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Silver Splitters and Pensions

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Introduction

Traditionally, marriage was considered to be ‘for life.’ However, nowadays, divorce for those over 65 (colloquially referred to as “silver splitters”) is on the rise, in contradiction to the decline in rates for younger age groups. Though there appears to be no particular reason for this growing phenomenon, recent findings by National Statistics pinpoint contributing factors such as longer life expectancy, more active retirement and social attitudes changing, which has reduced the stigma of divorce.

The year 2019 saw nearly 108,000 divorces in England and Wales up by a fifth in a year and the highest number for nearly 50 years, and there are concerns that the numbers may rise even faster this year. Although the government’s lockdown measures have caused a decline in the number of divorces going through the legal system, this is anticipated to be only temporary and is expected to rise once lockdown measures lift.

The latest Legal & General research found that, on divorce, women are likely to have their household incomes fall by a third (33%), almost twice the decrease likely to be faced by men (18%). The research suggests that this could be driven by a combination of several key factors, including the fact that women are typically paid less than their male counterparts, with the average divorcing man four times as likely to be earning more than the woman in the relationship (74% versus 18%). This infers that women take nearly twice the financial hit suffered by men following a divorce. Researchers from the Legal & General pension group said the difference occurs because women are likely to earn less than men (usually as a consequence of caring decisions taken during the marriage) and because many do not insist on taking a share of their husband's pension.

Sara McLeish, who is the CEO of Legal & General Financial Advice, said: *‘Only 3% of people seek financial advice as part of their divorce but doing so can help ensure the separation is more likely to be fair and equitable, leaving all parties in the best shape to pursue the next chapter in their lives.’*

How should pensions be taken into account on divorce generally?

If the matrimonial assets include pensions of value then these should be taken into account when dealing with a financial separation on divorce or the dissolution of a civil partnership. The pension fund(s) will need to have a value attributed to them and will then fall to be divided as part of the matrimonial “pot” of assets. This only applies to those who are married, or in a civil partnership, as your pension cannot be shared if you separate following a period of cohabitation without being married or in a formal civil partnership.

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There are two main types of pension in the UK, private pensions and state pensions.

It is not possible to share a basic state pension if your marriage or civil partnership ends. However, divorcing couples can use their former spouse or civil partner's National Insurance contributions to "*top up*" their basic state pension if they do not have the requisite 35 years of National Insurance contributions.

A UK private pension can, however, generally be shared (subject to some exceptions). There are three main ways in which the courts deal with pensions. The first method is by way of a pension sharing order where one spouse is given a percentage share of their former partner's pension pot. The money that they get from the pension pot is then transferred into a pension scheme in their name.

The second way in which the courts deal with pensions is known as pension offsetting; where the value of a pension is offset against other assets. For example, one spouse could keep their pension and the other spouse keeps the home.

The third way the courts deal with pensions is known as a pension attachment order. This is where payment is made directly from one person's pension pot to their former spouse, once in payment (similar to a maintenance payment).

The pension gender pay gap is a real and increasing problem, with many women missing out because of decisions taken within the marriage. It is typically women who will take time out of their careers and therefore have gaps in their pension contributions due to maternity leave, career breaks, other caring responsibilities or working part-time. This is even more acute when spouses are separating and the more financially vulnerable party does not have a pension fund to fall back on in retirement. It is therefore imperative that divorcing couples seek specialist financial and legal advice on the long term financial consequences of their decisions.

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