



GMP Equalisation

5 things schemes should be doing

The High Court handed down its decision in *Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc and others* at the end of October. This has given us the long awaited clarification that schemes are required to equalise for the effect of guaranteed minimum pensions (GMPs), and approved certain methods by which this can be done. But the key question for trustees and pension scheme managers is “what should I be doing now?”

What is a GMP?

From 6th April 1978 until 6th April 1997, individuals could accrue an entitlement to an earnings-related addition to their basic state pension, called the State Earnings Related Pension Scheme (SERPS). An employer could contract its scheme out of SERPS if it was designed to provide a pension at least as good as a statutory minimum, known as the GMP. The GMP is therefore a component of a member's total scheme pension. The method for calculating GMPs is set out in legislation and can, for a variety of reasons, result in inequality between men and women.

Equalisation

The Barber case in 1990 confirmed that occupational pensions were deferred pay, and therefore that schemes were required to treat men and women equally. As a result, schemes ‘equalised’ their retirement ages, often at age 65, and adjusted their benefits accordingly. However, the position on GMPs remained uncertain, despite two government consultations aimed at addressing the problem in 2012 and 2016, and resolution of the issue was put on hold pending the outcome of Lloyds.

So, what do we now know?

It's now clear that schemes must equalise benefits for men and women for the effect of GMPs. However, this only applies to GMPs accrued post-Barber, i.e. accrued on or after 17th May 1990.

The case looked at various methods of effecting equalisation and approved a number of them. In determining the appropriate method of equalising benefits on the facts, the judge applied the ‘principle of minimum interference’. This requires the court to ‘compare possible options and to consider, in relation to any particular option, where the obligation to provide equal benefits can be complied with in some other way involving less interference

with the rights of any party’. As a result, it found that the Bank could require the trustee to adopt ‘method C2’, as it was less costly than some of the others and did not interfere with members’ rights. Broadly, this method provides the better of male or female comparator pensions each year, subject to accumulated offsetting, and allows for interest ‘when comparing accumulated gains and losses in the case of a switch in calculation from one sex to the other’.

In addition, the judge confirmed that the period for which scheme members are entitled to receive arrears of payments is governed by the scheme rules. There is no relevant statutory limitation period.

And what don't we know?

The case has left some unanswered questions, as it didn't explicitly deal with:

- + how transfers out should be addressed;
- + whether a de minimis threshold could apply, e.g. where the estimated cost of calculating and implementing equalisation is greater than the additional benefits the member would be entitled to;
- + how to deal with previous buy outs; or
- + how to deal with DC benefits with GMP underpins (as legislation doesn't allow the conversion of a GMP into DC benefits).

As of the start of December, we know that the High Court has rejected an appeal, but an approach to the Court of Appeal remains possible. The High Court has also clarified, by an order issued on 6th December, the GMP conversion approach. The Government has yet to officially declare whether it will be legislating to assist trustees and employers with implementing the decision, but we expect the DWP to produce guidance by mid-2019.

5 key actions:

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1

Carry on as usual

You should carry on dealing with day to day transactions, e.g. putting pensions into payment, as usual, subject to providing appropriate communications (see below).



2

Inform members

The decision has been widely publicised so you should be ready to answer questions from members. You may also consider sending out a short update explaining the decision and that you are considering its implications for your scheme.

3

Review your member communications

You may need to revise your retirement communications for affected members to explain that their benefits may need to be adjusted in the future. Other communications to affected members, e.g. on transfer values, may also need to be revised to advise members that their benefits may change as a result of the decision.

You should consider giving members the option of postponing a decision to transfer until their true benefits can be calculated. Otherwise, you will need to consider amending your discharge form to deal with transfers on an unadjusted basis.



4

Ensure member data is complete and accurate

Current reconciliation exercises should ensure schemes have correctly calculated members' GMPs. You should identify any gaps in records and take reasonable steps to address them.



5

Speak to your advisors

The impact of the judgment on your scheme, e.g. in relation to paying arrears of payments or making partial transfers, will depend on your scheme's governing documentation. You should ask your lawyers to check your scheme's rules and consider the specific impact of the judgment on your scheme. You may wish to ask your scheme's actuary to advise on the likely cost of equalising benefits for the effect of GMPs using one or more of the approved methods. If you haven't already done so, you should also ensure that appropriate provision is made for equalisation in your next valuation. Schemes should react practically and prudently until the position becomes clearer.