



Family Law News & Views

ISSUE 7

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“Everything was made so easy”

“friendly and caring”

“practical and clear advice”

“A real personal service”

INSIDE THIS ISSUE:

Pension sharing	1
Separation explained	1
Unmarried couples and property	2
Inheritance Tax and gifts	2
Enforcement of Orders	2
Dates for your diary	3

How does pension sharing work?

Pensions are just one form of assets to be divided in divorce or dissolution proceedings. The starting position is the same as other assets, i.e. equality. However, pensions are dealt with in a different way to ‘liquid assets’.

When a Pension Sharing Order is made by the Court or agreed, some of one spouse’s pension benefits are transferred to the other. Each spouse is then free to pay more into their pension and receive the benefits of their own pension independently of the other.

How does it work?

It depends on the type of scheme to be shared. There are two types. They are Money Purchase/Defined Contribution Schemes and Final Salary/Defined Benefit Schemes.

It is generally the case that a percentage is transferred from one spouse to another and this percentage is stipulated in the Pension Sharing Order. Agreeing the percentage is part of the financial negotiations, but it is not always straightforward. It is not generally the case that an equal split would provide both parties with an equal pension at retirement.

Some financial negotiations can be complex and pension sharing sometimes requires specialist advice from an independent pensions advisor and/or an actuary.

What about State Pensions?

There are two types – Basic State Pension and Additional State Pension. An Additional State Pension is an enhanced

pension related to earnings.

Both types are taken into account when calculating a total pension value. However, a Basic State Pension cannot be shared, whereas, in theory, an Additional State Pension can.

How are pensions valued?

Pension providers calculate a Cash Equivalent Value (CEV) or Cash Equivalent Transfer Value (CETV). Sometimes this information is provided on an annual statement, but in most cases the information has to be requested. This can take a few months.

Word of warning

Pension sharing is a very complex area of law and taking advice is highly recommended.

Divorce and separation explained

What does separation mean when filing for divorce? If couples have been separated for more than 5 years, does divorce ‘just happen’? Is sleeping in separate bedrooms enough?

Separation for 2 years

To proceed with a divorce based on separation for more than 2 years, both parties have to agree. If one does not agree,

then another ground must be used.

Separation for 5 years

To proceed with a divorce based on separation for more than 5 years, both parties do not have to agree. However, divorce does not magically happen on the 5th anniversary of the date of separation. Divorce on this basis follows

the same procedure as a divorce based on any other ground.

Is sleeping in separate bedrooms enough?

No. Separation means, in most cases, living in different properties. It is very difficult to persuade the Court that you are separated if you are still living under the same roof.

Unmarried couples and property

If you plan to buy a property together with your partner, make sure you sign a Declaration of Trust and review it should you separate and retain a share.

Take the case of Mr Q and Ms T in 2012.

They purchased a property in joint names in 1999 and had a joint mortgage, but Ms T paid the deposit and all the purchase costs. They asked their conveyancer to prepare a Declaration of Trust stating

that they held the property as tenants in common in equal shares, but it was never signed.

They separated a few months later and Mr Q moved out.

A year later, Ms T could not afford to pay the mortgage and the property was repossessed. Upon sale, half the proceeds were paid to Ms T and the remaining half were held as Mr Q commenced proceedings.

The Judge decided that

although the intention was to own the property jointly, this intention changed when Mr Q left the property. The Judge held that Ms T should receive all the net sale proceeds.

Mr Q appealed but the Judge at appeal agreed with the Judge in the lower Court.

This case is specific to the facts, but it illustrates the importance of having a Declaration of Trust and taking legal advice should you leave a property you hold a share in.

Divorce

Financial
Settlements

Child Arrangement
Orders

Wills

Advance Decisions

Advance
Statements

Lasting Powers of
Attorney

Inheritance Tax and gifts

If your estate is worth more than the Inheritance Tax threshold (£325,000 for the 2014/15 tax year) you can still make gifts without tax being due when you die even if you do not live for 7 years following the gift.

Exempt Beneficiaries

Gifts between married couples and civil partners are exempt. Also gifts to 'qualifying' charities, some

political parties and some national institutions.

Annual Exemptions

Gifts totaling up to £3,000 in each tax year are exempt. Also, you can make gifts of up to £250 per person in any tax year (to as many people as you like).

Wedding Gifts

Wedding or Civil Partnership gifts are exempt in that

parents can gift £5,000, grandparents and great grandparents £2,500 and anyone else £1,000.

Gifts out of expenditure

Regular gifts made out of your after-tax income (not capital) are also exempt providing making such gifts leaves you enough income to continue your normal lifestyle.

Importantly, take advice before making any gifts.

Parents at war!

In a recent case, two parents took enforcing Orders to the extreme and the case ended up in the Court of Appeal.

In 2003, a Residence and Contact Order was made which included an Order that the father could not attend the children's school on a week day.

In 2006, a Restraining Order

was made whereby the father could not contact the mother.

Both parties attended a school open day on a Saturday in 2009. The mother contacted the police and they arrested the father for breach of the 2003 Order, which it turned out the police did not have the power to do. So they arrested him for breaching the 2006 Order.

He was released but sued the mother and the police for false imprisonment.

The Court of Appeal had complex matters to decide in this case, which are too detailed to explain here.

However, surely such litigation must have had a profound affect on the children!



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What we offer you

- ◇ FREE initial 30 minute, no obligation meetings
- ◇ FREE home visits within 15 miles of Newmarket
- ◇ Evening and weekend appointments
- ◇ Skype or telephone appointments
- ◇ Fixed fees where possible
- ◇ No VAT on our fees for a limited period
- ◇ Flexible payment options
- ◇ Regular updates on your case and our costs
- ◇ Advice in plain English—no legal jargon
- ◇ Professional advice from a qualified and experienced Solicitor

Julie McDonald Family Law is authorised and regulated by the Solicitors Regulation Authority (No. 607193)

Dates for your diary

**FREE Legal Clinic at
Newmarket Day Centre
Tuesday 5 August &
Tuesday 2 September
10.30am to 11.30am**

On the first Tuesday of every month Julie McDonald hosts free Legal Clinics at the Newmarket Day Centre.

If you have a legal question about Family Law, Wills or Lasting Powers of Attorney, you are welcome to drop in to meet Julie and ask your question. Topics include:

- Making a Will
- Making a Lasting Power of Attorney
- Relationship problems including divorce and separation
- Problems seeing grandchildren

St Nicholas Hospice



St Nicholas Hospice Care

Legal Surgery

Wednesday 27 August

12 noon to 1.00pm

Julie McDonald hosted legal surgeries at the Hospice on Wednesday 29 January 2014 and Wednesday 30 April 2014.

Julie was at the Hospice to provide free legal advice to staff, Hospice patients and their families.

The Hospice has invited Julie back to host another legal surgery on 27 August.

We also took part in Wills Weeks 2014. As soon as the donations have been made and counted, we will report the total raised.

Newmarket Day Centre

