

High Court rules on 'GMP equalisation'

- The High Court has ruled that 'GMP equalisation' is required
- Several methods are possible but of these, the employer can require the minimum cost option to be adopted

The High Court has published its ruling on equalisation for the effect of unequal Guaranteed Minimum Pensions (GMPs). The case concerns Lloyds Banking Group Pensions Trustees Limited and three related schemes, but it will have implications for other schemes contracted out between 1990 and 1997. The DWP and HMRC were also represented in court because of the potential for a wider precedent to be set.

Background

Since 17 May 1990 schemes have been required to provide equal benefits to males and females, subject to certain exemptions.

However, schemes which were contracted out prior to 6 April 1997 are required to pay members a GMP. The legislation defines GMP differently, depending on whether the member is male or female, and this often creates inequality.

GMP equalisation (or, more accurately, equalisation for the effect of unequal GMPs) has been a long running area of uncertainty

The High Court was asked to answer two broad questions:

- Are the trustees required to equalise for the effect of GMPs?
- If they are, how should such equalisation be achieved?

Is equalisation required?

The High Court has ruled that equalisation for the effect of unequal GMPs is required. The ruling confirms that the trustees have a duty "to equalise benefits for men and women so as to alter the result which is at present produced in relation to GMPs".

This addresses a long standing area of uncertainty for schemes.

Equalisation methods

Several potential methods of equalisation were put forward.

Method	Approach	Permissible?
A	Equalise each unequal term of benefits (eg pension increases) separately	Would require employer consent
B	Provide higher of male or analogous female pension each year	Yes – with employer consent
C	As B, but allowing offsetting against past adjustments so that either the male or analogous female receives an uplift – but not both	Yes – employer can require this
D1	Compare actuarial value of benefits with opposite sex. Provide an additional pension to make up any shortfall in value.	No
D2	As D1, but converting the benefit into a new pension to remove GMPs	Yes – with employer consent

In practice, method A is likely to be very expensive and unlikely to obtain employer consent.

An actuarial value approach similar to D1 has typically been used by schemes that have had to consider the treatment of unequal GMPs during a wind-up process. Although this issue was not addressed, the ruling includes a comment that “Schemes entering buy-out transactions... could be considered to be a special case, as in a buy-out the liability to pay benefits is transferred from the scheme to an insurer acting as a third party.” Legal advice is likely to be required on the implications of this for schemes currently undergoing a buyout.

Backdating

The High Court was asked to consider whether beneficiaries were entitled to receive arrears of payments, and for what period.

On this aspect the ruling concluded that any limitation would be in scheme rules – there was no statutory limitation. In the Lloyds case it was concluded that, based on the scheme rules, the beneficiaries were entitled to arrears back to six years before the claim for payment, but either were not entitled to arrears beyond this period or were only entitled with trustee discretion. Other schemes’ rules may well impose similar limitations.

Interest at 1% p.a. simple in excess of base rates should be applied to arrears of payments.

Next steps

The ruling provided by the High Court helps to address the long running uncertainty surrounding the requirements and assist other trustees in addressing the issue. There is a period in which an appeal can be launched but, if there is no appeal, the position will effectively be confirmed towards the end of the year. The DWP have also stated that they will publish additional guidance in the near future.

It is likely to take some time for trustees and sponsors to consider and make any benefit changes required as a result of the ruling. In the meantime, other actions include consideration of the impact on:

- Member communications
- Company accounting
- Transfer value calculations and processes
- Trivial commutation payments
- Scheme funding

Unanswered questions

Not all of the questions raised were covered by the ruling – in particular, the following questions were postponed:

- The treatment of previous transfers-out (although the Court did note that the schemes were required to equalise in respect of transfers they had received)
- Whether a de minimis threshold can be applied.

These issues may require a subsequent hearing to resolve.

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