

# Pensions and divorce: An uneven split

Following on from the divorce bill recently achieving Royal Assent, Adele Woods explores how divorcing couples are more likely to disregard their rights with pensions



Confirmation that The Divorce, Dissolution and Separation Bill has received Royal Assent means that once in force it will be even easier for divorcing couples to obtain a divorce independent of legal support. This could see people disregarding their financial claims and in particular those relating to pensions.

In many cases, even now, where people utilise divorce online, they remain completely unaware that their financial claims remain live. The reality is that obtaining the final decree of divorce (called the 'Decree Absolute') only terminates the marriage and it does not, contrary to popular belief, end the financial tie between ex-spouses.

Often a pension can be the biggest asset of the marriage. When it comes to dividing pensions the court does not take into consideration future earnings and need only divide the sum as it stands at the time. Yet there are many factors to consider, including the age of the parties and whether the pension is in payment. This is often complex and can require an expert report in order to achieve fairness.

Most clients pay little attention to the value of their pension but it is advisable that everyone regularly reviews their pensions and remains aware that in the unfortunate event that their marriage comes to an end they will need to be addressed.

From experience there is also the

assumption, often by the party with the larger pension asset, that by not doing anything they will be preserving the pension in its entirety for themselves, but this is a risky position to take as ex-spouses can make claims against their

previous partner's pensions many years or decades after the divorce has been finalised. The court will often take the current value and not back-date to the time of the divorce. Over recent years, there have been many high-profile cases in the press that have seen successful claims for money and assets, such as pension contributions, being made even where parties divorced years before.

Another concern is that, even if couples choose to divide their pension using a pension-sharing order and their ex-spouse passes away after the final decree of divorce is granted but before the order comes into effect, there is a chance the order could fail. The ex-partner would be unable to claim as a widow or widower leaving them financially vulnerable.

The Law Society has campaigned that the bill should be amended so that a final divorce order cannot be granted until the pension sharing order has taken effect – ensuring no party faces unfair financial burdens – however this has not been incorporated into the bill.

It is therefore imperative that finances, and in particular pensions, are dealt with at the same time as divorce proceedings. If you are considering divorce we would recommend that you obtain legal advice at the outset.

Written by Smith Partnership family team associate, Adele Woods