

On the horizon

Is the way now clear on GMPs?



In October 2018 the High Court decided in *Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank Plc* that providing unequal pensions for male and female members, due to the effect of post-May 1990 guaranteed maximum pensions (GMPs), amounted to sex discrimination.

Trustees cannot equalise GMPs themselves as the requirements for calculating them are set out in legislation. Instead, equality must be achieved by increasing benefits in excess of GMP. However, because GMPs are calculated, revalued, paid and increased in a different way to other benefits, new inequalities emerge over time. The High Court was therefore asked what an acceptable method for ensuring equality would be. Its preferred method was "C2" which broadly requires an annual comparison of a member's benefits with an equivalent member of the opposite sex.

So now that schemes have had almost six months since the judgment is everyone clear on the way forward? Sadly, it's not that simple. While most schemes will have got to grips early on with the immediate issues that needed resolving, e.g. trivial commutations and the approach to new transfer requests, there are still a number of longer term issues to sort out including:

- a lack of data to do the necessary calculations. Many schemes have a figure for GMPs but cannot identify post-May 1990 GMPs – the closest they can come is being able to identify post-April 1988 GMPs because of statutory requirements in relation to increases
- is it possible to ignore very small differences in benefits as a result of equalisation? This is an issue which it is generally hoped that the court will look at in a third Lloyds judgment likely to be published towards the end of 2019
- what happens where a member has lifetime allowance protection – will that be lost if benefits are increased as a result of equalisation? There are good arguments why this should not be the case and why equalisation payments should not count against the annual allowance but the industry is still hoping for guidance from HMRC to clarify the issue
- where a member has in the past received a trivial commutation lump sum what happens if they are now entitled to an additional amount in relation to equalisation? Under tax rules if the benefit entitlement was not fully extinguished, the lump sum may have been unauthorised so hopefully guidance from HMRC will cover this too
- can and should trustees use forfeiture provisions in scheme rules to limit how far back they need to go in correcting benefits already paid? Many sets of scheme rules will have provisions in them allowing unclaimed pension instalments to be forfeited after six years and trustees will need to give careful consideration to the exact wording in their scheme rules
- is GMP conversion the solution? Legislation allows GMPs to be converted into actuarially equivalent non-GMP benefits if certain formalities are complied with, but some of the issues involved are not straightforward. It is hoped that DWP will issue guidance on conversion later this year

Hopefully the position will become clearer once we have industry guidance and the further judgment in the Lloyds case.



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