

Age discrimination remedy – Divorce factsheet

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Introduction

When a divorce settlement is being determined by a court, the value of pensions may be considered. The Firefighters' Pension Schemes (FPS) provides a Cash Equivalent Transfer Value (CETV) that can be considered when deciding how assets should be split.

Once a court has determined the split, a Pension Sharing Order (PSO) will be issued and the CETV is split accordingly. This creates a pension debit on the member's record and a pension credit for the ex-spouse.

Under remedy, the value of the CETV originally provided to the court may be different for each of the legacy (FPS 1992, FPS 2006, Special FPS 2006) and reformed scheme (FPS 2015) rules and therefore revised calculations are required.

This means that due to the remedy choices that need to be offered to all members with remediable service and considering the implementation date of the PSO, there may need to be a recalculation for any PSOs that have been applied between 1 April 2015 and 30 September 2023.

A summary about how the pension debit and the pension credit are affected by remedy has been provided in this factsheet but some of the key points are: -

- The pension debit that is applied to the member's pension will be adjusted accordingly depending on the remedy choice that they make.
- The remedy choice made by the member has no effect on the pension credit that is awarded to the ex-spouse.
- The pension credit that is awarded to the ex-spouse will always be based on the higher of the two CETVs. This does not cost the member anything and nor do they have a higher debit applied because of this.

Information provided to the court before 1 October 2023

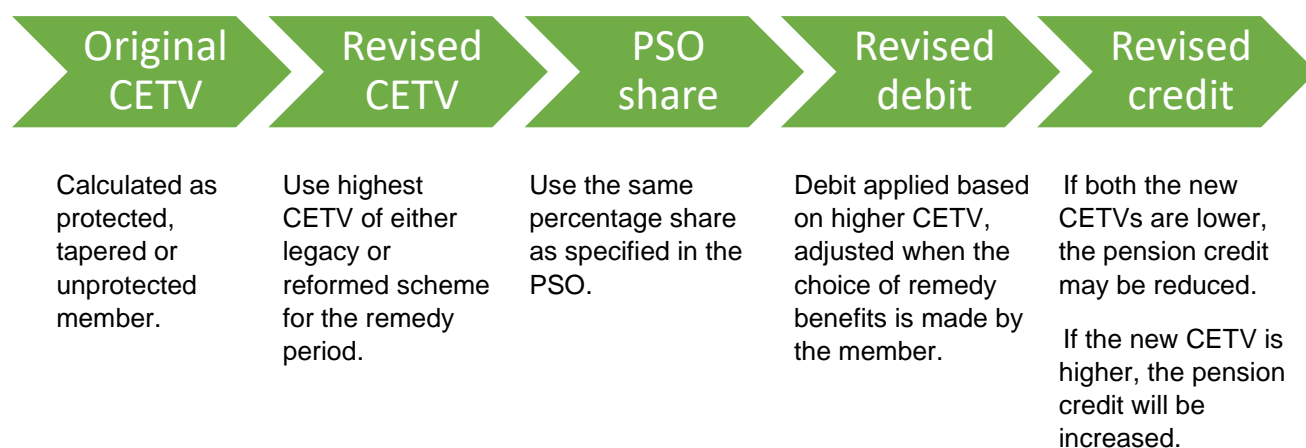
The CETV that was used in the Pension Share will be recalculated. Where this is higher in an alternative scheme the amount will be used to recalculate both the pension debit applied to the member's pension benefits, and the pension credit awarded to the ex-spouse (Pension Credit Member).

Details about how a PSO debit affects a member's benefits in an alternative scheme will be shown on the Remediable Service Statement (RSS).

If the member was a tapered protected member

Where the original CETV used to calculate the PSO was based on a mix of both the member's legacy and reformed scheme benefits. It is possible that the recalculation of the CETV based on either legacy or reformed scheme remediable service will produce a CETV which is lower than the amount that was originally calculated. In these circumstances this will mean that the pension credit awarded to the ex-spouse may be reduced accordingly.

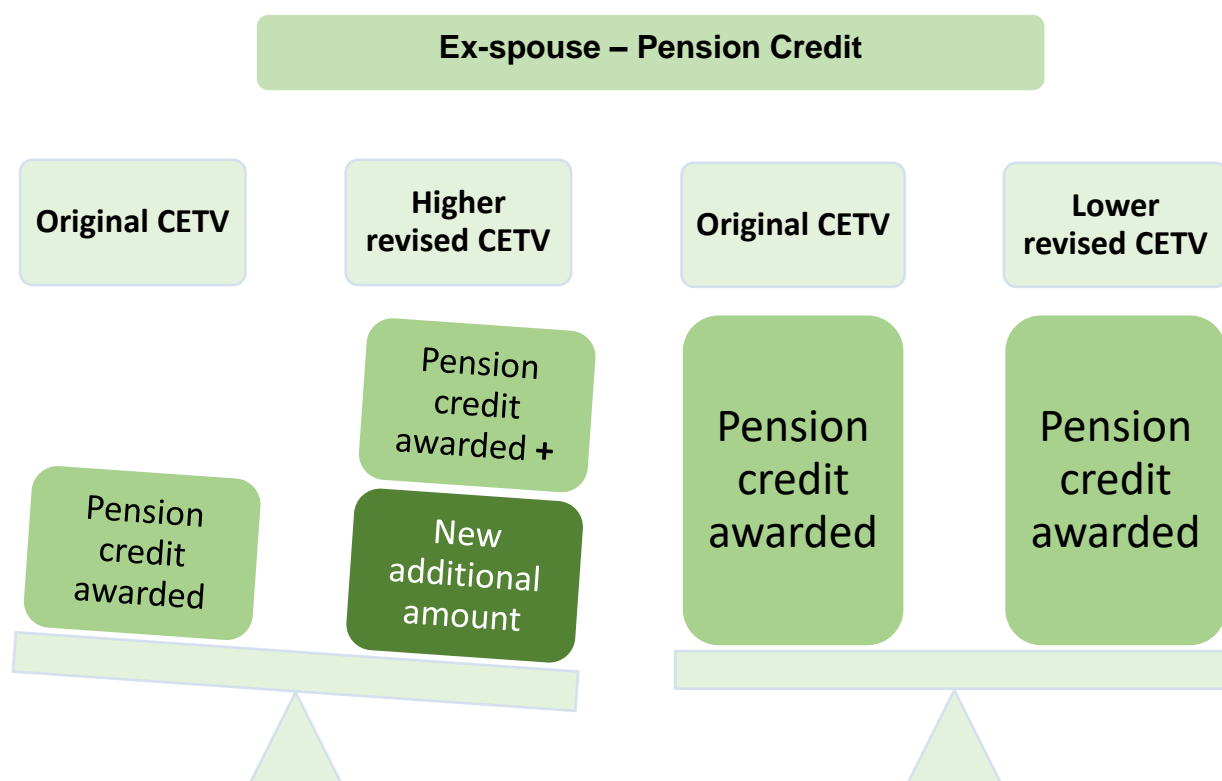
The process can be illustrated as follows: -



The diagrams below illustrate what happens to the ex-spouse's benefits with the key points being: -

- In all cases the highest revised CETV will be used.
- If the revised CETV is higher than previously used, this will result in an additional amount being awarded to the pension credit.
- If both the revised CETVs are lower than the original CETV and the member's pension is already in payment, then the pension credit awarded will not be changed.

Illustrations of changes to the pension credit awarded to the ex-spouse: -



Member's pension in payment – Immediate choice member

Where a pension is in payment, the member's choice of remedy benefits may result in a higher or lower pension. The tables below provide some key information about how this affects the member's pension in payment and the pension credit awarded to the ex-spouse.

A remedy choice resulting in a **higher** pension than is currently in payment: -

Member – pension debit	Ex-spouse – pension credit
<p>The PSO debit applied to the member's pension benefits will be adjusted accordingly. This is because the debit will be different for each remedy option.</p> <p>Any underpayments due to the member will need to be paid and this will be explained in the RSS.</p>	<p>The pension benefits awarded to the ex-spouse will be increased by the same percentage share as stated in the PSO.</p> <p>Any underpayments due to the ex-spouse will need to be paid.</p>

A remedy choice resulting in a **lower** pension than is currently in payment: -

Member – pension debit	Ex-spouse – pension credit
<p>The PSO debit applied to the member's pension benefits will be adjusted accordingly. This is because the debit will be different for each remedy option.</p> <p>Any overpayments made to the member will need to be recovered and this will be explained in the RSS.</p>	<p>The highest CETV will be used to award a pension credit to the ex-spouse. This may result in an increase to pension benefits by the same percentage share as stated in the PSO.</p> <p>Any underpayments due to the ex-spouse will need to be paid.</p>

If the member was a **tapered** member and both revised CETVs are **lower** than the original CETV calculation then regardless of the member's choice for remedy, there will be no changes to the pension credit: -

Member – pension debit	Ex-spouse – pension credit
<p>The PSO debit applied to the member's pension benefits will be adjusted accordingly. This is because the debit will be different for each remedy option.</p> <p>Any overpayments made to the member will need to be recovered and this will be explained in the RSS.</p>	<p>There will be no changes made to the pension benefits awarded to the ex-spouse.</p> <p>There will be no liability to repay any overpayments made to the ex-spouse which arise because of the members choice of remedy benefits.</p>

Members' pension not in payment – Deferred choice member

Where a pension is not yet in payment, the relevant debit will be held against the pension record, and this will be adjusted when the member makes their choice of remedy benefits at retirement.

The tables below provide some key information about how this affects the member's pension and the pension credit awarded to the ex-spouse.

Member – pension debit	Ex-spouse – pension credit
<p>The value of the PSO debit will be calculated based on a CETV of both the members legacy and reformed benefits and held on the members' record.</p> <p>The member will have the option to take legacy or reformed benefits at retirement. These two values will be shown on the members annual RSS.</p>	<p>The pension credit will be calculated on the value of the higher CETV. This may mean an increase or a decrease in the pension credit awarded.</p> <p>The pension credit awarded to the ex-spouse will not be affected by the choice of benefits the member makes at retirement.</p>

PSO that specifies a scheme

In some cases, a PSO may specify that a certain percentage should be attributed to one or more schemes, where this occurs, members will still be able to have their remedy choices provided correctly.

Using the details in the PSO and the original CETV, it will be possible to calculate the overall percentage debit from the total of the member's pension. This same percentage will then be used to calculate the pension debit to be applied to the member's benefits for both the legacy scheme and the reformed scheme respectively.

Revisiting the PSO

On splitting the CETV, it is not the role of the Firefighters' Pension Scheme to negotiate divorce settlements. The only pathway open to the scheme is, therefore, to recalculate the CETV and provide any additional credit that may be due, where a pension sharing order is in place. Neither the scheme nor the Public Service Pensions and Judicial Officers Act (PSPJOA) have any powers to re-open a settlement.

In some exceptionally rare cases, where additional costs are incurred, it may be possible for a claim under the Compensation Scheme. Robust evidence would need to be provided to illustrate that there has been a clear direct financial loss which is because of remedy. The Scheme Manager will consider each claim on a case-by-case basis and decide if it can be accepted or not.

Further information relating to the compensation scheme is available on the FPS members website: -

www.fpsmember.org/remedy/age-discrimination-remedy-compensation-0

Information provided to the court on or after 1 October 2023

The CETV will be calculated on both the legacy and reformed scheme benefits remediable service and the higher value CETV will be considered by the courts when deciding how assets should be split including the relevant percentage split of the Pension Share.

The member will have a pension debit based on the higher CETV value, but the value of their pension could still change depending on their remedy choice at retirement, in this case the PSO debit will be adjusted accordingly.

If the member makes a remedy choice which gives a lower pension at retirement, the ex-spouse will have a pension credit awarded which will be based on the higher CETV value, as this amount is unaffected by the member's remedy choice. In these cases, the member will not have to pay anything, nor will they have a higher debit on their benefits to enable the ex-spouse to be awarded a pension credit based on the higher CETV value.

Where a divorce takes place after the member has already retired and made their choice for remedy benefits, the CETV will reflect the choice the member has made.

This factsheet has been prepared by LGA using the regulations as they stand in June 2024.

This factsheet will be reviewed, referencing any changes to the scheme regulations and policies that might be needed.

This factsheet should not be interpreted as legal advice.

Please address any queries on the content of this factsheet to bluelightpensions@local.gov.uk

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