

# Pensions on Divorce

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# University of Bristol Report 2024

In 50% of couples,  
one partner holds

**90%**

of pension wealth

Only

**11%**

Of divorces include a  
Pension Sharing Order

Between ages 65-69 the average pension wealth

For Men:

**£211,000**

For women:

**£35,000**

# Why?

Quality of Financial Information

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Pensions are seen as being too complex

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Clients resistant to consider pension division

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Strong drive towards settlement

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Property of member spouse rather than a product of the marriage

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# What the court can order

## What & When

Pension Sharing Order. Within divorce proceedings only

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Pension attachment order

Within divorce or Judicial separation proceedings only

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Spousal Maintenance (by another name)

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Pension Offsetting. Within divorce or Judicial Separation

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**Pension Sharing and Pension Offsetting are the dominant practice**

# Why?

Section 25 of the Matrimonial Causes Act  
1973 (appendix 1)

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Financial Remedy application flowchart  
(appendix 2)

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To achieve fairness between the parties

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Fairness is not necessarily "equality":

- a. Needs
- b. Contributions
- c. Health
- d. Ages
- e. Length of marriage
- f. Non-matrimonial nature

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# Computation (‘Cash Equivalent’)

Does the CE represent the true value

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Include period of cohabitation

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Court Order will be by way of a percentage  
(see appendix 3 “Moving Target Syndrome”).

## Pension Sharing Order

One or multiple pension funds are divided to either:

- i. Transfer out into a new or existing pension fund

or

- ii. Internal transfer into same scheme (usually unfunded schemes)

## Pension Offsetting

Forgo direct claim on pension fund now for greater share of current marital assets

## BUT...

- Tax
- Utility (less applicable closer to retirement)



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# 'Needs' or 'Sharing Principle'

In the majority of cases assets do not exceed the parties' needs  
(timing and source of pension not relevant consideration)

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Sharing principle of the "marital acquest" used where assets exceed needs and therefore credit can be given to:

- a. Pre-acquired contribution
  - b. Post-acquired contribution
  - c. Source of pension fund
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Whether needs or sharing

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Whether division of pension income or division of pension capital

# To PODE or not to PODE...

## (Pension on Divorce Expert)

# NOT to PODE

A

All pensions define contributions (little or no defined benefit)

B

Parties of a similar age

C

Both parties under 40

D

Neither is in the uniform services

E

No significant defined benefit

F

Principle is “sharing”

G

Modest asset (below £100,000)

H

Only pension is non-uniformed service public service sector and internal transfer is the only option

# To PODE

- A** Reversal of the above and funds now include defined benefit schemes
- B** Implicit guarantees
- C** Retirement annuity

- D** Older occupational pension
- E** Significant disparity in state pension

# Example PODE Report (Appendix 4)

# Tax



Must take independent tax advice

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Consider if pension offsetting

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# Age differential



"Income Gap"

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A Pension Sharing Order against an older pension member spouse, will serve to reduce the pension holder's income immediately, without immediate benefit for the pension claimant.

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# Location of Pension

- ✓ No PSO can be made against a foreign pension

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- ✓ Possible recourse by way of undertaking

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- ✓ Transfer if UK pension out of jurisdiction QROPS  
(Qualifying Recognised Overseas Pension Scheme)



# 'And Finally'

**1**

- Decree Absolute/Final Order
- Delay for widow/widower
  - Delay 28 days post order

**3**

- Add Backs
- Pitfalls

**2**

Revisit/Remarriage Section 28 (3) 1973

- Almost absolute bar on Court's jurisdiction to entertain an application after remarriage however Section 28 (3) does not apply to an application for a pension sharing order
- Application made before remarriage but proceeded after remarriage can be heard, although remarriage will be relevant as to the merits
- Good practice to include in divorce application an application for Financial Remedies or
- For Respondent file Form A or Form B as soon as possible if remarriage is contemplated

**4**

Common Beliefs: -

- Pension will only be shared on retirement therefore post-separation contributions will also be shared
- A pension share will need the pension holder to draw down funds (and pay tax) to be able to "share" with non-member spouse
- Pensions belong only to member spouse and are not marital assets

# ...and final documents

- Pension Sharing Order (see appendix 5)
- Pension Sharing Annex (see appendix 6)

# Thank you

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