

FAQs about Divorce and Retirement Savings



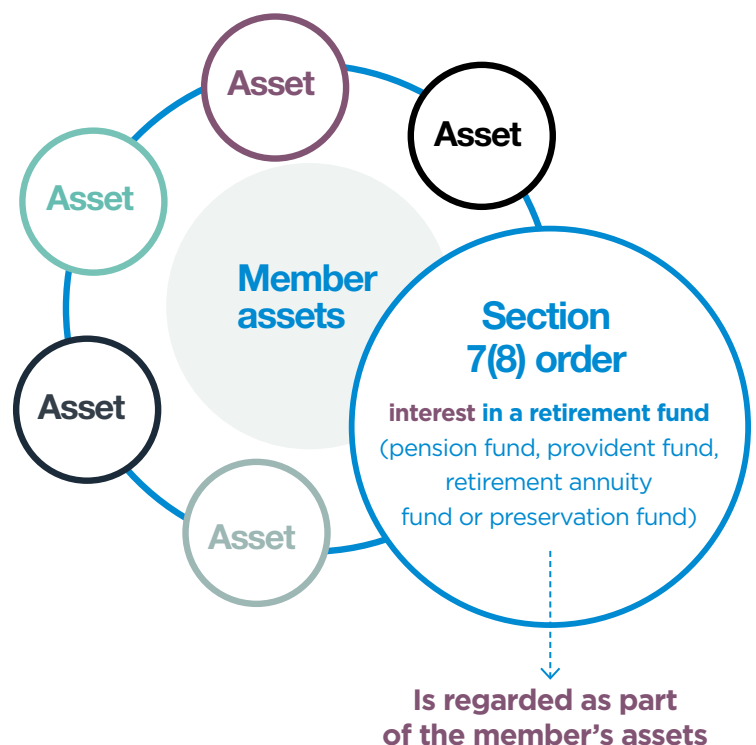
Your retirement savings are considered assets. This is something you need to keep in mind if you and your spouse decide to divorce. Getting divorced is stressful regardless of what you're going through, but it can become more stressful if there are financial or legal complications.

Therefore, it's essential to know what happens to your retirement savings after divorce. Here is a helpful guide with frequently asked questions, for you to refer to if you are considering or are currently undergoing a divorce.

Q What is a section 7(8) order?

According to the Divorce Act, a member's pension interest in a retirement fund (pension fund, provident fund, retirement annuity fund or preservation fund) is regarded as part of the member's assets. This means that it may be taken into account when determining how the parties' assets are divided upon divorce.

Section 7(8) of the Divorce Act states that the court granting a divorce order may make an order that awards a portion of a spouse's pension interest in a retirement fund to the non-member spouse and can order the fund to make such payment.





Q What is pension interest*?

Pension interest is the benefit a member of a pension or provident fund would be entitled to receive in terms of the fund rules had they resigned on the date of divorce.

**This definition is only applicable if the relevant retirement fund is a pension or provident fund. "Pension interest" has a different definition if the relevant fund is a preservation fund or a retirement annuity.*

Q How much of my pension interest

Ex-spouse can be awarded **any percentage** or Rand value

0% -----> 100%



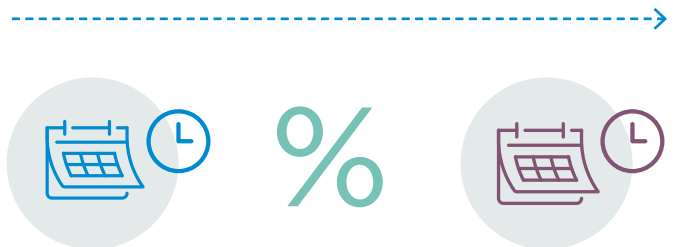
Not exceeding 100% of your pension interest.

Your ex-spouse can be awarded any percentage between 0% - 100%, or a Rand value not exceeding 100% of your pension interest. The court granting the divorce has discretion in this regard or the parties can agree this in terms of the settlement.

Q How will my ex-spouse know what the value of my pension interest is?

The fund must protect the personal information of members and, unless required by law, may not provide information to any person other than the member. It is therefore recommended that your spouse requests you as member to obtain the value from the fund.

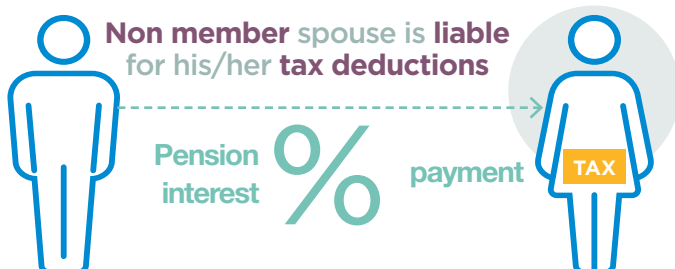
The value of your pension interest is equal to your resignation benefit on the divorce date. This means that the fund can only tell you the current value of your resignation benefit, which may differ from the value at the (actual) date of divorce.



Q Who is liable to pay tax on the pension interest awarded?

Member spouse

Non-member spouse



Non-member spouses have to pay their own taxes on the pension interest payments unless they're transferring them to a retirement fund in which case, it can be transferred tax free.



Q Is pension interest payable if a member withdraws from service (and the fund) while in the process of getting divorced?

If the divorce order is obtained after the date of withdrawal, the fund cannot give effect to a section 7(8) order because on the date of divorce, no pension interest existed.

Q What happens if my employment is terminated before the divorce order is granted?

Since pension interest is defined as the resignation benefit that would be payable in terms of the rules of the fund if you resigned on the date of divorce, there is no pension interest that can be awarded to your ex-spouse in terms of section 7(8) of the Divorce Act if your service is terminated before the date of divorce. This has been confirmed by the Supreme Court of Appeal in *Eskom Pension Fund v Krugel*.

Q Is an order in terms of section 7(8) of the Divorce Act always possible?

Section 7(8) cannot be granted if:

-
- Marriage out of community of property on or after 1 November 1984.
 - Member's employee service was terminated before the date on which the divorce order is granted.

No, a section 7(8) order cannot be granted if: The divorce action is in respect of a marriage out of community of property entered into on or after 1 November 1984 and in terms of which the ante-nuptial contract excludes community of property, community of profit and loss and the accrual system; or The member's service with their employer ended before the divorce order was granted (because the member will no longer have a pension interest to award as at date of divorce).

Q Which Section 7(8) requirements must be met before payment can be made to an ex-spouse?



- ① The fund(s) to which the member belonged on the date of divorce must be named or identifiable in the order
- ① The portion of the pension interest awarded to the non-member spouse must be clear; (either expressed as a percentage or a Rand value of pension interest, not exceeding 100%)
- ① It must be clear that a portion of pension interest is being awarded
- ① The relevant fund must be expressly ordered to:
 - Pay over the awarded portion of your pension interest to your ex-spouse or a fund of your ex-spouse's choice; and
 - Endorse its records accordingly.



Q How will paid-up members be treated?



- Section 7(7) deems that the pension interest of an active member is part of the assets of that party for purposes of the distribution of assets at divorce.



- Section 7(8) gives the divorce court the power to order the fund to pay part of the pension interest of an active member to the non-member spouse.



- Where a member resigns before the date of divorce and becomes entitled to a withdrawal benefit, the pension interest value goes down to RO (as the withdrawal benefit, as calculated on the future divorce date, will always be RO.) This will always be the case, irrespective of the member receiving the withdrawal benefit from the fund before the date of divorce or leaving the withdrawal benefit in the fund till after the divorce- the withdrawal benefit in the fund cannot be a pension interest.



- The right to claim the withdrawal benefit from the fund is a real asset (like the house/ car/bank account) of the member and not a deemed asset in the estate of the member that can be taken into account at divorce. The non-member spouse can therefore get an order that the member must cash in their claim against the fund and pay a portion of that money to the non-member spouse. In this case, the member will apply for a withdrawal benefit and the tax will be paid by the member (and not the non-member spouse as in the case of a pension interest claim). Alternatively, the member can leave the money in the fund and pay the non-member spouse with other assets (for example, the house or car).



- If the member then joins the employer again between the date of the withdrawal and the date of the divorce, then he becomes a “new” member of the fund. Separate records are held for his “active membership” and his “deferred member” status. Only the “active member” withdrawal benefit at date of divorce can be taken into account when calculating the pension interest.

Q How does a non-member lodge a divorce claim?

Submit the following documents to:
Divorce.SCCore@sanlam.co.za

- Non-member ID only
- Divorce Order or Final decree of divorce (The final decree is preferred)
- Settlement agreement
- Certified copy of marriage certificate
- Certified copy of Bank statement

SC legal department will assess the documents – process takes +/- 10 working days – after which they will provide feedback and send a form for the non-member to complete. The legal department will also communicate if they require more information before proceeding.





Q What is an example of wording that complies with the requirements?



Example where the **member belongs to one fund only**:

The [insert Plaintiff/Defendant] is a member of the [insert registered name of retirement fund] (hereinafter referred to as “the Fund”). The Fund is ordered to pay [insert percentage or Rand value] of the [insert Plaintiff/Defendant]’s pension interest in the Fund to the [insert Plaintiff/Defendant] or to a retirement fund elected by the [insert Plaintiff/Defendant] and endorse its records accordingly.



Example where the **member belongs to more than one fund**:

If a portion of the member’s pension interest in more than one fund is awarded to the ex-spouse, a separate paragraph should be used for each fund to avoid any confusion or ambiguity. The following wording will comply with the requirements:

The Plaintiff is a member of the **ABC Fund** (hereinafter referred to as “the A Fund”) and the **XYZ Fund** (hereinafter referred to as “the X Fund”) and the court orders that the ex-spouse is entitled to 50% of the member’s pension interest in both funds. The A Fund is ordered to pay 50% of the Plaintiff’s pension interest in the A Fund to the Defendant or to a retirement fund elected by the Defendant and endorse its records accordingly.

The X Fund is ordered to pay 50% of the Plaintiff’s pension interest in the X Fund to the Defendant or to a retirement fund elected by the Defendant and endorse its records accordingly.

Possible reasons why a retirement fund may not be able to make payment to a member’s ex-spouse

The Supreme Court of Appeal has confirmed (in *Old Mutual and Sanlam v Swemmer*) that divorce orders must be worded very carefully to ensure that they comply with the requirements discussed above, failing which the order is not enforceable against the fund. Some of the common reasons why divorce orders are found to not comply with the requirements are listed [here](#).



Important notes on documents submitted by an ex-spouse when claiming payment from a retirement fund.

Important to note:

- 1 Documentation must be submitted via the member’s employer, who will pass it on to the administrator of the Fund.
- 2 No payment can be done until all correct documentation is submitted and all legislative requirements are met.
- 3 All documentation must either be an original or a certified copy of an original document.



Q What documentation should be submitted by an ex-spouse when claiming payment from a retirement fund?

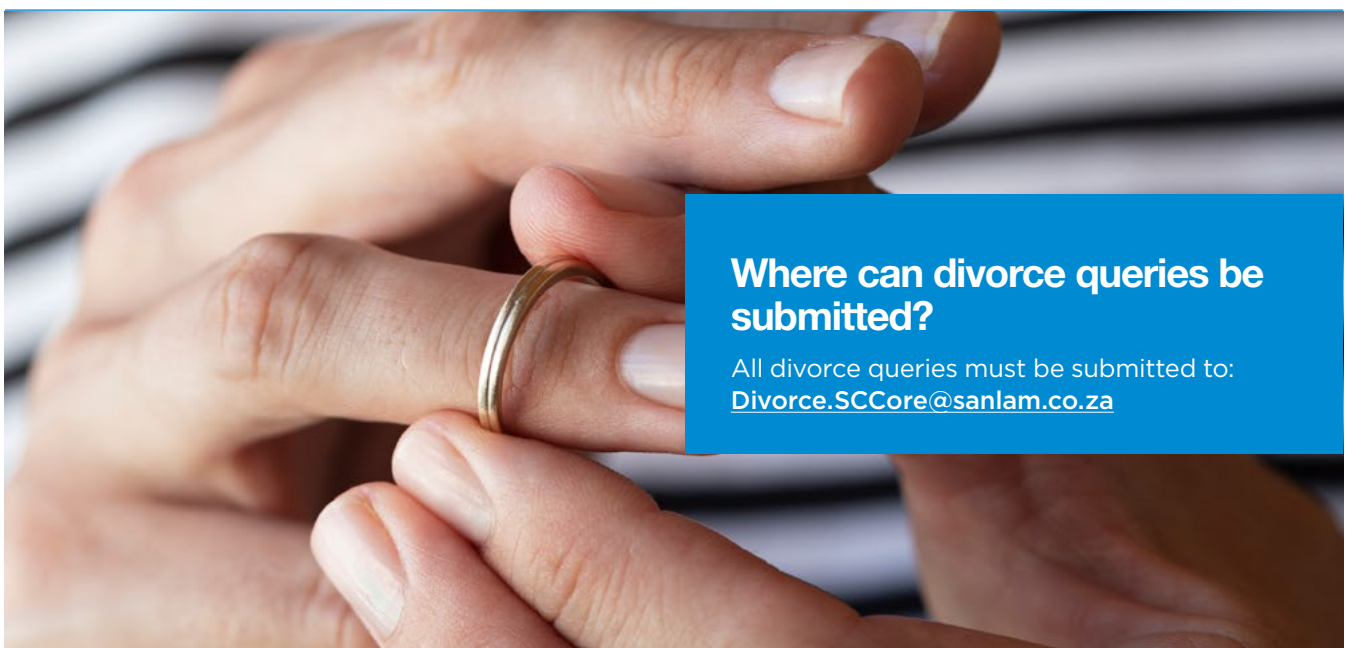
- 1 The Administrator of the retirement fund's application form. [Click here](#) for the online form or send an email to Divorce.SBCCore@sanlam.co.za to request a copy of the form.
- 2 Certified copy of the ex-spouse's identity document or passport.
- 3 Certified copy of the marriage certificate.
- 4 Certified copy of the divorce order and settlement agreement, if applicable (each page must be stamped by the court).

One of the following:

- 5
 - Certified copy of the ante-nuptial contract (if married out of community of property on or after 1 November 1984)
 - Written confirmation by the parties as to the matrimonial property regime if married in community of property.

If the divorce order was previously submitted to the retirement fund but did not meet the requirements of section 7(8) of the Divorce Act, the retirement fund would not have been able to make payment to the ex-spouse. Once the divorce order has been amended by the court to bring it in line with the legislative requirements, the following following documents must be submitted to the retirement fund (in addition to those above):

- 6 Certified copy of the application papers, being the notice of motion and supporting affidavits (each page stamped by the court).
- 7 Certified copy of the variation order (each page stamped by the court).



Where can divorce queries be submitted?

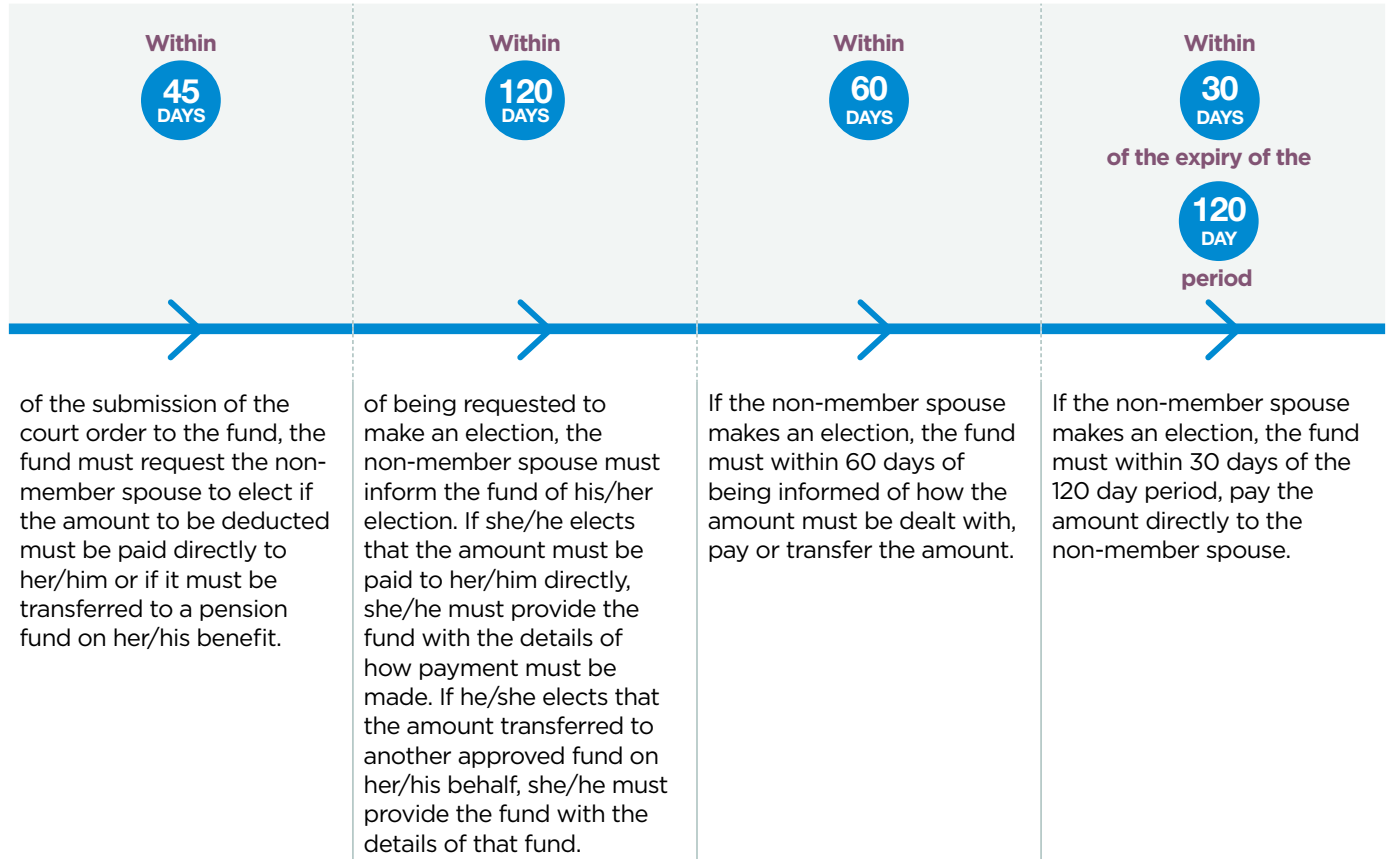
All divorce queries must be submitted to:
Divorce.SBCCore@sanlam.co.za



Q How long does it take to settle a claim?

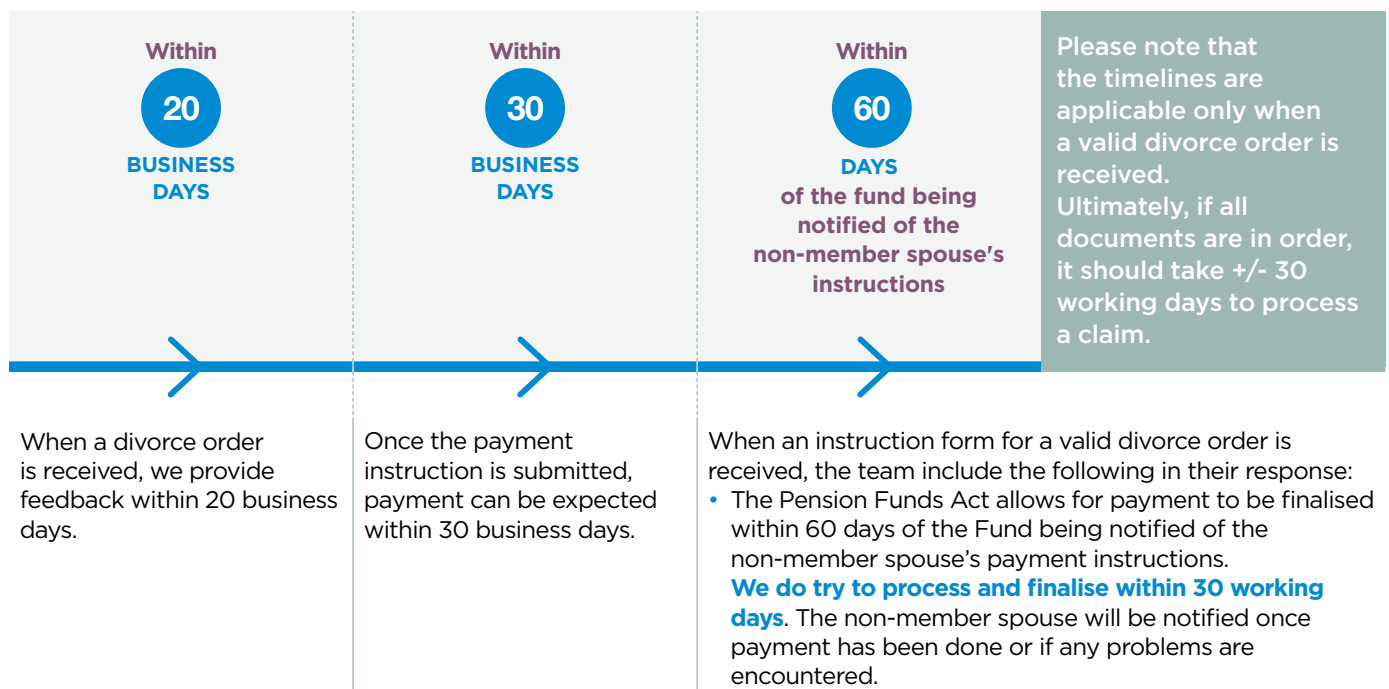
Timelines prescribed by the Association for Savings and Investment South Africa (ASISA).

Section 37D(4)(b) of the Pension Funds Act stipulates the following time periods applicable to divorce orders:



Sanlam processing timelines.

For our in-house divorce order process, we have shortened the prescribed timelines of ASISA to the following:



Possible reasons why a retirement fund may not be able to make payment to a member's ex-spouse

The Supreme Court of Appeal has confirmed (in *Old Mutual and Sanlam v Swemmer*) that divorce orders must be worded very carefully to ensure that they comply with the requirements discussed above, failing which the order is not enforceable against the fund.

Some of the common reasons why divorce orders are found to not comply with the requirements are set out below:

Issue	Example(s)	Why is it problematic?
1. The member belongs to a pension fund and a provident fund and the divorce order does not make it clear whether the order is in respect of both funds or only one of them and, if so, which one.	<i>"The Plaintiff is a member of the A Fund and the B Fund. The Defendant is entitled to 50% of the Plaintiff's pension interest in the fund and the fund is ordered to make payment to the Defendant."</i>	If it is not clear which fund(s) has been ordered to make payment to the ex-spouse, Requirement 1 has not been met.
2. No retirement fund has been named in (nor is one identifiable from) the divorce order.	<i>"the Plaintiff's pension fund"</i>	If no fund has been named in (or if no fund is identifiable from) the divorce order, Requirement 1 has not been met.
	<i>"the fund to which the Plaintiff belongs"</i>	
3. The name of the fund stated in the divorce order is so vague that it may relate to any one of a number of funds.	<i>"Sanlam Provident Fund"</i>	If it is not clear which fund has been ordered to make payment to the ex-spouse, Requirement 1 has not been met.
	<i>"Sanlam Umbrella Fund"</i>	
4. The portion of pension interest awarded to the ex-spouse is not clear.	<i>"any portion"</i>	If the portion of pension interest awarded to the ex-spouse is not clear, Requirement 2 has not been met.
	<i>"50% or such portion as the court deems just"</i>	
5. It is not clear whether the intention of the parties was to award to the ex-spouse a portion of the member's pension interest (as defined in the Divorce Act) or a portion of some other value/benefit.	<i>"Plaintiff's fund value"</i>	If the divorce order awards something other than pension interest to the ex-spouse, Requirement 3 has not been met.
	<i>"Plaintiff's pension"</i>	
	<i>"Plaintiff's pension interest calculated from date of marriage to date of divorce"</i>	
	<i>"Plaintiff's pension fund interest"</i>	
	<i>"Plaintiff's provident fund interest"</i>	
	<i>"Plaintiff's provident interest"</i>	
	<i>"Plaintiff's interest"</i>	
	<i>"Plaintiff's pension benefit"</i>	
<i>"Plaintiff's fund number 123456"</i>		

Issue	Example(s)	Why is it problematic?
6. It is not clear what has been awarded to the ex-spouse.	<i>"50% net after tax of the Plaintiff's pension interest"</i>	The Pension Funds Adjudicator has confirmed in determinations that this type of wording is ambiguous. If it is not clear what has been awarded to the ex-spouse, Requirement 3 has not been met. (There is no need to refer to tax as any tax will in any event be payable by the ex-spouse.)
	<i>"50% of the Plaintiff's pension interest, after tax"</i>	
	<i>"50% of the Plaintiff's net pension interest"</i>	
7. It is not clear whether the member or the relevant fund is to make payment to the ex-spouse.	<i>"the Plaintiff will make payment to the Defendant"</i>	If it is not clear that the relevant fund (and not the member) is to make payment to the ex-spouse, Requirement 4 has not been met.
8. The relevant fund has not been ordered to make payment to the ex-spouse.	<i>"to be paid to the defendant"</i>	If it is clear that payment is to be made to the ex-spouse, but it is not clear that such payment must be made by the relevant fund, Requirement 4 has not been met.
	<i>"which is payable to the plaintiff"</i>	
	<i>"must be paid directly to the plaintiff"</i>	
9. The relevant fund has been ordered to endorse its records, but has not been ordered to make payment to the ex-spouse.	<i>"The fund is to make an endorsement to reflect the ex-spouse's entitlement."</i>	The Pension Funds Adjudicator has confirmed in determinations that an order for a fund to endorse its records is insufficient; the relevant fund must be ordered to make payment to the ex-spouse otherwise Requirement 4 has not been met.
	<i>"The Plaintiff is ordered to submit a copy of the divorce order to the fund so that its records may be endorsed."</i>	

