

## **Pensions on divorce, or on dissolution of a civil partnership**

When a couple divorce or separate, or their civil partnership is dissolved, the court must give adequate consideration to the value of the pension rights of each spouse or partner. The solicitor(s) handling the proceedings will guide the parties through the appropriate options and procedures, but this factsheet will help with understanding the options open to members of MPS who divorce, separate or end civil partnership.

The information in this factsheet is not a definitive statement of the law. It should be read in conjunction with the Scheme's Rules and information on our website at [www.mps-pension.org.uk](http://www.mps-pension.org.uk) and you should always consult your solicitor before acting on the information contained here. It should also be noted that family law in Scotland is administered differently to the way it applies in England and Wales.

Certain transactions and information can only be provided on payment of a fee to the Scheme. If we were not to make a charge to cover our costs, the other Scheme members would effectively be paying the charges, so this is something we have to do. A schedule of the charges, where payable, is appended to this factsheet.

For simplicity it is assumed in this factsheet that the MPS member is male and his former spouse is female. The same position applies in reverse if a wife is the party with substantial pension savings, or it is a civil partnership. Therefore please substitute:

'husband' or 'civil partner' for 'wife';  
'dissolution, nullification or separation of a civil partnership' for 'divorce';  
'civil partnership' for 'marriage'; and  
'civil partner' for 'spouse' as applicable to your own arrangements.

In this factsheet we only cover proceedings begun since the introduction of pension earmarking in 1996 and pension sharing in 2000. The factsheet details do not apply to members who have been divorced since before those dates. In the UK, civil partnerships date from December 2005.

## Putting a value on pension rights

The courts will value the pension rights of one or both parties by using the 'cash equivalent' transfer value. This is the same value as would apply if a member transferred his accumulated pension rights to another scheme or arrangement. We can provide a valuation on request on this basis to a Scheme Member who has not yet retired, or to his solicitor or his wife's solicitors provided authorisation from the member is given in writing. We would normally charge for a valuation being carried out more than once in any twelve-month period, so for illustration purposes the solicitor may be content with a valuation issued within the last year.

Members who have already retired do not have a legal right to a transfer valuation, so the calculation has to be specially commissioned. In these circumstances we would also make a charge for providing a valuation for the court.

When asked to provide a valuation, we will do so as quickly as possible, but always within the statutory timescale of three weeks. If a court order is obtained requiring us to provide the information more quickly, we shall do our best to do so.

It is our understanding that Scottish Courts only tend to consider the value of pensions built up during the marriage period. If for example a member had 20 years' service with MPS but was only married for 15 of them, a Scottish Court would use the same valuation basis as an English one, but would only regard the 15 years' worth of pension accumulated during marriage in working out a settlement. This is not necessarily the case, we understand, in other parts of the UK.

## Ways that pension rights can be divided

There are essentially three ways a court can deal with the division of pension rights when a couple divorce or separate:

- The value can be '**offset**' against the value of other assets owned jointly. For example, in dividing other property values into two, a larger part of the share could be allocated to the party with lesser or no pension rights. Solicitors will have a view on whether this is an equitable distribution of property in the circumstances, as tangible property and assets are quite different from pension income, current or yet to come. Clearly if both parties have good size pensions then the value of one may come close to offsetting the value of the other without much impact on the division of other joint assets.
- Part of one party's pension could be '**earmarked**' for their former spouse, by placing an order over the benefits that come into effect when the member retires, (or immediately if already retired), or dies. So for example, the court could order that 40% of benefits due to come into payment in five years is earmarked for the member's former spouse. When the member draws his benefits, 40% of any lump sum payable goes to the member's former spouse, and in England and Wales 40% of the pension then payable could be directed

to her bank account (Scottish Law does not generally permit pension income to be earmarked, only lump sums payable on retirement or death).

- Part of one party's pension value could be transferred to a pension in their former spouse's own name. This procedure is known as '**pension sharing**'; if the former spouse is of pensionable age then pension income can start straight away and will be paid for life. If she is younger at the date of divorce, then the fund is set aside to provide a pension from her retirement date.

As 'offsetting' has no effect on the MPS pension, we do not consider it in more detail in this factsheet. However, we do now consider earmarking and pension sharing in depth:

### **Earmarking (or 'attachment') orders**

An earmarking order requires the Scheme to pay benefits to the former spouse, in the proportion specified by the Court, when they become due. If the order specifies that a lump sum is payable if the member died before retirement, it will be paid provided the order also specifies that the former spouse should receive this lump sum. If the order contains no requirement for the Trustees to pay the lump sum benefit to the nominated party, the direction is not binding. However, if the order is silent on that point, no benefits are payable to the former spouse if the member does not survive to retirement.

On the member's retirement, the earmarked proportion of the lump sum and/or pension will be paid to the former spouse. It is important that the former spouse keeps the Scheme informed of her address and bank details if these change. If pension income is earmarked (under English law), then the relevant proportion of the pension will be paid until the earliest of either the member's death, or the former spouse's remarriage or death.

### **Special considerations with Earmarking:**

- The member with the pension rights will pay tax on all of the income including the part that is earmarked. Therefore, a 50% split of the pension in retirement will not necessarily mean that both parties receive the same amount. It is possible that the Solicitor might recommend a different split to take account of this difference in net pension after tax.
- Earmarking is often criticised because it does not provide opportunity for a 'clean break', which is recognised as an aim of divorce proceedings. The former spouse has to remain in touch with the Scheme, but more importantly, she retains no control over when payment is made, or any options as to payment (such as exercising a lump sum option). If the former spouse is younger than the member, she could find the pension stops on the member's death just as she is entering old age, arguably when the need for the pension is at its greatest.

These issues could be overcome with sound financial planning, but the parties may wish to discuss them with their Solicitor. It is our understanding that if there is a change of circumstances after the order has been served, the parties can return to court to seek a variation of the terms of the original order, but a Solicitor is best placed to advise you on that point.

What the former spouse must do when an earmarking order is in place:

Keep the Scheme administrator updated with

- Her address details
- Her bank details
- Tell the Scheme if she marries again

### **Pension sharing orders**

A pension sharing order is served by the Court on the Scheme's Trustee. If the terms relating to the pension scheme can be accepted, the Scheme will implement the order within four months of receiving all relevant information and costs.

In accordance with the order, a percentage of the member's pension value (as determined by the Cash Equivalent Transfer Value) is effectively transferred from the member to his former spouse.

His pension is then reduced by the percentage in the court order – this is the pension debit.

The former spouse then receives her share of the value awarded by the court – this is called the pension credit.

The credit must be used to provide pension benefits. This can be done in two ways:

#### **As an external transfer**

The former spouse can take that cash value and transfer it to her own existing pension plan – including that of her own employer if she is a member of such a scheme and they are prepared to accept it. It could alternatively be transferred to a new personal pension plan or stakeholder scheme. If the former spouse is under age 55 in 2010, she may not be able to draw pension until age 55 and if it is taken before normal retirement age it will probably be reduced.

It is recommended that former spouses consider taking financial advice before deciding to take an external transfer. The cost of any such advice will not be met by the Scheme.

The following government bodies also provide information relating to transfers which may assist former spouses in coming to a decision.

**The Pensions Advisory Service**

11 Belgrave Road  
London  
SW1V 1RB  
Tel: 0300 123 1047

**The Financial Conduct Authority**

FCA Head Office  
25 The North Colonnade  
London  
E14 5HS  
Tel: 0800 111 6768

**As an Internal Transfer**

The former spouse can become a member of the Scheme in her own right, as a pensioner (if over retirement age) or as a 'deferred' member, if under that age – a member whose pension is being preserved for later payment. Pensions may be drawn from age 50 where the law allows, but where a pension is drawn before age 60 it will be reduced for early payment.

Benefits will be calculated based on the age of the former spouse on entry to the Scheme as a pension credit member. It is important to note that she will not receive the equivalent percentage of her former husband's pension – the transfer value is used to 'purchase' benefits in the same way as if the former spouse had transferred in her own pension value to the Scheme. We can provide a quotation of what the Scheme will offer as an internal transfer so the former spouse can decide what is best, with advice from her Solicitor. A fee would be payable to cover the cost of the work involved; however, if the internal transfer option was subsequently selected and the order implemented within four months of the date of the quotation, the cost of the quotation already provided would be offset against the remaining charges payable.

Note: it is not compulsory for Schemes to offer membership to former spouses no longer married to Scheme members, and many schemes will not permit it. MPS took the decision to allow members' former spouses the choice of membership in the Scheme, or a transfer out, as they prefer.

**Special Considerations with Pension Sharing**

- Pension Sharing does represent a 'clean break' as compared to earmarking, but it is irrevocable. Once a pension has been shared, it does not revert to the member on the death of the former spouse on her remarriage.
- A former spouse can choose to transfer her pension credit to another scheme or arrangement where it will provide benefits on retirement. It may also provide benefits to dependants, or a new spouse, on death, which is not the case if the former spouse remains in MPS as a credit member.

- If the pension was shared before the member retired, then the former spouse will normally be entitled to take part of her pension as a cash sum. This is not permitted if the pension that was shared was already in payment at the date of the pension sharing order.
- Each party is responsible for their own PAYE tax on their pension when it has been shared.
- When assessing the pension credit against the Lifetime Allowance for the purposes of determining any Lifetime Allowance Charge, it will need to be added to the pension from any other arrangements such as a personal pension or employer's plan.
- The pension debit does not reduce the member's own Lifetime Allowance, and so further saving is not restricted for tax purposes. However, the issues pertaining to pensions taxation can be complicated, especially when either or both parties has a number of pension arrangements, so specialist financial advice may be needed to ensure advantage is taken of the appropriate tax concessions.
- If the pension credit is retained in the Scheme, the credit member will acquire the same rights as other scheme members to:
  - Stand for election as a trustee
  - Vote in elections
  - Receive regular communications from the Scheme, including newsletters and three-yearly benefit statements
  - Use the dispute resolution procedure in the event of a complaint
- Pensions in payment, for both parties, and in deferment before retirement, are increased in line with the Retail Prices Index.

## **The court order**

The Trustees have a right to see a court order in draft and raise an appeal if there is any aspect of the order with which it is not possible to comply. Correcting court orders can be expensive and time consuming, so we recommend that the Scheme is consulted on the drafting of the order in advance. We will try to be as helpful as we can in assisting with the production of an order that will be practical to comply with.

## **Charges**

As stated above, the Scheme has to make a charge for the provision of specific divorce information and for the complex process of implementing a court order. We will not generally begin work or accept a court order without payment of the appropriate charges as set out in the Schedule.

## **Enquiries**

If at any stage you require assistance or more information about the Scheme Benefits, you are welcome to contact the administration office on 0845 606 4444.

Updated news and information about the Scheme's benefits and constitution can be found on our website at [www.mps-pension.org.uk](http://www.mps-pension.org.uk)

## Costs of Pension Sharing and Attachments Orders

### (i) Deferred Pensioners

Event	Comments	Cost for Scheme Member (or as notified in order)
Produce cash equivalent transfer value quotation for deferred pensioner	For the first quote within a twelve month period, unless required by a specified date within 3 months of the request	No charge
Produce a 2nd or urgent cash equivalent transfer value quotation or if you are within one year of NRD	An additional charge may be levied if the calculation date is not a current date and a calculation has to be carried out on special terms.	£221
Provision of other information	As required	Free if so required by law, otherwise up to £127
Receipt of pension sharing order whether by consent or by order	To cover all preliminary work prior to the setting up of all new records	£943
Receipt of an attachment order and implementation.	To cover checking of order, setting up an attachment record, splitting pension at retirement into two accounts.	£538
Settlement of an external transfer value, where chosen (pension sharing only)	Including all documentation required by authorities and receiving scheme	£538
Creation of a new record for the former spouse within the scheme before drawing their pension (pension sharing only)	Includes all re-calculations of deferred benefits, correspondence with authorities and setting up new computer records for the new member.	£1,388
Maintenance of member records	The scheme has to pay for the upkeep of each member record.	Dependent on age at the pension sharing

during Deferment, and whilst pension is in payment.	A sliding scale charge for the maintenance of the credit member's account will be made.	implementation date, will be not exceeding £316 (for age 20 or below)
Objections to order; appeals	Where legal or technical assistance is required to implement the court order	Costs charged by advisers to the scheme will be passed on to the spouses.

VAT will be added to the above charges. Any charges that are not paid within 12 months will be increased in line with RPI. Where medical evidence is requested, the costs will be met by the divorcing spouses.

## (ii) Pensioners

Event	Comments	Cost for Scheme Member (or as notified in order)
Produce cash equivalent transfer value quotation for pensioner	For the first quote within a twelve month period, unless required by a specified date within 3 months of the request	£674
Produce 2nd or urgent cash equivalent transfer value quotation	An additional charge may be levied if the calculation date is not a current date and a calculation has to be carried out on special terms. Calculation of pensioner Transfer Values is complex and requires work from the Actuary.	£674
Provision of other information	As required	Free if so required by law, otherwise up to £127
Receipt of pension sharing order whether by consent or by order	To cover all preliminary work prior to the setting up of all new records	£1009
Settlement of an external transfer value, where chosen (pension sharing only)	Including all documentation required by authorities and receiving scheme	£1,145
Creation of a new record for the former spouse within the scheme before drawing their pension (pension sharing only)	Includes all re-calculations of deferred benefits, correspondence with authorities and setting up new computer records for the new member.	£1,388
Maintenance of member records during Deferment, and whilst pension is in payment.	The scheme has to pay for the upkeep of each member record. A sliding scale charge for the maintenance of the credit member's account will be made.	Dependent on age at the pension sharing implementation date, will be not exceeding £316 (for age 20 or below)

Objections to order; appeals	Where legal or technical assistance is required to implement the court order	Costs charged by advisers to the scheme will be passed on to the spouses.
Settlement of an external transfer value, where chosen (pension sharing only)	Including all documentation required by authorities and receiving scheme	£1,145
Creation of a new record for the former spouse within the scheme before drawing their pension (pension sharing only)	Includes all re-calculations of deferred benefits, correspondence with authorities and setting up new computer records for the new member.	£1,388
Maintenance of member records during Deferment, and whilst pension is in payment.	The scheme has to pay for the upkeep of each member record. A sliding scale charge for the maintenance of the credit member's account will be made.	Dependent on age at the pension sharing implementation date, will be not exceeding £316 (for age 20 or below)
Objections to order; appeals	Where legal or technical assistance is required to implement the court order	Costs charged by advisers to the scheme will be passed on to the spouses.

VAT will be added to the above charges. Any charges that are not paid within 12 months will be increased in line with RPI. Where medical evidence is requested, the costs will be met by the divorcing spouses.