

Ombudsman's Determination

Applicant	Ms N
Scheme	Principal Civil Service Pension Scheme (the PCSPS)
Respondents	Cabinet Office, My Civil Service Pensions (MyCSP)

Outcome

1. Ms N's complaint against the Cabinet Office and MyCSP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld), MyCSP shall pay redress in respect of the financial loss, and make a distress and inconvenience award to Ms N.

Complaint summary

2. Ms N says that she relied on a cash equivalent transfer value (**CETV**), provided for divorce purposes in July 2015. Her pension credit is significantly lower, because MyCSP later decided that her ex-husband should draw his pension retrospectively.

Background information, including submissions from the parties

3. Mr N, Ms N's former husband, reached normal pension age under the PCSPS in July 2010.
4. In November 2013, Mr N was quoted a CETV of £105,800.
5. On 21 January 2015, Mr N's employer notified MyCSP of Mr N's plans to retire on 30 June 2015. Mr N was issued with a retirement pack on 19 June 2015.
6. On 29 June 2015, Mr N requested a new CETV. He was quoted £111,565 as at 7 July 2015 for divorce purposes (the **July CETV**). The valuation was on the basis that he was still an active member.
7. The notes accompanying the valuation (the **Notes**) included the following wording:

"The [CETV] is the cash value of the member's pension rights in the [PCSPS] for the purposes of divorce or dissolution of a civil partnership.

It is worked out on a basis which is consistent with guidance issued by the actuarial profession in its Guidance Note 11. It is the actuarial value of the

benefits that the member has built up in [the] PCSPS, having regard to market rates of return on index-linked government bonds...

...

The pension credit member is entitled to receive a proportion of these benefits in the form of a lump sum if the benefits shared have not been put into payment before they are shared."

8. In the accompanying information sheet, under the heading "**Pension Sharing Order**," it states:

"If your [PCSPS] benefits are made subject to a pension sharing order, we will reduce these by the percentages specified in the court order..."

We will give your former spouse or civil partner a pension credit. If you are not yet in receipt of your pension, this will be a percentage of the Cash Equivalent Transfer Value (CETV) of the benefits you have built up in the PCSPS.

If you are already receiving a pension from the PCSPS, the credit will be a percentage of the Pension Equivalent Transfer Value (PETV) of your pension. ... We cannot reduce your pension until we have had all the paperwork and scheme charges that we need. When we do, we will backdate the order to the effective date..."

9. On 22 July 2015, Ms N's legal advisers (the **Advisers**), wrote to MyCSP. They stated that they expected to lodge a "Financial Remedy Order" with the court shortly. MyCSP was invited to comment on the draft pension sharing annex the Advisers were proposing to attach to the order.
10. On 19 August 2015, MyCSP confirmed that it had no objections to the draft pension sharing annex.
11. On 1 September 2015, the court made a financial remedy order (the **Order**). By consent, 58.6% of Mr N's CETV was to be transferred to Ms N from the date of decree absolute.
12. The Order records that the family home was sold, and the net proceeds divided equally between the divorcing parties. It indicates that Mr N paid 50% of what he received from his late father's estate to Ms N. The Order states:

Clean break: capital and income

Except as provided for in this order, both parties claims for periodical payment orders, secured periodical payments orders, lump sum orders, property adjustment orders, pension sharing orders and pension attachments orders shall be dismissed, and neither party shall be entitled to make any further application in relation to the marriage for an order under the Matrimonial Causes Act 1973 [MCA 1973] Section 23 (1)(a) or (b) and neither party shall

be entitled on the others death to apply for an order under the Inheritance (Provision for Family and Dependants) Act 1975, section 2.”

13. The annex (the **Annex**) to the Order states:

THIS ORDER TAKES EFFECT FROM the later of

- a. the date on which the Decree Absolute of Divorce or Nullity of marriage is granted, or the Final Order of Dissolution or Nullity of civil partnership is made;
- b. 28 days from the date of this order or, where the court has specified a period for filing an appeal notice, 7 days after the end of that period;
- c. where an appeal has been lodged, the effective date of the order determining that appeal.

14. The decree absolute was granted on 21 September 2015.

15. On 23 October 2015, Mr N contacted MyCSP. He advised that he had not received payment of his pension, or the retirement forms that had previously been sent. MyCSP reissued the retirement pack to him.

16. On 4 November 2015, Mr N returned his completed retirement forms. They were dated on 28 October 2015. Mr N's retirement benefits were subsequently put into payment with effect from 1 July 2015.

17. Ms N and the Advisers corresponded with MyCSP regarding the fees for implementing the pension sharing order (the **PSO**). On 3 December 2015, Ms N agreed to have her fees deducted from the value of her pension credit.

18. On 7 December 2015, MyCSP notified Ms N and Mr N that the PSO had been implemented. Ms N received £44,220, 58.6% of the value of Mr N's pension of £75,465 as at 22 September 2015.

19. After allowing for her share of the divorce charges, Ms N's pension credit was valued at £43,755. This provides an annual pension in the PCSPS of £2,546 per annum, payable from April 2020.

20. Mr N later confirmed to the Advisers that he drew his pension after “dealings” with the Advisers had concluded, and after the position [concerning the PSO] was confirmed to him by MyCSP.

21. On 5 April 2016, the Advisers complained to MyCSP. The Advisers said that MyCSP had not notified them that Mr N had decided to take his benefits. They asserted that Ms N had lost out on a higher pension credit because Mr N had taken a retirement lump sum. However, the complaint was not upheld.

22. Following additional submissions, MyCSP issued a further response under stage one of the internal dispute resolution procedures (**IDRP**), upholding the earlier decision.

23. The Advisers subsequently complained under IDRPs stage two on 5 October 2016. They sent follow up letters to MyCSP on 18 April 2017 and 29 June 2017. Then further chasers on 25 July 2017, 25 August 2017; and 15 September 2017.
24. On 9 October 2017, MyCSP acknowledged the Advisers' letter dated 25 August 2017. MyCSP stated that it would shortly be referring the Order back to the court for review. The Advisers sent further chasers on 16 October 2017 and 16 November 2017.
25. MyCSP has indicated that it did not exchange any correspondence with the court regarding the PSO.
26. In its IDRPs stage two response dated 15 May 2018, the Cabinet Office acknowledged that MyCSP had failed to escalate Ms N's case for a final decision until December 2017. However, it did not uphold Ms N's main complaint.
27. Unhappy with that decision, Ms N brought her complaint for independent review.
28. MyCSP maintains that Mr N became entitled to his pension some time before the effective date of the PSO. Mr N remained a member up until his retirement had been finalised. Consequently, any CETV calculated before his benefits had been settled was based on different factors.
29. MyCSP has stated that it followed its procedures and provided a CETV based on Mr N's status at the time. As Mr N failed to return completed paperwork in good time, the retirement process could not be finalised until November 2015.
30. The Cabinet Office has explained that Mr N's lump sum formed part of the July CETV, this is the main reason for the lower final CETV. Although MyCSP was aware that Mr N was planning to retire, MyCSP's records indicated that he was still active in the PCSPS.
31. The Cabinet Office has advised that Mr N took his benefits between the date of the July CETV and the valuation date. Consequently, Ms N will receive a lower than expected pension from the PCSPS. The Cabinet Office does not accept that MyCSP is responsible for the financial loss Ms N is claiming. MyCSP could have checked the position concerning Mr N's retirement. However, it was down to the divorcing parties, and their legal advisers, to ensure that the PSO achieved the desired outcome.
32. Ms N's position is summarised below.
 - The difficulties of implementing a PSO in respect of a pension in payment was raised with Mr N's solicitor. Mr N was asked not to draw his pension until the PSO had been implemented. It was therefore not necessary to include prohibition in the PSO preventing him from taking his benefits in the meantime.
 - The July CETV was in line with expectations and consistent with the earlier CETV provided. The July CETV was relied on in good faith when lodging the financial remedy application and PSO annex with the court.

- MyCSP provided the figures knowing that a PSO was potentially in the pipeline.
- She could not reasonably have foreseen that the valuation would be changed retrospectively. Or that her pension credit would be based on a much lower CETV.
- The Advisers were communicating extensively with MyCSP and continued to do so after MyCSP provided the July CETV. At no time did MyCSP indicate that Mr N's retirement benefits would be backdated.
- The information that was provided clearly states that the valuation is for divorce purposes or dissolution of a civil partnership. MyCSP opted to change the CETV by allowing Mr N to backdate his retirement. It now appears that MyCSP is saying that the figures could not be relied on.
- MyCSP insists that Mr N retired in July 2015. However, it also says that he would have been classed as an active member until his benefits were finalised.
- MyCSP's position is confusing, unacceptable and contradictory. There cannot be a period from July 2015 where Mr N is both an active member and then a pensioner. His benefits should not have been set up retrospectively without alerting [relevant] third parties.
- Her solicitors are professionals providing advice to clients. How can any weight be placed on information provided by MyCSP, when it can change figures retrospectively, without warning?
- They were misinformed by MyCSP in January 2016. MyCSP stated that Mr N's decision to take a lump sum did not adversely impact the pension credit.

33. The Cabinet Office and MyCSP's position is summarised below.

- Ms N's share was correctly worked out based on the CETV calculated as at 22 September 2015. Ms N suffered no loss to her internal pension credit in the PCSPS.
- While Mr N retired in July 2015, the retirement process could not be completed until November 2015. This delayed payment of Mr N's benefits. However, it did not change his retirement date.
- MyCSP received an electronic interface from Mr N's employer on 18 June 2016. Up until that point, Mr N's pension records showed that he was an active member.
- Mr N apparently agreed not to claim his benefits until after his divorce and the PSO had been implemented. As far as his PCSPS benefits and PSO were concerned,

his retirement date of 30 June 2015, was the crucial date. However, it appears that Mr N and the Advisers failed to realise this.

- Mr N's benefits crystallised on the above date. Mr N was therefore entitled to payment from 1 July 2015, irrespective of when he claimed payment. Consequently, Mr N's benefits due from 1 July 2015 to 22 September 2015, were not subject to the PSO. This is reflected in the lower CETV [of £75,465].
34. In recognition of the fact that the IDRP was delayed, the Cabinet Office offered to reimburse Ms N the additional legal fees she incurred because the Advisers had to chase MyCSP. However, the Cabinet Office requires Ms N to first provide proof of those costs.
35. Ms N expected to receive a pension credit of between £61,999 and £65,377, based on 58.6% of the CETVs of £105,800 and £111,565 respectively. The Advisers question how Mr N's retirement could have impacted the implementation of the PSO, since it was not finalised until November 2015.
36. Ms N considered that redress for the alleged shortfall, with investment returns, and a higher distress and inconvenience award, would put the matter right.

Adjudicator's Opinion

37. Ms N's complaint was considered by one of our Adjudicators who concluded that further action was required by MyCSP. The Adjudicator's findings are summarised below: -
- MyCSP was given six months' notice of Mr N's intention to retire at the end of June 2015. However, Mr N did not accept the retirement quote until after the effective date of the Order. Consequently, MyCSP acted incorrectly by allowing for Mr N's retirement benefits before implementing the PSO.
 - Section 28 of the Welfare Reform and Pensions Act 1999 (the **WRA 1999**), indicates that activation of a PSO takes effect when a PSO is made under the Matrimonial Causes Act 1973 (**MCA 1973**). Mr N's shareable rights under the PCSPS, were subject to a debit of 58.6% from the effective date stipulated by the court. Similarly, Ms N became entitled to a credit of 58.6% against the party responsible for the scheme.
 - Section 29 of the WRA 1999 defines "transfer day", as the day the PSO takes effect. Where the arrangement is a workplace pension, the relevant benefits are determined as described below.
 - For a member in active membership, it is the benefits he or she would be entitled to had service ended immediately before the "transfer day". In other cases, those the member would have been entitled to immediately before the transfer date.

- Section 34 of the WRA 1999 describes the implementation period as four months beginning on the date the PSO takes effect. Or, if later, the date the scheme receives all relevant paperwork to implement the PSO. The scheme can choose any day within this period as the “valuation day”. However, it does not have discretion over the amount of the shareable rights to be valued.
- For assessing against the lifetime allowance (**LTA**), a member is considered to have a prospective entitlement until he or she provides all the required documents. HMRC’s Pensions Tax Manual (**PTM**) states that:

“The date BCE 6[Payment of a pension commencement lump sum] is triggered will be the date the actual entitlement to the linked pension benefit or special type of trivial lump sum arises.”
- PTM061200 states:

“For the purposes of the tax legislation, a person normally becomes entitled to a lump sum at the time the person acquires an actual right rather than a prospective right to receive the lump sum benefit. The change occurs at the point the person has become actually entitled to receive the lump sum.

The exception to this is where a pension commencement lump sum is being paid. Here, entitlement is deemed to arise immediately before the person becomes entitled to the pension benefit ...”
- Ms N was entitled to 58.6% of the CETV of Mr N’s shareable rights that he had accrued immediately prior to the “transfer day”. The PSO came into effect before Mr N became entitled to take the benefits originally quoted to him in June 2015. Consequently, the PSO had priority.
- Until Mr N applied to take his benefits in late October 2015 and provided all the required documentation to enable him to do so, he did not have an actual right to take those benefits. His retirement options should therefore have been recalculated and requoted to him after the PSO was implemented.
- Ms N’s complaint should be partly upheld because MyCSP failed to fully discharge its liability under the PSO. It should therefore recalculate the value of Ms N’s pension credit and her pension accordingly. However, Ms N’s claim to investment loss is unfounded because she was awarded a pension in the PCSPS.
- MyCSP also mismanaged the complaint process. A higher distress and inconvenience award of £1,000, would remedy the non-financial injustice. This would be in line with what the Pensions Ombudsman would direct for non-financial loss in similar cases.

- The issue Ms N has raised is not exceptionally complex or contentious. Consequently, Ms N could have pursued her complaint with the help of the Pensions Advisory Service at no cost to her. As the Cabinet Office has offered to reimburse the extra costs Ms N incurred because the Advisers had to chase MyCSP, the Cabinet Office should honour this.

38. MyCSP did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. MyCSP provided its further comments but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by MyCSP for completeness.

Ombudsman's decision

39. I will first summarise the representations made since the Adjudicator's Opinion.

40. MyCSP maintains that it was not MyCSP's decision to backdate Mr N's retirement. On 21 January 2015 MyCSP received an "Age Retirement Notification" from his employer stating that his last day of service would be 30 June 2015. MyCSP was unaware Mr N had agreed not to draw his pension until after the PSO had been implemented. The Order should have stated that such an agreement was in place. Nevertheless, this would not have affected the calculation of the CETV. The calculation date is the date of the PSO which was after Mr N's last day of service.

41. MyCSP has clarified that its process is to base a request for a CETV on the date the request is received. This was the case for the July CETV request. MyCSP was subsequently instructed to calculate the CETV as at the effective date of the PSO. MyCSP therefore acted correctly by using a later date of 21 September 2015 to calculate the CETV.

42. Until Mr N returned his forms, MyCSP reiterates that it was unable to settle his benefits. Consequently, Mr N was shown as still being an active member of the PCSPS. However, he had in fact left service on 30 June 2015 and was no longer accruing benefits. The last day of service determines the date the pension becomes payable. It is not MyCSP's procedure to inform third parties when members claim their pension, or when benefits are paid out, unless the member provides consent for MyCSP to disclose this information. Therefore, MyCSP could not have notified the Advisers of actions on Mr N's case.

43. MyCSP has emphasised that the CETV was an estimate of the potential benefits payable. It was not a guarantee of entitlement, as the PSO could not be implemented until its effective date had been established.

44. Where a member is retiring imminently, MyCSP says that it is unlikely that the PSO would be implemented before retirement. In such cases, the ex-spouse needs to claim a portion of the retirement lump sum received by the member as well as seeking a share of the pension income. This agreement should be confirmed in the

consent order. The lump sum is not considered once it has been paid out to the member on retirement as it no longer forms part of the pension assets.

45. Regarding the misinformation provided in January 2016. MyCSP says that it should have explained that, as Mr N's benefits were in payment from 1 July 2015, his decision to take a lump sum would not impact the PSO, "as it is based on the benefits available at the effective date of the PSO".
46. MyCSP does not accept that Mr N applied to take his pension in October 2015. MyCSP argues that Mr N made his application in June 2015 via his employer, the same month his retirement pack was issued. As the completed paperwork was not received until November 2015, MyCSP was previously unable to finalise the retirement process. MyCSP could not provide Ms N with "different CETV figures as the benefits had not been put into payment."
47. MyCSP accepts that Mr N's benefits "crystallised" when MyCSP had all the required documentation to finalise his retirement. MyCSP states that its view is that Mr N's lump sum was payable from 1 July 2015. That is, before the effective date of the PSO. MyCSP contends that Mr N's pension and lump sum, payable from 1 July 2015, were not therefore subject to the provisions of the PSO, which came into effect from 21 September 2015, as reflected in the lower [final] CETV.
48. In cases where the PSO is implemented before a member retires from a pension scheme, MyCSP's position is that the ex-spouse may receive some of their pension credit benefit as a retirement lump sum, in addition to receiving a pension. However, if the PSO is implemented after the member retires, the ex-spouse is only entitled to receive pension. No benefits may be taken as a lump sum.
49. I have considered those representations, but do not think that they ought to alter the outcome proposed by the Adjudicator for the following reasons.
50. The core issue for me to consider is whether Ms N's pension credit should have been calculated using the CETV of Mr N's full pension benefits before he drew those benefits, or whether MyCSP were correct to calculate it net of payments of benefit made to Mr N. I conclude that the pension credit should have been calculated using the CETV of Mr N's full pension benefits before he drew any of them.
51. It is not disputed that Mr N expressed his intention to retire with effect from 30 June 2015 before the PSO was made by the court. I have no reason to doubt MyCSP's assertion that Mr N left pensionable service before the date of the Order.
52. However, I do not agree that notification by an employer of intention to retire and/or the issue of a retirement pack constitutes an application for benefit. MyCSP could not process an application for benefit unless and until it was actually made by the member by return of paperwork. In this case the Order was made by the court and took effect in the intervening period between Mr N notifying his employer of his decision to retire and Mr N formally applying to take his retirement benefits.

53. Mr N did not claim his retirement benefits until 4 November 2015, after the effective date of the PSO. The dispute about whether the Order should have contained a prohibition on Mr N taking his benefits does not appear to me to be relevant on the facts because the evidence shows that Mr N in fact delayed drawing his pension until after he had finalised matters with Ms N's solicitors. Whether the Order contained a prohibition or not could not alter the date from which it took effect.
54. Since Mr N's PCSPS benefits were made subject to a PSO on 21 September 2015, MyCSP should have reduced the value of Mr N's shareable rights by the percentage specified in the Annex before putting Mr N's benefits into payment. All benefits paid to Mr N in respect of the period 1 July 2015 to 22 September 2015 should also have been recognised as subject to the PSO.
55. The problem that has occurred in this case concerns the benefits on which the final CETV was based rather than the calculation date that was used by MyCSP. MyCSP made a serious administrative error in awarding Ms N a pension credit based on the value of Mr N's pension rights after he had already taken a proportion of those benefits. Although the WRA legislation provides an administrative window for implementation of the Order, s.29 creates a debit and a credit on the effective date of the Order. On the effective date no benefits were in fact in payment. I disagree with MyCSP's view that Mr N's lump sum was payable from 1 July 2015, that is, before the effective date of the PSO. It was not payable until Mr N had made an application for payment, which was after the effective date of the PSO.
56. To remedy the financial injustice, MyCSP should recalculate the value of Ms N's pension credit and pension accordingly.
57. I note that neither MyCSP nor the Cabinet Office has contested the award of £1,000 for non-financial injustice recommended by the Adjudicator. I agree that the level of distress and inconvenience was serious because MyCSP mismanaged the complaint process.
58. For these reasons, I partly uphold Ms N's complaint.

Directions

59. Within 28 days of the date of this Determination, MyCSP shall:
 - (i) recalculate Ms N's pension credit, ignoring the fact that Mr N's retirement benefits came into payment with effect from 1 July 2015, using the full value of the pension and lump sum and applicable actuarial factors in force as at 21 September 2015;
 - (ii) award Ms N a corrected pension in the PCSPS, in respect of her revised pension credit;

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- (iii) on receipt of documentary evidence of the legal fees levied by the Advisers, reimburse Ms N's legal expenses in respect of the Adviser's follow up correspondence to MyCSP dated between 17 April 2017 and 17 November 2017; and
- (iv) pay £1,000 to Ms N.

Karen Johnston

Deputy Pensions Ombudsman
18 October 2019

Appendix

Welfare Reform and Pensions Act 1999

“28 Activation of pension sharing.

(1) Section 29 applies on the taking effect of any of the following relating to a person's shareable rights under a pension arrangement—

(a) a pension sharing order under the **M1** Matrimonial Causes Act 1973,

[F1(aa) a pension sharing order under Schedule 5 to the Civil Partnership Act 2004,**]**”

...

“29 Creation of pension debits and credits.

(1) On the application of this section—

(a) the transferor's shareable rights under the relevant arrangement become subject to a debit of the appropriate amount, and

(b) the transferee becomes entitled to a credit of that amount as against the person responsible for that arrangement.

(2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of subsection (1) is the lesser of—

(a) the specified amount, and

(b) the cash equivalent of the relevant benefits on the valuation day.

(4) Where the relevant arrangement is an occupational pension scheme and the transferor is in pensionable service under the scheme on the transfer day, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which he would be entitled under the scheme by his shareable rights under it had his pensionable service terminated immediately before that day.

(5) Otherwise, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the relevant arrangement by his shareable rights under it.

(6) The Secretary of State may by regulations provide for any description of benefit to be disregarded for the purposes of subsection (4) or (5).

(7) For the purposes of this section, the valuation day is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.

(8) In this section—

“relevant arrangement” means the arrangement to which the relevant order or provision relates;

“relevant order or provision” means the order or provision by virtue of which this section applies;

“transfer day” means the day on which the relevant order or provision takes effect;

“transferor” means the person to whose rights the relevant order or provision relates;

“transferee” means the person for whose benefit the relevant order or provision is made.

...

31 Reduction of benefit.

(1) Subject to subsection (2), where a person’s shareable rights under a pension arrangement are subject to a pension debit, each benefit or future benefit—

(a) to which he is entitled under the arrangement by those rights, and

(b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under an occupational pension scheme of a person who is in pensionable service under the scheme on the transfer day, each benefit or future benefit—

(a) to which the person is entitled under the scheme by those rights, and

(b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of subsections (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) The provisions of this section override any provision of a pension arrangement to which they apply to the extent that the provision conflicts with them.

(5) In this section—

“appropriate percentage”, in relation to a pension debit, means—

(a)

if the relevant order or provision specifies the percentage value to be transferred, that percentage;

(b)

if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order or provision on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.”

...

34 “Implementation period”

(1) For the purposes of this Chapter, the implementation period for a pension credit is the period of 4 months beginning with the later of—

(a) the day on which the relevant order or provision takes effect, and

(b) the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of—

(i) the relevant **F1**... documents, and

(ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.

(2) The reference in subsection (1)(b)(i) to the relevant **F2**... documents is to copies of—

(a) the relevant order or provision, and

(b) the order, decree or declarator responsible for the divorce[**F3**, dissolution] or annulment to which it relates,

and, if the pension credit depends on provision falling within subsection (1)(f) of section 28, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.

(3) Subsection (1) is subject to any provision made by regulations under section 41(2)(a).

(4) The Secretary of State may by regulations—

(a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;

(b) provide for this section to have effect with modifications where the pension arrangement to which the relevant order or provision relates is being wound up;

(c) provide for this section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.

(5) In this section—

“relevant order or provision”, in relation to a pension credit, means the pension sharing order or provision on which the pension credit depends;

“transferor” means the person to whose rights the relevant order or provision relates;

“transferee” means the person for whose benefit the relevant order or provision is made.”