



Fire Officers' Association

Guidance - Pension Sharing on Divorce:

Implications for the Police and Fire Pension Scheme

1. Background

- 1.1 New pension sharing provisions came into force on 1 December 2000 following the Welfare Reform and Pensions Act 1999. They provide an alternative to offsetting matrimonial assets and earmarking of pension rights and are designed to create a clean financial break between the couple at the time of divorce. Charging regulations were issued in 2000 to enable pension schemes to levy charges for work carried out in connection with divorce proceedings.
- 1.2 The pensions sharing concept is fairly simple. As part of the divorce settlement, the Courts can order a pension scheme to split a scheme member's accumulated pension rights, creating a pension credit for the former spouse with a corresponding pension debit for the scheme member. They become separate entities and schemes can offer limited membership to the former spouse to accommodate the pension credit. The scheme member will then suffer a reduction to their eventual benefits, based upon the index-linked value of the debit.
- 1.3 The difference in matrimonial law between England/Wales and Scotland remains. In Scotland, the accumulated pension rights are valued only in relation to the period of the marriage, whereas in England/Wales they are valued in respect of total scheme membership up to the time of divorce. Different assessments therefore have to be accommodated, depending upon where the divorce petition is lodged.
- 1.4 Virtually any secondary pension rights can be shared. Including Occupational Pensions, Personal Pensions, AVC arrangements, SERPS and the forthcoming Stakeholder Pensions. The basic state pension is not shareable, nor is a pension payable to a survivor (eg a widow(er)'s pension) but a pension in payment to someone in their own right is also subject to sharing.
- 1.5 The legislation was developed very much with money purchase arrangements in mind. It is relatively simple to envisage an accumulated fund being split between the couple at the point of divorce with the resulting sub-funds being left to accumulate future investment growth prior to conversion into individual annuities. As will be seen later in this report, the position becomes much more complex when final salary occupational schemes, with their myriad of benefits and payment conditions, become involved.

- 1.6 Pension sharing is not necessarily automatic. The divorcing couple are still free to offset their joint assets in full settlement. However, figures from the DSS suggest that pensions are commonly the most valuable asset a couple own (housing equity average around £35k;- pensions equity average around £50k).

2. Scheme Provisions

Most occupational pension schemes have already had their scheme rules/regulations amended to incorporate the changes required by the Welfare Reform and Pensions Act 1999. Neither the Police Pension Scheme nor the Firemen's Pension Scheme have been amended. However the provisions of the Welfare Reform and Pensions Act override Scheme rules.

The current position is the Police and Fire Pensions unit is being asked to supply information and comply with court orders under divorce provisions. Initially this was without any central guidance, but the Department of Transport, Local Government and Regions subsequently issued a detailed guidance manual for the Firemen's Pension Scheme which can be adapted to the Police Scheme. Included in the guidance is a suggested schedule of charges which was originally issued by the National Association of Pensions Funds to its members (Appendix B) Most of those members are outside the public sector and incur greater costs by having to rely on their actuaries to prepare the valuation calculations required for divorce purposes.

3. Provision of Information

The arrangements are laid out in national legislation. There are timescales, fines for non-compliance and facilities for charging fees along the way. Additionally, there are Fire and Rescue Authority-specific issues, which are considered later in this report. Full details are set out in Appendix A

4. Charges

- 4.1 The legislation allows the Fire and Rescue Authority to levy charges associated with the administration costs of dealing with pensions sharing. Any charges levied must reflect the reasonable costs associated with the case in question.
- 4.2 Charges can be made in (stages 1 & 2) for responding to requests from the member or the Court for initial pension valuations which are needed within 3 months, a second valuation within 12 months, or a request from Scotland for a valuation that relates to a date more than 12 months previous. Charges can also be levied for any work carried out after a sharing order has been made.
- 4.3 Charges cannot be made for supplying initial valuations outside of the 3 months, for providing basic information about the Fire/Police Pension Scheme or for costs that are not directly related to a case (eg for changing computer systems, buying new equipment etc.). Most importantly, charges cannot be made unless they have been notified to the divorcing couple in advance (including the method of recovery).

- 4.4 The Fire and Rescue Authority can charge either the member or the spouse for the work carried out or can split the charge between them. The Court can overrule the Fire and Rescue Authority's intention by prescribing either party to pay the charge or can change the proportion either one is to meet. The Fire and Rescue Authority cannot recover costs from the other party in the event of default. Payment can be demanded before any sharing order is discharged. Alternatively, costs can be recovered by deduction from benefits (eg by reducing a pension in payment, transfer value, pension credit).
- 4.5 On behalf of the Police and Fire and Rescue Authorities, the Pensions Unit currently make a charge for "earmarking" but as "pension sharing/splitting" is a new option the Unit has not so far notified any charges pending receipt of guidance from Home Office and/or DTLR. In view of the fact that the Pensions Unit is being asked to supply figures in an increasing number of divorce cases which may then be the subject of pensions sharing/splitting orders, it is now appropriate to settle on a scale of charges.
- 4.6 In addition to the basic principles of charging, Fire and Rescue Authorities should also consider the following matters
- ***Whether to make a standard charge, recognising that some cases will be more complicated than others and will inevitably lead to some winners and some losers?***
 - ***If not a standard charge, to what degree should different administrative tasks attract different charges? The possibilities range, on the one, hand from a fixed charge for specific processes (such as pensions credits or payments) to a charge for every name and/or address change, pay-slip produced, phone call answered etc. on the other.***
 - ***How are charges to be collected — the guidance appears quite strict with regards the deduction of charges to be levied for the implementation of a pension sharing order. For the provision of the Information leading to up to the Order being made, it is usually the scheme member who is responsible and these costs have to be met before the information is provided. However, once the Order is received and we are required to commence Implementation, then the costs for this particular task are to be deducted from the Cash Equivalent Value of the ex-spouse's pension credit, unless the Court Order specifically requests otherwise.***
 - ***What scale of charges should be levied?***

4.7 Charging arrangements in use elsewhere

In 2002, The National Association of Pensions Funds published their recommended scale of charges for this work at between £750 and £1000, per case. However, such levels reflect the fact that most private sector schemes cannot calculate transfer values without recourse to their Actuaries thereby incurring high costs themselves. For the Police and Fire Pensions unit, calculation of Transfer values should be possible without recourse to the Actuary. However, as the present systems are not computerised, it could still be a time consuming exercise, and a charge at the upper end of the range is appropriate.

- 4.8 In connection with the Local Government Pension Scheme, it was not felt that administering authorities would be best served by creating a very detailed schedule of charges i.e. separate charges for valuing the benefits when implementing the order, for creating a debit and credit record, for implementing changes of name or address; for payroll processing; for effecting transfers of credits to other arrangements etc. This would create a small industry and a potential administrative headache leading to delays in the process. Consequently in one Fire and Rescue Authority, it was recommended that a one-off fee of between £250 and £500 be charged. This compared to NAPF's recommended fee of £750 to £1000. However, for the reasons outlined in 6.7, the present systems in place with the Police and Fire Pensions Unit justify a higher range of charging for the immediate future.
- 4.9 Appendices C/D/E are examples of charging arrangements operating in two Local Government Schemes and one Police pension scheme.
- 4.10 In addition to deciding upon the level of fee, it is necessary to state who should meet it. Under the regulations for Police and Fire, the charges are automatically deducted from the ex-spouses credit, unless a court specifically states otherwise.
- 4.11 Finally, an authority needs to decide how recovery of the costs should be effected. According to current guidance, charges in respect of providing information should be paid up front. The unit cannot provide information without these charges. With regards implementation charges, these are to be deducted from the ex-spouse's pension credit.

5. The scheme in practice

- 5.1 Under the Disclosure of Information regulations pension scheme members are allowed a free valuation of their cash equivalent once every 12 months. It is clear therefore that in most cases the authority will be unable to levy a charge for providing the initial information. There are exceptions to this statement, for example, where the member has already retired or is within 12 months of retirement age. Nevertheless, it is expected that most initial enquiries will not attract a fee and in the interest of equity it is suggested that we don't pick out those against whom we have a legal right to charge.
- 5.2 Where the financial settlement on divorce includes a provision to share a members pension then the next stage is to revalue the cash equivalent. On this occasion it is expected that a charge can be levied, as it will fall within 12 months of the initial enquiry. The Sharing Order will then require the authority to calculate and record the pension credit to the ex-spouse and pension debit to the scheme member. From that point on the majority of extra work will concentrate upon the ex-spouse's entitlement. This will take the form of maintaining the new record until such time as a transfer to another arrangement is enforced or the benefit comes into payment. In this context it can be seen why the Local Government Scheme recommended that the ex-spouse meets the charges.

- 5.3 There is merit in the recommendation to charge a one-off fee rather than to break it down into individual elements. Firstly, the amount is known at the outset and as Fire and Rescue Authorities are required to publish their charging structure at the initial enquiry stage, all parties are aware of the sums involved. Secondly, an authority's costs would rise if collection of individual elements were required at each processing stage. A one-off fee would incorporate the revaluation of the cash equivalent, calculation and recording of the pension credit and debit, servicing of the ex-spouse's entitlement during deferment and processing of future payments in the form of ongoing monthly pension or transfer to another arrangement.

SCHEDULE OF POSSIBLE CHARGES RELATING TO DIVORCE WORK

Supplying information require on FORM E. including a Cash Equivalent calculation

This information will be supplied FREE OF CHARGE once in any 12 months' period

Further request for a Cash Equivalent Value within a 12 months' period

There may be a charge of £### plus VAT which will have to be paid by Scheme member BEFORE the valuation is supplied.

Request for other information/projected benefits supplemental to the information provided for FORM E.

There may be a charge of £## plus VAT which must be paid by the Scheme member BEFORE the information is provided.

On receipt of a pension sharing order

There will be a charge of £### plus VAT which must be paid by the Credit member (ex-spouse), unless the court directs otherwise. This fee must be paid BEFORE the order is implemented.

Pension Sharing order completed incorrectly or order is amended.

A charge may be levied up to £### plus VAT for carrying out any alterations.

Third party administration costs.

Any costs incurred by the Fire and Rescue Authority from any 3rd party for specialist advice, legal advice etc. or any other charges incurred will be passed to the Scheme member.

Earmarking Order

- a) An initial charge of £## plus VAT to establish a record of the Order. This amount must be paid by the scheme member, when the Court Order is forwarded for recording in the Authority's records.
- b) A charge of £## plus VAT for amending the Order whenever it is varied or the personal details of the scheme member or his/her ex-spouse change. To be paid at the time of the change by the person initiating the change.
- c) A recurring charge of each year of £## plus VAT for regular payments to the ex-spouse beginning with the commencement payment, payable by the ex-spouse by deduction from the annual pension payable in April each year. Where a lump sum is payable to the ex-spouse, a charge of £## plus VAT will be deducted from the payment made. There could be a combination of both types of payment resulting in both charges applying.

Stages 1 and 2 concern the request for initial Information. Different timescales apply depending upon where the request comes from:

- If either the member or the Court ask for the cash equivalent value of the pension rights (including any AVC account) then a response must be made within 3 months.
- If divorce proceedings have already commenced then this response time is cut to 6 weeks.
- Alternatively, a Court Order may specify a shorter timescale.
- If only general information about the scheme is requested either from the spouse or the Court then a response must be made within 1 month.
- If notification that a pension sharing order may be made is received whilst still working on the above, then the response time is cut to 21 days or any other (longer) period specified by the Court.

Where information specific to the individual is requested then a summary of the accrued benefits (actual benefits in the case of a pensioner member) together with options available for the discharge of the pension credit, plus a schedule of charges that the Authority will make in complying with any sharing order must be included in the response. The Authority must also set out what information it requires in the event of a sharing order being issued.

A charge for supplying this information cannot be made unless it has already been requested and provided within the last 12 months. Failure to disclose the information within the timescales carries a fine of £200 against the Pensions Manager or £1,000 against the Authority as determined by OPRA.

Stage 3 concerns the provision of information when a sharing order is received. If there are any outstanding items from stages 1&2 both parties must be notified in writing within 21 days of receiving the order. Such items might include a copy of the decree absolute, payment of charges as specified. The notice must state that the order will not be implemented until all outstanding items are received.

If there are no outstanding items the Authority must write to both parties within 21 days confirming the date of receipt of the order and the date it will be implemented. The letter to the spouse must confirm the value of the pension credit and the equivalent benefits within the Police and Fire Scheme. The Authority must also point out that in the absence of a request to transfer, the default option of awarding scheme benefits would be applied.

The Authority has 4 months in which to implement the order. If it cannot meet this timescale an extension must be requested from OPRA. Failure to implement the order within the 4 months (or extension granted by OPRA) carries a fine of £1,000 against the Pensions Manager or £10,000 against the Authority as determined by OPRA.

Stage 4 concerns the information that must be given after an order has been implemented. The Authority has 21 days to write to both parties. The letter to the scheme member (whether active or deferred) must confirm:

- The value of the accrued benefits at the valuation day
- The value of the debit and the reduction to benefits that this represents
- The amount of any charges deducted from the member's benefits (see later)
- The value of benefits after reduction and the date the order takes effect

In the case of a pensioner member the letter must give the same information with the substitution of pension in payment for accrued benefits.

Where the former spouse becomes a credited member the letter must detail:

- The value of the pension credit at the valuation day
- The amount of any charges deducted from the credit
- The value of benefits bought by the credit in terms of pension and lump sum
- The payable date of the benefits awarded
- The date the order takes effect
- Details of any periodical charges to be made (see later)
- General information on their membership of the pension scheme

NAPF Scale

A. Scheme member not yet retired — about to divorce

Procedure	Comments	Estimated Cost
1. Produce CEV Quotation	Standard Annual entitlement under PSA 1993	£0
2. Additional CEV quotations		£150 per additional quotation
3. Provision of other information	If under disclosure of information regulations Otherwise depending on nature of request	£0 minimum £25 maximum £75
4. Receipt of pension sharing order or consent order.	To cover all administration costs from receipt of pension sharing order to completion of pension payments	Maximum £750
5. Objections to order by scheme	Onus should be on the draftsmen of the order to ensure that it is correctly drafted prior to issue	Scheme to notify member/solicitor that costs for dealing with inoperable orders will be passed on.

B. Scheme member retired — pension in payment - about to divorce

Procedure	Comments	Estimated Cost
1. Assess the value of the pension in payment, including any contingent benefits	Actual costs dependent on charges incurred for actuarial time	Maximum £500
2. Administrative cost of collecting and interpreting medical evidence in respect of divorcing couple (NOTE — this is not relevant to the Police/Fire Scheme)	It is assumed that the charges for supply of medical evidence will be met by the divorcing couple	Scheme to advise that payment for the supply of medical evidence will be the responsibility of the member
3. Establish new pensioner record	To cover all administrative costs from receipt of pension sharing order to completion of pension payments	Maximum £750
4. Establish a new member scheme record (record keeping/tracing reasons, etc)		Minimum £25 Maximum £100

WEST YORKSHIRE PENSION FUND

Charges in relation to Divorce Cases

The following charges for supplying information in relation to divorce proceedings will be made by the West Yorkshire Pension Fund (WYPF).

- Within any 12month period, there will be no charge for supplying the information as required on Form 'E'. This includes the provision of the calculation of a cash equivalent transfer value.
- Requests for supplementary information in addition to that required on Form 'E' will incur a charge of £50.00 + VAT. This includes any further requests for a revised transfer value costing. This will be payable either within 3 months of the request for the information or, prior to the start of the pension sharing order if earlier. Any costs incurred will be invoiced directly to the 'Debit Member' unless the court directs otherwise.
- If a pensions sharing order is imposed we will make a charge of £350.00 + VAT for carrying out the instructions of the order.
- If the instructions in an order are completed incorrectly or if an order is subsequently amended, we reserve the right to charge up to an additional £350.00 + VAT for carrying out any alterations.
- If at any stage of the process we incur any 3rd party administration costs or fees for specialist actuarial services, legal advice, medical information, and any other charges incurred by WYPF for obtaining any necessary information from other third parties, these will be passed on to the debit member in addition to our standard charges outlined above.
- Any costs incurred will be invoiced directly to the 'Debit Member' unless the court directs otherwise. These costs are to be paid within 21 days of the end of 'implementation period' (4 months from the date of the order takes effect or 4 months from the date that we have all the information necessary to implement the order), or they will be deducted by default from the Debit Members benefits plus any appropriate cost of living increases when they become payable.

SOUTH YORKSHIRE PENSIONS AUTHORITY**SCHEDULE OF CHARGES FOR IMPLEMENTATION OF COURT ORDERS RELATING TO PENSION SPLITTING/SHARING ON DIVORCE****PRIOR TO RECEIPT OF A SPLITTING/SHARING ORDER**

There will be no charges for:

- The provision of basic scheme information to you, your solicitor or the Courts
- Providing details of the Cash Equivalent Value of pension rights to the scheme member, their solicitor or the Courts

UPON RECEIPT OF A PENSION SPLITTING/SHARING ORDER

If a Court Order to split or share pension rights is received, a one-off fee of £350.00 + VAT must be paid by the ex-spouse of the scheme member before it is implemented. This fee is made up as follows:

- (i) £150.00 + VAT for revaluing the pension rights at the valuation date and for establishing the pension credit/debit;
- (ii) £50.00 + Vat for servicing the ex-spouse's entitlement during the period of deferment;
- (iii) £150.00 + Vat for processing future payments

METHOD OF PAYMENT

The Authority must be in receipt of the fee before any order is implemented. This can be accomplished by either of the following methods

- (i) By a payment of £350.00+ Vat (cheque made payable to South Yorkshire Pensions Authority), or
- (ii) By a reduction in the pensions credit awarded to the ex-spouse corresponding to a reduction of £350.00 + VAT in the cash equivalent value of the pension rights awarded to the ex-spouse by the courts.

The ex-spouse should notify SYPA of the intended or preferred method as soon as possible after splitting/sharing order as been issued

POLICE PENSION SCHEMECHARGES FOR INFORMATION
RE DIVORCE CASE ENQUIRIES - W.E.F. 1 MAY 2001

APPLICABLE TO:

1) CURRENT SCHEME MEMBER
(including Ex Officers with Deferred Pensions)

Type of Information/Service Requested	Charge £
One cash equivalent transfer value (CE1V) in any 12 month period (provided to scheme member)	NIL
Further CETV in any 12 month period (charge is recoverable from the scheme member)	100.00 + VAT
Estimate/Projected Pension (provided to scheme member)	NIL
Other information (i.e. Form E, letter from Solicitor or request from scheme member on behalf Solicitor or Court)	100.00+ VAT
EARMARKING ORDER One off initial cost for setting up (Payable by — as decided by the Court Order, the payment should be enclosed when copy Court Order sent to Pension Section)	
Periodic payments - over and above the set up cost (Payable by the scheme member as an annual deduction taken from their pension in April of each year)	50.00 pa + VAT
PENSION SHARING ORDER One off setup/admin charge (Payable by -as decided by the Court Order or if not specified, by the ex-Spouse of scheme member, payment should be enclosed when copy Court Order sent to Pension Section) NOTE — current guidance on the Police/Fire Scheme requires cost to be deducted from the ex-spouses cash equivalent value	750.00 + VAT

2) RETIRED OFFICERS
(Where pension is already in payment)

Type of Information/Service Requested	Charge £
Equivalent calculation to that of current scheme members Cash Equivalent Transfer Value (Payable by the retired member for each request)	100.00 + VAT
One off payment to establish a new pensioner record as directed under the Court Order (Payable by Ex-Spouse, payment should be enclosed when copy Court Order is sent to Pension Section NOTE — guidance for the Police and Fire Schemes directs that costs should be deducted from the cash equivalent value)	750.00 + VAT

PLEASE NOTE:

All above charges will be subject to annual increases as determined by the Retail Price Index (RPI) with effect from April 2002

3) FORMER SOUSE

Type of Information/Service Requested	Charge £
Any changes to personal details held by the Pension Section — charges made for each request (i.e. changes of name, address, bank details etc)	15.00 + Vat Amount to be reviewed periodically

1. Letter to solicitor re pension on divorce £100.00 plus vat (prior to 1/5/2001, after this date see revised list)
2. Information required for mortgage purposes £25.00 plus vat
3. Earnings information required by solicitor £100.00 plus vat
4. Copy P60 £10.00 plus vat
5. Information re review of Personal Pensions (SIB Cases)

CAT. 1 - Opted out of police Pension Scheme, benefits transferred to a Personal Pension, or refunded. Still in employment with the Police Authority, reinstatement possible. Administration fee for information is £295.00 plus vat

CAT.2 - Opted out of Police Pension Scheme, benefits preserved within the Scheme. Still in employment with the Police Authority. Re-instatement possible. Administration fee for information is £175.00 plus vat

CAT.3 - Effected a personal pension, whilst eligible to join the Police Pension Scheme. Re-instatement of missed period possible. Administration fee fro providing information is £175.00 plus vat

CAT.4 - Left the employment of the Police Authority, and transferred preserved benefits to a Personal Pension. Re-instatement not possible. Administration fee for providing benefits lost by transfer is £175.00 plus vat