

Outer Temple

Chambers

GMPs, equalisation and unresolved problems.

What is the correct approach?

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Equalisation of GMPs – is the thirty year wait nearly over?

- Morgan J's decision in Lloyds I made meaningful progress in providing legal and practical answers as to whether and how GMPs should be equalised.
- But significant legal questions were either left open (transfers) or remained to be considered in further detail (tax, some elements of limitation, missing / contaminated data).
- Equally significant, practical guidance for schemes seeking to identify and compensate current and former members who are entitled to receive additional Article 157 benefits was much needed.

Equalisation of GMPs – Setting the Scene

Why are GMPs unequal?

- **Women (usually) accrued GMP more quickly than men;**
- **Women can receive GMP from age 60; men receive GMP from age 65.**

Equalisation of GMPs – Setting the Scene

Why does this cause inequality in pension paid?

- Where a scheme treats GMP differently from excess (in relation to revaluation or indexation in payment) this will result in differences in payments.
- So, if GMP revaluation $>$ excess revaluation, women will do better during deferment and will start with a higher pension; and
- If excess indexation is better than GMP indexation, men will do better during payment;

Lloyds 1 [2018] EWHC 2839 (Ch)
[2018] EWHC 3343 (Ch)

Is there an obligation to equalise pension inequalities resulting from GMPs?

- Yes, under article 157 TFEU (and very probably under the section 67 Equality Act 2010) - ¶¶150 - 268.
- The whole of the pension is pay notwithstanding the integration with state benefits (SERPS) ¶¶240 - 255;
- There is no objective difference / material factor / objective justification defence as the difference in treatment is itself based on sex, cp. James v Eastleigh BC [1990] - ¶¶256 - 268.

Lloyds 1 [2018] EWHC 2839 (Ch)
[2018] EWHC 3343 (Ch)

How is equalisation of GMPs to be carried out?

- **Trustees were not entitled to apply an approach:**
 - **that was more generous than necessary (¶¶358 – 374; 393); or**
 - **that replaced an entitlement to levelled up benefits with an actuarial equivalent (¶ 375 - 390).**
- **This meant that the method required was method C2, i.e. calculating entitlement of M and F and paying the higher.**

Lloyds 2: Judgment awaited in the
Autumn

The Transfer Questions

Where scheme 1 transfers to scheme 2, is scheme 1 still liable or:

(a) Does the entire liability pass to scheme 2 because of Coloroll?

- **Court in Coloroll was only asked one question**
- **Is the wider answer 'implicit' as bank contended?**
- **Or is the bank's submission 'surprising'?**

Lloyds 2: Judgment awaited in the
Autumn

The Transfer Questions

Where scheme 1 transfers to scheme 2, is scheme 1 still liable or:

(b) Does scheme 1 get a statutory discharge?

- this is the big argument on transfers
- it goes well beyond GMP equalisation, but
- one GMP issue is whether such a statutory discharge would be contrary to EU discrimination law;

Lloyds 2: Judgment awaited in the
Autumn

The Transfer Questions

Where scheme 1 transfers to scheme 2, is scheme 1 still liable or:

(c) Does scheme 1 get a rules-based or contractual discharge?

- Rules-based, validity is likely to stand or fall with statutory discharge
- Contractual discharge is difficult from the bank / employer's perspective;

Lloyds 2: Judgment awaited in the Autumn

The Transfer Questions

Assuming that Scheme 1 retains a liability and there has been no valid discharge:

- consequential issues arise as to the extent to which schemes need to reopen old transfers.
- In principle, no limit, but query if becomes impossible – eg if lost touch with member, member dead etc
- Plain that this is for the trustees / administrators to sort out.

Lloyds 2: Judgment awaited in the Autumn

The Transfer Questions

The DWP gave evidence in Lloyds 2:

- DWP has a longstanding interest in ensuring schemes are able to equalise pensions for the effect of inequalities caused by Guaranteed Minimum Pensions;
- In terms of help, it identified:
 - the DWP's tracing service;
 - HMRC's recent GMP reconciliation process (including the GMP checker service)

Lloyds 2: Judgment awaited in the Autumn

The Scheme reconciliation process

- SRS was set up in 2014 as a result of the ending of contracting-out which took place on, 5 April 2016.
- intended to enable schemes to reconcile their scheme records against data held by HMRC so that HMRC's and the scheme's records should tally as at 6 April 2016.
- voluntary, so accuracy and completeness not guaranteed. Also concluded on 31 October 2018
- Nonetheless, schemes can still obtain a member's "GMP calculation" by using HMRC's "GMP checker service".

Lloyds 2: Judgment awaited in the
Autumn

The DWP Tracing Service

- Enables a member to trace any pension entitlement which he or she may have accrued.
- Requires only a scheme name or an employer name.

Lloyds 2: Judgment awaited in the Autumn

Pensions Tax Issues

- Overview – HMRC taking a fairly benign approach
- In the context of transfers, If benefits have been left behind after a transfer, the regulations allow lump sums (up to a limit) to be paid out to members (rather than the provision of a tiny pension) as authorised payments.
- there are other provisions dealing with trivial pension commutation which can be helpful too
- The payment has to be made within 6 months of the date on which the trustee knew or ought to have known about the sum left behind

Lloyds 2: Judgment awaited in the Autumn

Pensions Tax Issues

- Beyond Transfers:
- HMRC published guidance on GMP equalisation in February 2020. <https://www.gov.uk/government/publications/guaranteed-minimum-pension-gmp-equalisation-newsletter-february-2020>
- Most important, is the recognition that the entitlement to the uplift occurred when the benefits were earned and not when the equalisation uplift was recognised.

Lloyds 2: Judgment awaited in the Autumn

Pensions Tax Issues

- HMRC's position on when the right to the uplift occurs resolves most problems.
- LTA Issues remain: say someone with £1.25M worth of pension now, post uplift, has £1.26M worth, taking them through the LTA.
- However, this would not amount to new accrual for annual allowance purposes, so a member does not fixed protection.
- The member does of course have to pay tax on the additional pension and on the interest.

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Lloyds 2: Judgment awaited in the Autumn

Pensions Tax Issues

- GMP Conversion. These have only occurred since Lloyds ! Decisions.
- The guidance did not deal with GMP conversion – which goes beyond equalisation, as all GMP will be converted, even if pre **Barber** and even if there is no equalisation uplift as the individual was a ‘GMP winner’.
- Presumably there will be some guidance at some stage