

Pensions and divorce

Pension sharing information leaflet

This leaflet provides general guidance on how Pension Sharing Orders are applied within APS and is not intended to be a comprehensive study of issues relating to pensions and divorce, nor to provide legal advice and cannot be relied upon or treated as a substitute for a member or the spouse or civil partner, or former spouse or civil partner of a member or other third party obtaining specific legal advice concerning individual situations.

Information for members of the Airways Pension Scheme (APS) and their spouses or civil partners about how Pension Sharing Orders are applied in APS is shown below. Please read this leaflet carefully because it contains information which the Trustee of APS is required to provide by law.

References in this leaflet to divorce are also applicable to the dissolution of a civil partnership, so any references to a former spouse should be read to include a former civil partner.

What is Pension Sharing?

Pension sharing was introduced with effect from 1 December 2000 and applies only to divorce and nullity cases where petitions have been presented on or after that date. It provides an option whereby pension benefits may be shared between divorcing couples. Whether a pension is to be shared and, if so, the amount of the share would usually be determined by the Court as part of the divorce settlement. The Court will issue a Pension Sharing Order stating the percentage of the member's pension to be transferred to the former spouse (in Scotland, a "qualifying" Agreement may be issued rather than a Court Order - each reference to an Order below will apply equally to an Agreement. Additionally, Scottish law provides the option for a specified amount of the member's pension to be shared instead of a percentage). The effect of this means that the member's pension is reduced (by a pension 'debit') and the former spouse receives a pension 'credit'. Examples of how a pension debit can affect the ongoing pension of an active member or pensioner of the Scheme can be found at the end of this Leaflet.

Cash Equivalent Transfer Value (CETV) or Cash Equivalent of Benefits (CEB)

The value of a pension in APS will be worked out by the calculation of a CETV, which is a lump sum amount representing the value of the main Scheme pension at a given date (in the case of a pension already in payment, the calculation will be determined a CEB – a pensioner equivalent of a CETV). For pension sharing quotation purposes this will usually be the date the request is received. For those members with an AVC fund (or pensioners with an AVC annuity being paid by the Scheme) an additional sum representing the current value of the AVC benefits will also be provided. Details of the pension and AVC benefits can only be provided directly to a member's former spouse if the member specifically requests us to do so). The amount of the CETV/CEB plus the value of any AVC benefits will be used by the Courts when working out the divorce settlement. If the Scheme receives a Pension Sharing Order the CETV/CEB (and the value of the AVC benefits) will be recalculated to assess the value of the pension debit and credit using the effective date as specified on the Court Order. The valuation date for the recalculation will be the start of the implementation period, i.e. the date on which all the information and the charges (see the section called Schedule of Charges that will apply to Pension Sharing Orders) required by the Scheme have been received. **The CETV or CEB actually paid could therefore be higher or lower than the amount taken into account by the Court when setting the Order.**

Equal treatment of GMPs for men & women

The Government has said it believes that GMPs built up by men and women should be treated equally. Following this, the Trustee of the Lloyds Banking Group pension schemes asked the Court to clarify the position for its schemes. On 26 October 2018 the Court decided that the Lloyds Banking Group pension schemes should

equalise GMPs for men and women, but this ruling affects all pension schemes where GMPs have been built up.

The Court also suggested methods that could be used to achieve equal treatment of GMPs. Some of these methods would require a significant overhaul of existing systems. It could take several years to agree a common method. We'll work out and pay the transfer value pension on the current, unadjusted basis. As soon as we are in a position to work out how equal treatment of GMPs for men and women is likely to affect the member's pension, we'll write to the receiving scheme if any additional payments become due. The arrangement receiving the transfer credit will need to be able to accept any additional transfer payment (if we work out that one is due). If they will not accept a further payment we may not be able to pay it to the former spouse. Therefore, the former spouse should check this with their new pension arrangement before we complete payment of the transfer credit as we cannot reverse the transfer once we have paid it.

How the Pension Credit will work

- ◆ When a Pension Sharing Order (PSO) is received the Scheme will take steps to implement the Order in accordance with legislation. The Scheme will provide detailed information about the implementation of the pension share, including the value of the pension credit due to the former spouse.
- ◆ A four-month implementation period is allowed for the discharge of the pension credit and will begin on receipt of the Order and all the required information to be provided by the divorcing couple and/or the Courts, and charges being paid pursuant to legislation. **It is extremely important that all information requested by the Scheme is provided promptly to avoid any delay in discharging the pension credit.**
- ◆ The 'Annex' to the PSO will specify the percentage of the pension credit to be transferred and who is responsible for paying the charges.
- ◆ The Valuation Date for assessing the CETV/CEB of the pension credit will be the date on which the implementation period commences. The Scheme will make every attempt to discharge the pension credit as soon as possible after the start of the implementation period.
- ◆ **Pension credits cannot be retained within APS** – pension credits must be transferred to an approved pension arrangement, for example a personal pension scheme, a stakeholder pension (offered by many insurance companies) or a National Employment Savings Trust (NEST) retirement pot. Pension credits can be transferred to a qualifying recognised overseas pension scheme (QROPS) in respect of a non-UK resident. However, it is important to check that the receiving arrangement will accept a payment in respect of a PSO before proceeding with a PSO. The receiving QROPS scheme must qualify under the Registered Pension Schemes Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012 and can be either an Overseas Scheme or Overseas Arrangement.
- ◆ We will write to the former spouse to request details of the chosen pension provider when we receive notice of an impending PSO.
- ◆ If the former spouse does not provide the relevant information and take the steps needed to allow the Trustee of the Scheme to effect a transfer of the pension credit to a pension provider within a reasonable period, the Trustee of the Scheme will transfer the credit to an arrangement selected by the Trustee as permitted by legislation (see the section called Default Transfer later in this leaflet). It is in the former spouse's best interests to nominate a suitable pension provider to receive the pension credit. Delay by the former spouse will **not** result in the former spouse becoming a member of, or entitled to benefits under the BA Scheme, nor will the benefits be increased.
- ◆ Pension credit rights acquired by a former spouse following a PSO will normally need to be tested against the recipient's Lifetime Allowance (LTA). However if, prior to the PSO taking effect, the member's benefits had been subject to an LTA test (or the benefits were in payment before 6 April 2006) then the pension credit will not be tested against the former spouse's LTA, subject to the former spouse making an appropriate notification to HM Revenue & Customs (HMRC)*. The LTA is the total value of pension that a member can receive from all registered pension schemes without incurring a tax charge. Further details regarding the LTA can be found on the HMRC website: www.hmrc.gov.uk or our website: www.mybapension.com

- ◆ Divorce debits that are effective on or after 6 April 2014 may affect any Lifetime Allowance Individual Protection (IP14 - or IP16 from April 2016) that the member may have obtained from HM Revenue & Customs (HMRC). Where this applies, the Scheme member is required to notify HMRC within 90 days of the pension debit being applied. If the member does not, there could be financial penalties.

* Further information regarding the notification procedure can be found on the HMRC website at:-
www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm029000

Further information your solicitor is likely to require

- ◆ Pension Sharing Orders applicable to APS must be sent to British Airways Pensions, PO Box 2074 , Liverpool, L69 2YL. **The Pension Sharing Order, stamped by the Court, should be forwarded to the Scheme within 7 days of being sealed by the Court.**
- ◆ APS is not in the process of winding up (this refers to a scheme being totally closed down with all liabilities being secured with external arrangements).
- ◆ Pensions within APS do not generally contain any benefits which are not shareable under the Pension Sharing provisions. If an Earmarking Order or Bankruptcy Order is applicable in an individual case this will be advised in our member-specific covering letter.
- ◆ Cash Equivalent Transfer Value (CETV) and Cash Equivalent of Benefits (CEB) quotations represent 100% of a member's main Scheme benefit. No reductions or adjustments have been applied.
- ◆ Where a member has AVC benefits these will be quoted as a separate value. For purposes of assessing the pension debit and pension credit the percentage specified on the Pension Sharing Order must be applied to the total sum of the CETV/CEB and value of the AVC fund.

Schedule of Charges that will apply to Pension Sharing Orders

- ◆ Basic information regarding APS and the provision of the initial CETV/CEB is provided free of charge.
- ◆ When a Pension Sharing Order is received by APS a minimum charge will apply and will be payable to the Scheme. The charges applied are detailed below. **Processing of the pension credit will be dependent on this charge having been settled.**
- ◆ The payment must be made by cheque to the Scheme at the time of receipt of the Order.
- ◆ The Scheme member or pensioner and/or the former spouse will be responsible for payment of the charge unless the Order specifies alternative arrangements.
- ◆ A former spouse may elect to have any part of their charges deducted from the CETV/CEB that would otherwise be payable.
- ◆ A member or pensioner may elect to have any part of their charges deducted from their remaining pension.
- ◆ If the Scheme receives an Order, which is incorrect and is inoperable, any charges incurred in clarifying the Order may also be passed on to the member or pensioner.
- ◆ The amount of the charges will be reviewed periodically.
- ◆ If a period of more than twelve months elapses between us sending this information and an Order being received, an adjustment based on any increase in the Retail Prices Index is likely to apply.

Administration Costs

Divorce and pension regulations provide for the recovery by pension schemes of the administrative expenses that they are likely to incur in complying with their obligations under the regulations. The British Airways Pension Schemes make such a charge, which is payable by the Scheme member and/or former spouse at the time a sealed Court Order with a Pension Attachment Annex is received by the Trustee.

The standard minimum charges applied in all cases are:

Current member or member with a deferred pension:	£1,350.00 plus VAT
Retired member with pension in payment:	£1,600.00 plus VAT

Higher charges can be applied in certain circumstances. The actual charge levied will depend on the volume of work and the complexity of the communications that the Scheme administrators are engaged in. If the case requires the involvement of senior pensions personnel or any of the external advisors to the Scheme the Trustee has discretion to determine what the maximum charge will be.

Default Transfer

- ◆ As explained above former spouses entitled to a pension credit must provide the Scheme with details of their chosen pension provider and help the Trustee to finalise the transfer of the credit. The credit cannot be left in APS.
- ◆ Where the Trustee has not been notified of the chosen pension provider within a reasonable time it will transfer the credit to an external arrangement selected by them and will finalise a transfer to that arrangement on behalf of the former spouse as permitted by legislation. This is likely to be to a non-profit deferred annuity contract or a policy referred to as a buy-out arrangement, again usually offered by insurance companies but the exact nature of the arrangement would be clarified at that time.

If you have any specific queries not covered above or require clarification on the above points please contact us.

How a pension debit may affect an active member's ongoing Scheme pension

(All figures are hypothetical and for illustration purposes only)

Example:

At Effective Date of Pension Sharing Order

- ◆ Member's Pension payable from Normal Retirement Date [20 years' service / 75ths of £25,000 (assumed Retiring Pay)] = £6,666.67 a year
- ◆ Cash Equivalent Transfer Amount (CETV) = £90,000
- ◆ Former spouse awarded say 20% in Pension Sharing Order (PSO). Pension credit awarded to former spouse or former civil partner is therefore 20% of £90,000 = £18,000, this amount is transferred to the former spouse's external pension arrangement.
- ◆ Member's Pension Debit at effective date of PSO (20% of £6,666.67) = £1,333.33 a year
- ◆ If the member paid AVCs the fund balance at effective date of PSO will also need to be reduced by the applicable percentage shown in the PSO. The relevant amount would be transferred to the former spouse's external pension arrangement along with the amount from the member's main Scheme pension.

At Retirement

- ◆ Member retires 10 years later, pension payable [30 years' service / 75ths of £40,000 (assumed Retiring Pay at leaving date)] = £16,000 a year
- ◆ Pension Debit at retirement [Pension Debit at date of divorce plus annual increases to retirement] = £ 2,600* a year
- ◆ Member's Pension at retirement following adjustment for PSO [£16,000 less £2,600] = £13,400 a year

* a pension debit is revalued between the effective date of the Order and commencement of payment of pension in the same way a deferred pension would be revalued following a member leaving the Scheme.

HMRC – maximum pension benefits and contributions

- ◆ The value of the member's pension is tested against a Lifetime Allowance (LTA) when payment of the pension commences.
- ◆ For members with a PSO it is the value of the pension after reduction for the Pension Debit that will be tested against the member's LTA when his/her pension comes into payment.
- ◆ A member whose benefits are subject to a PSO may if they wish pay extra contributions to help make up some of the shortfall in pension, subject to normal tax restrictions, i.e. members cannot pay more than 100% of their annual earnings in pension contributions and if AVCs are paid, which together with the increase in pension value, exceeds the relevant Annual Allowance, could result in liability for an Annual Allowance tax charge. Contributions to the BA Schemes are allowed up to a maximum of 50% of pay. Further details regarding the Annual Allowance can be found on the HMRC website: www.hmrc.gov.uk or our website: www.mybapension.com
- ◆ For Annual Allowance assessment purposes, the value of any pension debit paid out must be added back in for the pension input period in which the PSO was made (i.e. the pension debit value cannot be offset against a member's pension input amount in the tax year in which the debit is applied).

How a pension debit may affect a pension already in payment

- ◆ The Pension Sharing Order, stamped by the Court, should be sent to the Scheme by the Court within 7 days of the Order being made. In practice we have found that this is not always the case. **Pensioners, or their legal advisers, must forward a copy as soon as possible following the Court hearing to avoid any overpayment of pension payments (see the example below).** The legislation requires that we do not settle the pension share in respect of the Order until we have received all appropriate information and fees but that when settlement occurs it must be based on the level of the member's pension at the effective date of the Order.
- ◆ The 'Annex' will specify the date on which the Order takes effect – **it is from this date that the reduction to the pension in payment will be made.** The pension in payment will be reduced from the next available payroll to limit the likelihood of overpayments of pension being made which would require retrospective adjustments to recover an overpayment from the member's pension payments.
- ◆ The 'Annex' to the Pension Sharing Order will specify the percentage of the pension to be transferred to the former spouse (the 'pension credit') – **the member's pension in payment will be reduced by the same percentage.**
- ◆ On receipt of the Pension Sharing Order we will notify all parties if any of the information and charges required to discharge the pension credit remains outstanding. It is very important that any outstanding information and fees are provided quickly to avoid delays in discharging the pension credit.
- ◆ Divorce debits that are effective on or after 6 April 2014 may affect any Lifetime Allowance Individual Protection (IP14 – or IP16 from April 2016) that the member may have obtained from HM Revenue & Customs (HMRC). Where this applies, the Scheme member is required to notify HMRC within 90 days of the pension debit being applied.

(All figures are hypothetical and for illustration purposes only)

Example – Pension in Payment

Pension Sharing Order received:	30 October 2016
◆ Percentage shown on Annex of Pension Sharing Order: (i.e. percentage to be transferred to former spouse)	50%
◆ Effective date shown on Annex to Pension Sharing Order: (i.e. the date from which the reduction to member's pension must be made)	16 October 2016
Member's pension (before reduction for pension share):	£6,000 a year (£500 p.m.)
Member's pension (after application of Pension Sharing Order):	£3,000 a year (£250 p.m.)
Date pension reduction applicable from:	16 October 2016

In this example, the Pension Sharing Order was received after the October 2016 pension payment had been processed, which means the member's October pension payment would have been paid at the rate of £500 resulting in an overpayment of £125 (i.e. the required reduction for the period 16 – 31 October). The action taken by the Scheme would be to reduce the member's pension to £250 with effect from the November 2016 payroll to recover the overpaid pension of £125*.

Any delay in us receiving the Pension Sharing Order can result in a significant retrospective adjustment to the pension in payment to recover any overpayments made. Please ensure that information is provided promptly to ease any inconvenience to each party.