

**From:** Gary Chapman [mailto:GChapman@sypa.org.uk]  
**Sent:** 01 December 2017 12:03  
**To:** Kelly Scotford <Kelly.Scotford@royalgreenwich.gov.uk>  
**Subject:** FW: Enquiry to the East Riding Pension Fund [PROTECT]

Classification: **OFFICIAL**

Hi Kelly

Would you please add this to the Technical Group agenda for our next meeting.

Cheers

Gary

**Gary Chapman**

Head of Pensions Administration – South Yorkshire Pensions Authority

Tel: 01226 772954. Mobile: 07875970294

18 Regent Street, Barnsley, South Yorkshire S70 2HG.

[www.sypensions.org.uk](http://www.sypensions.org.uk)



**From:** LGPS Technical Queries [mailto:Query.Lgps@local.gov.uk]

**Sent:** 28 November 2017 15:51

**To:** 'Liz Vollans'

**Cc:** Gary Chapman ; Jayne Wiberg

**Subject:** RE: Enquiry to the East Riding Pension Fund [PROTECT]

Hi Liz

Just to mention that I have had a chat with Jayne about this and if this could be raised with Technical Group via Gary, we think that would be the best way forward on this case – a) so that we can see if other funds have had similar cases, and b) so that we can get a national approach on what to do on receipt of such enquiries.

Hope this is okay.

Regards

Con

**Con Hargrave**

**Pensions Adviser**

Local Government Association

Email: [cornelius.hargrave@local.gov.uk](mailto:cornelius.hargrave@local.gov.uk)

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**From:** Liz Vollans [mailto:Liz.Vollans@eastriding.gov.uk]

**Sent:** 06 November 2017 11:02

**To:** LGPS Technical Queries <[Query.Lgps@local.gov.uk](mailto:Query.Lgps@local.gov.uk)>; Gary Chapman <[GChapman@sypa.org.uk](mailto:GChapman@sypa.org.uk)>  
**Cc:** Graham Ferry <[Graham.Ferry@eastriding.gov.uk](mailto:Graham.Ferry@eastriding.gov.uk)>  
**Subject:** Fw: Enquiry to the East Riding Pension Fund [PROTECT]  
Dear all

Please see the email thread below between myself and West Yorkshire Police Authority.

As a bit of background, we received a request to release information about the value of the scheme members pension back In August. The DP form provided by the Police stated that 'a confiscation investigation pursuant to the Proceeds of Crime Act 2002 was being conducted as a result of suspected fraud offences'. The member is deferred, he left 31 July 2014 and I was able to establish by a further email that the suspected fraud offences are not linked to his previous employment by which the deferred benefits are awarded.

You will see from my responses to date that I have explained the position of the LGPS in respect of payment of benefits, I have given them the figures they asked for and have suggested the decision whether a confiscation order can be put in place is a legal argument for the Courts. However the police authority are still pressing for more clarification and therefore I am coming to LGA and hopefully the technical group (via yourself Gary) to see if further clarification can be provided.

Are you able to offer any further guidance? Have any other Funds experienced this issue?  
Am I able to get any further legal advice from anywhere?

I appreciate your assistance if possible. I am at a loss how to proceed. I feel I have provided as full a response as I am able but it appears this is still not satisfactory to the police authority.

Many thanks

Liz Vollans  
Assistant Pensions Manager  
[liz.vollans@eastriding.gov.uk](mailto:liz.vollans@eastriding.gov.uk)  
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----- Forwarded by Liz Vollans/CR/ERC on 06/11/2017 10:09 -----

From: "Larkin, Clair" <[Clair.Larkin@westyorkshire.pnn.police.uk](mailto:Clair.Larkin@westyorkshire.pnn.police.uk)>  
To: Liz Vollans <[Liz.Vollans@eastriding.gov.uk](mailto:Liz.Vollans@eastriding.gov.uk)>  
Date: 01/11/2017 18:22  
Subject: RE: Enquiry to the East Riding Pension Fund [PROTECT]

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Classification: PROTECT

Hi Liz,

I would be grateful if you can refer this so we have more time. It is important to establish what can and can't be done as schemes can vary and this is a technical question that only a representative of the pension fund can answer.

I sought to clarify the position regarding tax implications as I have recently been made aware of additional scheme sanctions which could in fact amount to total deductions of 70%.

Any contact details you have that you think might be useful will be gratefully received.

I look forward to your response in due course.

Regards,

Clair

**From:** Liz Vollans [<mailto:Liz.Vollans@eastriding.gov.uk>]  
**Sent:** 26 October 2017 08:23  
**To:** Larkin, Clair <[Clair.Larkin@westyorkshire.pnn.police.uk](mailto:Clair.Larkin@westyorkshire.pnn.police.uk)>  
**Cc:** Graham Ferry <[Graham.Ferry@eastriding.gov.uk](mailto:Graham.Ferry@eastriding.gov.uk)>; Suzanne Firth <[Suzanne.Firth@eastriding.gov.uk](mailto:Suzanne.Firth@eastriding.gov.uk)>  
**Subject:** RE: Enquiry to the East Riding Pension Fund [PROTECT]

Clair

The tax implications would be 55% as I have set out in my email.

The legal argument is whether an LGPS pension can be confiscated via the Proceeds of Crime Act 2002 while these benefits are 'not available' from the LGPS and I refer back to my earlier emails and the Court of Appeal case R v Chen.

If a confiscation order was submitted to the Fund then I cannot see how we would not pay the amount ordered less the 55% tax charge. However I suspect it will be the members defence lawyer who will argue whether these are 'available assets' as set out in the Act and the ultimately the Courts decision whether to put an order in place.

I can refer this enquiry to the Technical Group for the Local Government Pension Scheme to see if they can offer any further guidance but it maybe some time before we receive a response as the group only meet two or three times a year. Alternatively you could contact the Local Government Association or the Department for Communities and Local Government (DCLG) who may have a legal team who can advise.

Regards

Liz Vollans  
Assistant Pensions Manager  
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From: "Larkin, Clair" <[Clair.Larkin@westyorkshire.pnn.police.uk](mailto:Clair.Larkin@westyorkshire.pnn.police.uk)>  
To: Liz Vollans <[Liz.Vollans@eastriding.gov.uk](mailto:Liz.Vollans@eastriding.gov.uk)>  
Date: 25/10/2017 14:32  
Subject: RE: Enquiry to the East Riding Pension Fund [PROTECT]

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Liz,

Thank you for your further response below.

I would be grateful if you could make contact with or put me in contact with someone within your organisation that can provide the legal advice required in this matter. I would like to be able to confirm the position and see what tax implications such an unauthorised payment would amount to.

I think it best that this issue be resolved now so the position is clear at the point confiscation proceedings commence.

Thank you again.

Regards,

Clair

**From:** Liz Vollans [<mailto:Liz.Vollans@eastriding.gov.uk>]  
**Sent:** 17 October 2017 11:53  
**To:** Larkin, Clair <[Clair.Larkin@westyorkshire.pnn.police.uk](mailto:Clair.Larkin@westyorkshire.pnn.police.uk)>  
**Subject:** RE: Enquiry to the East Riding Pension Fund [PROTECT]

Hello Clair

Thank you for your email.

It is still my understanding that benefits in the LGPS cannot be paid before age 55 and therefore this means they are not 'available assets' for a confiscation order.

However as I am not an expert in the legal field I will leave this to legal experts to decide.

As requested I have provided below details of Mr Coopers pension value including the current Cash Equivalent Transfer Value (CETV). If the CETV was to be paid before age 55 then it would be subject to a 55% unauthorised payment charge under the Finance Act 2004.

Cash Equivalent Transfer Value at 16 October 2017 (deleted)

Annual Pension payable from 30 October 2033 (deleted)

Lump Sum payable from 30 October 2033 (deleted)

Please let me know if you require any further information.

Kind Regards

Liz Vollans  
Assistant Pensions Manager  
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[www.erpf.org.uk](http://www.erpf.org.uk)  
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Fax 01482 394186

From: "Larkin, Clair" <[Clair.Larkin@westyorkshire.pnn.police.uk](mailto:Clair.Larkin@westyorkshire.pnn.police.uk)>  
To: Liz Vollans <[Liz.Vollans@eastriding.gov.uk](mailto:Liz.Vollans@eastriding.gov.uk)>  
Date: 03/10/2017 11:52  
Subject: RE: Enquiry to the East Riding Pension Fund [PROTECT]

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Classification: PROTECT

Hi Liz,

Thank you for your response.

I understand your position in respect of the pension not being available / realisable by the defendant themselves (due to age), however it is our understanding that the fund could still be accessed by way of an unauthorised payment as a result of an order of the court (compliance order), compelling release the fund.

Can you please explain the position in respect of unauthorised payments as defined in s.208 of the Finances Act 2004 and their application to Local Government Pension. I would expect this could be applied in the same manner as with pension schemes from other providers of which we have experience of accessing such funds subject to 55% tax charges.

I would also be grateful if as per my original request the current value of the fund could be

provided so I have at least some indication of the value of this asset.

I look forward to your further response.

Kind Regards,

Clair

**From:** Liz Vollans [<mailto:Liz.Vollans@eastriding.gov.uk>]  
**Sent:** 29 September 2017 13:55  
**To:** Larkin, Clair <[Clair.Larkin@westyorkshire.pnn.police.uk](mailto:Clair.Larkin@westyorkshire.pnn.police.uk)>  
**Subject:** Enquiry to the East Riding Pension Fund

Clair

We spoke last month after you sent an email requesting further information about the Local Government pension for (deleted). I apologise for the delay in getting back to you.

I have made further enquiries to see whether a confiscation order pursuant to the Proceeds of Crime Act 2002 could be applied to Mr Coopers benefits. I thought this would be the best approach before calculating and providing you details of it's current value.

My understanding is that the Proceeds of Crime Act 2002 provides that a 'confiscation order' can be issued following a conviction to recover any financial benefit that an individual has gained as a result of his or her offence.

Confiscation orders sit outside the normal recovery provisions we have in the Local Government Pension Scheme regulations and my understanding is that pensions can be included as 'available assets' that must be paid to the State following a confiscation order being issued.

Whilst the intention of issuing a confiscation order is to confiscate the gains that an individual has got from their criminal activities, the assets that may be confiscated do not themselves have to have been gained from criminal activity. Section 7 of the 2002 Act just says that 'the recoverable amount' is an amount *equal* to the defendant's benefit from the conduct concerned. So, legitimately gained assets are still potentially available to be confiscated.

However, a confiscation order can only be issued in respect of 'available assets' and a pension may not be 'available' for this purpose if the individual cannot access it at the time. As Mr Cooper is only 50 year of age at the moment, and the earliest the member can draw his benefits from the Local Government Pension Scheme in accordance with the LGPS Regulations 2013, Regulation 30 (5), is once he has attained the age of 55, then his benefits are not available for this purpose. See below:

A member who has not attained [normal pension age](#) but who has attained the age of 55 or over, may elect to receive immediate payment of a [retirement pension](#) in relation to an employment if that member is not an employee in [local government service](#) in that employment, reduced by the amount shown as appropriate in [actuarial guidance issued by the Secretary of State](#).

This follows the Court of Appeal case R v Chen [2009], a copy of which I've attached.

Whilst this case related to defined contribution pension rights, the principles seem to be relevant here:

- The appellant owed the Crown £68,000 and his only non-pension asset was a car worth £100. Two pensions policies in the appellant's name were due to mature in 2018 but he had no right to access these funds until then [para 15].
- For the purposes of the confiscation order however, the judge in the initial case treated the value of the pensions policies as the market value of these at the time [para 17].
- The defence appealed this judgment, giving rise to the case going to the Court of Appeal.
- Whilst the Court of Appeal agreed these pensions policies constituted 'free property' under the 2002 Act (i.e. are technically available for confiscation), the question was whether they had any value at the time of the confiscation order being issued (because they were inaccessible) [paras 19 and 20].
- The Court of Appeal noted that in previous cases, a market value calculation of pension assets had been used in similar situations. However, these were orders made under the Criminal Justice Act 1988, which did not include provision for the prosecution to be able to go back to court at a later date in order to confiscate assets as and when they become available. This differs from the 2002 Act where section 22 gives the prosecution this power [para 26].
- The Court of Appeal considered this a highly material distinction and came to the conclusion that the initial judge had been wrong to use the market value of these pensions policies at the time of the confiscation order because there was 'simply no way in which it would have been possible to realise that or, in reality, any other money or property of any value under this policy' [para 27]
- The conclusion reached was that the confiscation order should only have been issued to the value of the car (£100) and that:  
*We consider that any other conclusion would be quite unacceptable. The appellant would be sent to prison for not paying a sum of money which at the time of making the order the court knew he would be unable to pay.*  
[para 31]

Based on this evidence there is currently no way for the member to realise their pension under scheme regulations or the Finance Act 2004. However you can utilise section 22 of the 2002 Act when the member is 55 and the member would have the right to access that pension under the Finance Act 2004 and the LGPS Regulations 2013.

Regards

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