

WEST MIDLANDS



PENSION FUND

WEST MIDLANDS PENSION FUND

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PENSIONS AND DIVORCE

A GUIDE FOR MEMBERS OF THE
LOCAL GOVERNMENT PENSION SCHEME
AND THEIR SPOUSES.



INVESTOR IN PEOPLE



CUSTOMER SERVICE EXCELLENCE

Information for Scheme Members and Their Spouses

For many people, pension rights are one of their most important and valuable assets.

Until 1996 the only way pensions could be taken into account, when couples were divorcing, was to offset their value against the value of other financial assets in the divorce or nullity of marriage

Provisions brought into effect from 1 July 1996 (England and Wales), 19 August 1996 (Scotland) and from 1 December 2000 (all UK) allow divorcing couples two additional ways of taking their pension benefits into account.

They are:

- Earmarking (as from 1996)
- Pension sharing (as from 1 December 2000)

This leaflet gives general information about these provisions.

The right to offset the value of pension rights against the value of other financial assets in the divorce settlement still remains an option.

It should be noted that earmarking can also be used in cases of judicial separation.

This leaflet is only a general guide. It is not a full statement of the law, which governs the Scheme.

Members are advised to take legal advice on the options available to them.

PENSIONS

& DIVORCE

Divorce Proceedings

General

In cases of divorce or nullity of marriage, the petitioner (either the husband or wife) can make an application to the Court for a share of the matrimonial assets.

Once the application has been lodged with the Court, the date for the first appointment at Court will be made.

If the Scheme member has not already done so, he/she will be required to apply for a valuation of his/her pension rights under the Local Government Pension Scheme (LGPS). This is because the divorcing couple are required to disclose to each other, and to the Court, all their financial interests.

This will include details of those benefits under the Scheme, which are shareable rights.

Obtaining Information About Benefits, Under the Local Government Pension Scheme, if You Are Involved in Divorce Proceedings

The Court will need information about the member's pension benefits and general information about the LGPS, in order to consider whether an earmarking or pension sharing order is appropriate.

The member's spouse, or their solicitor, can only ask for basic information about the Scheme.

Members are entitled to ask for information about the Scheme and their own personal benefits in the Scheme. As part of this process, members should complete the attached form to request information on the LGPS and to request a Cash Equivalent Value (CEV). This is the capitalised value of their LGPS pension benefits.

It provides a convenient way of assessing the value of the pension in relation to other assets, such as a house.

Members are, subject to certain exceptions, entitled to one free CEV per year, for any purpose.

The charges that the Scheme will make, if any, and the charges the Scheme will make for administering an earmarking or pension sharing order are shown in the section "Schedule of Charges".

You should note that all correspondence received by the Fund, in connection with your divorce, will be acknowledged in writing. If no acknowledgement is received, you should contact the Pensions Administration Service (see back page) to ensure that your correspondence has been received.

Additional Information Relating to Divorces in Scotland

Scottish law uses the concept of 'matrimonial property'. Pension benefits form part of the 'matrimonial property' and, unlike in the rest of the UK, it is only pension rights that have built up during the marriage that can be shared or be subject to an earmarking order.

In Scotland, a divorcing couple often make 'Minutes of Agreement' to settle as many issues as possible

before going to Court. This allows them to reach their own decisions (with legal advice) about the division of the matrimonial assets. Where the member and the member's spouse enter into such an agreement, the member must notify the Pensions Administration Service (see our contact details on the back page) that he/she intends to share pension rights with the spouse.

Disclaimer

This booklet gives general guidance only to assist Scheme members and their spouses who may be involved in divorce or nullity of marriage proceedings. It is not a full statement of the law, which governs the Scheme.

The Pensions Administration Service (see our contact details on the back page) will provide information to you at various stages during the divorce or annulment proceedings.

Individuals should seek further information from their solicitors about the relevance of earmarking or pension sharing provisions in individual divorce or annulment proceedings.

Earmarking

What is Earmarking?

Earmarking is a term used to describe special attachment orders, which are made by the Court. When an attachment, or earmarking, order is made the pension still remains that of the Scheme member, but the Scheme is required to make some form of payment to the former spouse when the member's benefits become payable. The Court can order that the former spouse receives one, or a combination, of the following benefits:

- all, or part, of the member's Local Government pension (this does not apply in Scotland)
- all, or part, of the member's Local Government lump-sum retirement grant
- all, or part, of any lump-sum paid in the event of the member's death

An order can also require certain members who joined the LGPS before 17 March 1987 to exchange some pension for an additional lump-sum retirement grant (this does not apply in Scotland).

The order will be sent to the authority administering the Scheme (see our contact details on the back page) who will acknowledge it within 21 days, and ensure it is acted upon.

A copy of the decree or declarator of divorce, nullity of marriage or judicial separation including, in the first two cases, confirmation that the decree has been made absolute should be sent to the authority administering the Scheme (see our contact details on the back page).

Changes

As it may be many years between the divorce and the benefits coming into payment, it is important to be aware of the following changes:

- an earmarking order against pension payments, but not lump-sums (unless the order directs otherwise), will automatically lapse on the remarriage of the former spouse, and the full pension will be restored to the member

- pension payments to the former spouse lapse on the death of the member
- the former spouse must inform the Pensions Administration Service (see our contact details on the back page) of any change of address, any change of name by marriage or by deed poll and, where the earmarked pension is in payment, any change of bank account details
- if the Scheme member transfers his/her benefits to another scheme, the earmarking order will transfer. The Pensions Administration Service (see our contact details on the back page) will, within 21 days of the transfer (14 days in Scotland), inform the former spouse of any transfer

The Pensions Administration Service (see our contact details on the back page) must be informed of the death of the member or of the former spouse.

Paying the Earmarked Pension

The Pensions Administration Service (see our contact details under on the back page) will contact the former spouse when the member applies for payment of their pension benefits or, if the lump-sum payable on death has been earmarked, when the member has died. The Pensions Administration Service will check that the earmarking order is still valid and, if so, will arrange for payment to be made to the former spouse.

Pension Sharing

What is Pension Sharing?

Pension sharing is similar to earmarking in that the Court will serve a Pension Sharing Order on the Scheme. When the Court orders pension benefits to be shared, the former spouse is allocated a percentage¹ (up to 100%) of the member's benefits. The member's benefits are reduced accordingly, and the former spouse will hold benefits in his/her own right, independent of the Scheme member.

¹ In Scotland, the Court may order that a specified amount of the member's benefits be allocated to the former spouse.

The Pension Sharing Order will be sent to the authority administering the Scheme (see our contact details on the back page) who will implement it as directed.

A copy of the decree or declarator of divorce, nullity of marriage or judicial separation including, in the first two cases, confirmation that the decree has been made absolute should be sent to the authority administering the Scheme (see our contact details on the back page).

Pension sharing was introduced from 1 December 2000 to enable clean break settlements and to overcome some of the inherent problems associated with earmarking orders, i.e. with an earmarking order, the former spouse has to wait for the Scheme member to retire (or die) before becoming entitled to the earmarked pension (or lump-sum) and is also at risk of:

- losing the retirement income if the former spouse remarries (although any earmarked lump-sum is not lost, unless the order instructs otherwise)
- losing the retirement income if the Scheme member dies first (although any earmarked death grant would be payable)
- having the intended income delayed if the Scheme member delays retirement

What Will a Pension Share Mean for the Scheme Member?

Pension Share Ordered Before Retirement

The member's pension, lump-sum retirement grant and any subsequent spouse's benefits will be reduced by the percentage allocated to their former spouse. For divorces in Scotland, the Court will specify either a percentage or a monetary amount. This reduction will be known as a 'pension debit' and will normally be calculated within four months of the pension sharing order being received.

At retirement, the 'pension debit' will be increased in line with the rise in the Retail Prices Index (i.e. it will be increased in line with the rise in the cost of living), between the date the amount of the 'pension debit' was first calculated and the date the member's pension becomes payable. This revalued amount of 'pension debit' will then be deducted from the member's total benefits.

On the member's death, if they have remarried, a pension share will reduce the widow(er)'s benefit

payable to the new spouse. However, if the member has dependent children, any child's pension payable will not be reduced because of a pension share.

Transferring Benefits

The member will still be able to transfer their remaining benefits to another pension scheme or arrangement on ceasing membership of the LGPS in the current pension fund. If the transfer is to another LGPS fund, the benefits will be transferred in full and the 'pension debit' applied by the new fund at retirement. If the transfer is to another type of pension scheme or arrangement, a transfer value will only be paid in respect of the debited amount of the member's benefits.

Buying Additional Pension Benefits

If, in the tax year before that in which the divorce or annulment occurs, the member's earnings are equal to or less than one quarter of the Inland Revenue earnings cap, currently £95,400 for the tax year 2001/2002, the member will have scope to rebuild the pension rights

'lost' on account of the 'pension debit'. The member can do so by paying Additional Voluntary Contributions (AVCs) or, provided the member is under age 64², by purchasing additional years of membership in the LGPS.

If the member's earnings exceed one quarter of the earnings cap, the scope to pay AVCs or to purchase additional years of membership may be limited and it may not be possible to rebuild some or all of the pension rights 'lost' on account of the 'pension debit'.

Irrespective of whether or not a member earns more or less than one quarter of the earnings cap, a member who, in at least one of the preceding five tax years (but not counting any tax year prior to 2000/2001), did not earn more than £30,000 a year can contribute³ up to £3,600 a year (including tax relief) into a Stakeholder Pension Scheme or a Personal Pension Scheme at the same time as contributing to the LGPS.

² The authority administering the Pension Fund, may also require the member to satisfy them that he/she is in reasonably good health.

³ A member who is, or who has been a controlling director in the tax year the contributions are made, or in any one of the preceding five tax years, cannot contribute to a concurrent Stakeholder or Personal Pension Scheme.

All such members will, therefore, have the opportunity to rebuild some or all of the pension benefits 'lost' on account of a 'pension debit'. Further information on the options available can be obtained from the Pensions Administration Service (see our contact details on the back page).

Pension Share Ordered After Retirement

The pension currently in payment will be reduced by the percentage allocated by the Court to the former spouse from the date of the pension share.

On the pensioner member's death, if he/she has remarried, a pension share will reduce the widow(er)'s benefit payable to the new spouse. However, if the pensioner member has dependent children, any child's pension payable will not be reduced because of a pension share.

Paying the Shared Pension

The Scheme member will claim their Local Government pension benefits in the normal way.

What Will a Pension Share Provide for the Former Spouse?

Pension Share Ordered Before the Member's Retirement

Normally, within four months of a pension sharing order being received, the former spouse will be granted pension benefits in the Local Government Pension Scheme in his/her own right. These will be equal to the value of the share of the member's benefits granted by the court and are known as 'pension credit' benefits. These will provide:

- an annual pension and a lump-sum equal to three times the pension, payable from age 65 or, if later, from the date of the pension share, or
- commutation of trivial benefits at State Pension Age (if the 'pension credit' is very small it can be paid as a one-off lump-sum payment), or

- commutation of benefits before age 65 on the grounds of serious ill-health where life expectancy is less than one year (a one-off lump-sum payment equal to eight times the annual rate of the 'pension credit' can be paid), or
- a lump-sum equal to three times the annual rate of the 'pension credit' if the former spouse dies before the 'pension credit' becomes payable, and
- if the credited member dies within five years of the 'pension credit' benefits becoming payable, a lump-sum equal to five times the annual rate of the 'pension credit' less the amount of annual pension already paid to the credited member.

When the 'pension credit' benefits become payable they will be increased in line with the rise in the Retail Prices Index, i.e. they will be increased in line with the rise in the cost of living between the date the amount of the 'pension credit' was first granted and the date the 'pension credit' becomes payable.

Once in payment, the annual rate of the 'pension credit' will be increased each year in line with the rise in the Retail Prices Index.

'Pension credit' benefits do **NOT** provide widow(er)'s or dependants benefits.

Transferring Benefits

A former spouse can opt to transfer the value of the 'pension credit' to another qualifying scheme or pension arrangement at any time up to one year before age 65 (other than to another LGPS fund). The value of the 'pension credit' cannot be aggregated with any rights the former spouse may have in the LGPS in his/her own right, i.e. as a result of being a contributor to the Scheme.

Buying Additional Pension Benefits

The former spouse will **NOT** be able to make Additional Voluntary Contributions (AVCs) to the LGPS or purchase added years of membership in the LGPS in order to increase the 'pension credit' benefits.

Paying the Shared Pension

The Pensions Administration Service (see our contact details on the back page) will advise the former spouse how to apply for the 'pension credit' benefits when the pension share is confirmed.

The pension, when paid, will be taxed (if appropriate). As the former spouse's 'pension credit' benefits are independent from the Scheme member's benefits, a pension sharing order does not lapse on the death of the Scheme member or the remarriage of the former spouse.

If a former spouse were to remarry, and that marriage were to end in divorce or annulment, the 'pension credit' could itself be subject to a pension sharing order.

Pension Share Ordered After the Member's Retirement

Normally, within four months of a pension sharing order being received, the former spouse will be granted pension benefits in the Local Government Pension Scheme in their own right. These will be equal to the value of the share of the member's

benefits granted by the court and are known as 'pension credit' benefits. Where the pension share takes place after the Scheme member has retired, the 'pension credit' will provide:

- an annual pension payable from age 65 or, if later, from the date of the pension share, or
- commutation of trivial benefits at State Pension Age (if the 'pension credit' is very small it can be paid as a one-off lump-sum payment), or
- commutation of benefits before age 65 on the grounds of serious ill health where life expectancy is less than one year (a one-off lump-sum payment equal to five times the annual rate of the 'pension credit' can be paid), or
- a lump-sum equal to three times the annual rate of the 'pension credit' if the former spouse dies before the 'pension credit' becomes payable, and

- if the credited member dies within five years of the 'pension credit' benefits becoming payable, a lump-sum equal to five times the annual rate of the 'pension credit' less the amount of annual pension already paid to the credited member.

When the 'pension credit' benefits become payable they will be increased in line with the rise in the Retail Prices Index i.e. they will be increased in line with the rise in the cost of living between the date the amount of the 'pension credit' was first granted and the date the 'pension credit' becomes payable.

Once in payment, the annual rate of the 'pension credit' will be increased each year in line with the rise in the Retail Prices Index.

'Pension credit' benefits do **NOT** provide widow(er)'s or dependants benefits

Transferring Benefits

A former spouse can opt to transfer the value of the 'pension credit' to another qualifying pension scheme or arrangement at any time up to one year before age

65 (other than to another LGPS fund). 'Pension credit' benefits cannot be aggregated with any rights the former spouse may have in the LGPS in his/her own right, i.e. as a result of being a contributor to the Scheme.

Buying Additional Pension Benefits

The former spouse will NOT be able to make Additional Voluntary Contributions (AVCs) to the LGPS or purchase added years of membership in the LGPS in order to increase the 'pension credit' benefits.

Paying the Shared Pension

The Pensions Administration Service (see our contact details on the back page) will advise the former spouse how to apply for the 'pension credit' benefits when the pension share is confirmed.

The pension, when paid, will be taxed (if appropriate). As the former spouse's 'pension credit' benefits are independent from the Scheme member's benefits, a pension sharing order does not lapse on the death of the Scheme member or the remarriage of the former spouse.

If a former spouse were to remarry, and that marriage were to end in divorce or annulment, the 'pension credit' could itself be subject to a pension sharing order.

Schedule of Charges for the Local Government Pension Scheme (LGPS) - April 2001

(a) Scheme Member Not Yet Retired - About to Divorce

Procedure	Comments	Cost
1. Produce full CETV quotation (member or Court does not stipulate deadline for production)	1. Standard annual entitlement under PSA 1993 (to be provided within three months of relevant date).	£0
2. Produce full CETV quotation (member or Court requires within three months)	2. Standard CETV under PSA 1993 (to be provided within deadline requested).	£75*
3. Produce partial CETV quotation (for Scottish cases where the date ceased cohabiting/date of service of divorce summons was more than 12 months ago or the member married after joining the LGPS)	3. Partial CETV quote (to be provided within three months or deadline requested by the member or the Court).	£75*
4. Additional CETV quotations - Based on same dates - Based on different dates		£30* per additional quote £75* per additional quote
5. Provision of other information	If under disclosure of information regulations. Otherwise, depending on nature of request	£0 Maximum £75*

(a) Scheme Member Not Yet Retired - About to Divorce

Procedure	Comments	Cost
6. Receipt of pension sharing order or consent order where the spouse (the credited member) is under 65	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
7. Establish a new pensioner record where the spouse (the credited member) is 65 or over	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
8. Assuming all documentation is in place, settle a transfer out (instead of 6)	This only applies if the credited member asks for a transfer out at the outset. Otherwise, the charges in 6 will apply and no additional charge will be levied if the credited member subsequently asks for a transfer out	£180
9. Objections to order by scheme	Onus should be on the draftsman of the order to ensure that it is correctly drafted prior to issue	Costs for dealing with inoperable orders will be passed on

B. Scheme Member Retired - Pension in Payment - About to Divorce

Procedure	Comments	Cost
1. Assess the value of the pension in payment, including any contingent benefits		£75*
2. Receipt of pension sharing order or consent order Where the spouse (the credited member) is under 65	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
3. Establish new pensioner record where the spouse (the credited member) is 65 or over	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
4. Assuming all documentation is in place, settle a transfer out (instead of 2, above)	This only applies if the credited member asks for a transfer out at the outset. Otherwise, the charges in 2 will apply and no additional charge will be levied if the credited member subsequently asks for a transfer out	£180

Notes: Recharges

1. Any additional costs arising if specialist actuarial, legal, etc. advice is requested will be charged in full in addition to the figures quoted above.
2. Where a Scheme member has an Additional Voluntary Contribution contract under the LGPS, the insurance company, etc. may charge for the provision of information. Any such charges will be charged in full in addition to the figures quoted above.
3. Any reasonable administrative costs incurred or likely to be incurred in complying with an "earmarking order" will be charged to the pensioner member.
4. Any costs incurred in relation to a "pension sharing order" which is made the subject of an application for leave to appeal out of time will be recovered by the authority administering the pension fund.
5. VAT will be payable in addition to all the above charges.
6. All charges are correct at the time of production of this charging schedule (January 2001).
The authority administering the pension fund will increase its charges each April by RPI (over the 12 months to the previous September).
7. The standard practice of the authority administering the pension fund is that the full amount of the charges marked with an "*" must be paid, by either party to the divorce, before the relevant action is undertaken. All other charges can either be paid
 - a) in full at the point of action, by either party to the divorce, or
 - b) by part payment at the point of action, by either party to the divorce, with the balance being deducted from either the cash value awarded to the ex-spouse (the credited member) under the sharing order or agreement before it is converted into an annual pension value under the LGPS or, if the credit member wishes to immediately transfer the pension credit to another scheme, from the transfer value payable in respect of the credited member, or
 - c) by deduction in full from either the cash value awarded to the ex-spouse (the credited member) under the sharing order or agreement before it is converted into an annual pension value under the LGPS or, if the credit member wishes to immediately transfer the pension credit to another scheme, from the transfer value payable in respect of the credited member, or
 - d) by deduction in full from any share of a scheme member's Additional Voluntary Contribution 'pot' awarded to the ex-spouse (the credited member) under the sharing order or agreement.

The authority administering the pension fund will, however, comply with the charging requirements specified in an order or agreement.

Notes: General

1. Divorce or annulment proceedings must have commenced under one of the following -
 - Part II of the Matrimonial Causes Act 1973 or Part III of the Matrimonial and Family Proceedings Act 1984 (England and Wales powers in relation to domestic and overseas divorce, etc.), or
 - Part III of the Matrimonial Causes (Northern Ireland) Order 1978, or Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (corresponding Northern Ireland powers), or
 - the Family Law (Scotland) Act 1985 or Part IV of the Matrimonial and - Family Proceedings Act 1984 (corresponding Scottish powers)

Change of Address

We need to ensure that members are kept up to date with Scheme changes and/or to inform members of any general pension issues. Information is included with Annual Benefits Statements. As these are issued to home addresses, please ensure that you keep us informed of any changes.

How Do I Tell the Fund About a Change of Address?

Simply write to us giving your personal reference number which is shown on all your correspondence.

If you prefer, you can contact us via e-mail, fax or minicom using the **CONTACT DETAILS** shown on the back page.

Members who have registered a password can contact our Helpdesk who, after verification, will be happy to take change of address details over the phone.



large sight text

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Information produced by the Fund can be made available in several formats including large sight text, Braille and several community languages. If you have any special requirements or would like to speak face to face with a member of staff, please contact us to arrange how we may best meet your needs.

Please remember that special requirements may take a little longer than normal to organise, but you have our assurance that we will do our best to ensure you receive the information in the most appropriate and efficient manner possible.

Help and Information

Further Information

We will ensure that all of our members are provided with relevant further information on request.

Comments and Complaints

We welcome and value your comments on the standards of service we provide. If you have any comments you wish to make please contact us at the address shown at the bottom of the page.

We would also like to hear from you if you are not satisfied with the way you have been treated. If you wish, you can speak to Mike Woodall, the Chief Pensions Officer, on his personal number (01902) 554610 on any weekday between 9.00 and 9.30am or via e-mail: mike.woodall@wolverhampton.gov.uk

If you wish to make a formal complaint you can write to:
Complaints and Compliments
Office of the Chief Executive
Civic Centre
St. Peter's Square
Wolverhampton
WV1 1NX

Data Protection

To protect any personal information held on computer, Wolverhampton City Council is registered under the Data Protection Act 1998. This allows members to check that their details held are accurate. The Fund may, if it chooses, pass certain details to a third party, if the third party is carrying out an administrative function of the Fund, for example, the Fund's AVC provider. Members who wish to apply to access their data on Data Protection Act grounds should contact the City Council's Data Protection Officer on (01902) 554498, via e-mail at dataprotection@wolverhampton.gov.uk

This authority is under a duty to protect the public funds it administers, and to this end may use information for the prevention and detection of fraud. It may also share this information with other bodies administering public funds solely for these purposes.

Write:

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0845 230 1665 (Helpdesk)

Fax:

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Minicom:

01902 554607 (Typetalk facilities)

Website:

www.westmids-pensions.com

E-mail:

PensionFundEnquiries@wolverhampton.gov.uk

Calls may be monitored for training purposes.