are both no longer working.

Solicitors are not qualified to give specialist advice on investments. It is crucial therefore to take advice from a financial adviser. It helps to do this as early as possible.

The pension building blocks
Again, it helps to ask the obvious questions:

- What level of income will I need when I retire?
- What savings, or assets, have I got that can produce that income?

The financial adviser will help you to look at the different elements that can produce an income. On divorce, your solicitor can give you advice about how those resources can be allocated on divorce. There are no fixed rules, and for most families it is a question of practicality.

So what are the elements that can produce an income? They may be some or all of the following resources.

1) **State pensions**: the basic state pension will not be enough to live on, but it will be a start. You can get a forecast by sending in a form BR19. – see the section on pensions.

   The good news is that, if your husband has been making contributions during a long marriage, a wife will benefit from those on divorce. When you are filling in your form, you should say that you are going to divorce, and the forecast will say what these contributions will provide to you.

   There is also the additional state pension, what used to be called SERPs. This can be valuable, and – unlike the basic pension – can be divided on divorce with a pension sharing order. If you have not contracted out of this, do investigate it.

2) **Occupational pensions**: traditionally, many large employers and public service employers had schemes based on final salary. If you had worked as an employee for 20 or 30 years, then you would receive a proportion of your final salary. The proportion would be based on how many years you had worked.

   In recent years, many employers have stopped doing this. They have become too expensive for the employer to afford – and too risky. Instead, the employer makes financial contributions during the employment, which are set aside and allowed to build up into an individual fund.

   In all cases, it is important to find out the value of your pension – what is called the cash equivalent value (the CETV). On divorce, the simplest way of doing this is to send a Form P to the employer.

3) **Personal pension policies**: these are policies taken out by individuals, to help save up for retirement.

   These can be taken out with large companies. Alternatively, they can be portfolios of shares that are invested for pension purposes (SIPPs). Tax relief is available on contributions made to personal pensions, and again your financial adviser can tell you about these. Again, the Form P can be used to get the information about the value of this investment.

4) **Other savings**: there are many different types of savings product, some of which also get tax relief like ISAs. But, basically, all savings can be used to provide an income on retirement.

5) **Downsizing your home**: another source of capital to produce income on retirement is possibly tied up in your home.

   Many people sell their house when their family has grown up and release capital that way. Moving down from a larger house to a smaller one can produce cash, and this in turn can be invested to produce an income.

For many families, it is a mixture of these elements that produces the income on retirement, whether or not they are divorcing.

It is a bit like three-dimensional chess – the time element comes into play as well. It is not just what these assets are worth now, it is what they will be worth when you retire, and how much income they can produce then.

All of this requires expert advice.

Pensions on divorce
There is no set framework for dealing with pensions on divorce. Much depends upon the resources of any family – how much pension is there, what savings are there and what level of income does each person have moving forward?

Pensions have to be seen in the wider context. If a wife who is looking after children has been given the house, it may be fairer to leave the husband with the majority, or all, of his pension. He can then use the lump sum on retirement to pay off a mortgage. She can downsize and release capital for her pension.

If there are sufficient resources to meet housing needs, and it is a question of dividing up assets fairly, there are two possible approaches to pensions:

- dividing the capital value of them equally at the time of divorce; or
- dividing them up so that there is an equal income at retirement.

The second option, of looking to equalise incomes on divorce, is becoming more popular than it was. This would require projections from a financial expert.

Court orders to help with pensions
The court approach varies from case to case. One or more of the following orders may be helpful:

1) **Pension sharing order**: this enables the court to divide the value of a pension between spouses. A new pension is set up, using the “pension credit”. This can either be within the occupational scheme or transferred to a personal pension policy. Different rules apply in different situations.

2) **Pension attachment order**: this is rarer, but can be used so that pension income is paid direct on retirement from the pension to the spouse. The same can be done for the lump sum payable on retirement – that can be paid direct to the spouse from the pension fund. Lastly an attachment order can be made against a death benefit. This is helpful as security for maintenance.

3) **Lump sum order**: the court can order one spouse to pay a capital sum to the other, and this can potentially be used to build up a retirement fund.

4) **Transfer of property**: this can apply to endowment policies or other savings products or share portfolios. Again, any of these might be used to build up a fund for retirement. If a house is transferred, capital could be released later on to produce an income.

5) **Maintenance**: this is not an ideal solution, but after retirement it is still possible to ask somebody who receives an income to pay maintenance to the other. Courts tend to prefer to set couples up independently, with their own separate pensions, so this would probably be a last resort. It may be more helpful in the run-up to retirement to help the recipient build up financial resources or preserve savings so that they can be rolled up for retirement.

It is important to understand pensions and how they work, so that you can manage your own finances after the divorce is over.