FOCUS

Focus 1811-1
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EQUALITY FOR GMPS AT LAST?

- High Court ruling in the ‘Lloyds Bank’ GMP case
- Trustees have a duty to adjust pension benefits to allow for GMP inequalities
- Applies to GMPs earned between 17th May 1990 and 5th April 1997
- Three main methods can be used but down to trustees to determine which at a scheme level
- Likely to result in an increase in liabilities of perhaps 1%-3%
- Trustees need to seek advice and consider actions to be taken
- In-progress and future transfer requests and retirements are affected and may need urgent consideration

Was your pension scheme contracted-out of SERPS? If so, you will be affected by this

Friday 26th October 2018 finally brought some clarity to a question that has bubbled beneath the surface of most pension schemes for nearly 30 years.

The question (broadly); must pension scheme trustees take action to equalise the effects of unequal guaranteed minimum pensions (GMPs)? The answer; yes!

The landmark European Court ruling in the 1990 ‘Barber’ case is well-known - all pension benefits accrued from 17th May 1990 must be equal between men and women. But, for contracted-out schemes where unequal GMPs accrued, there was uncertainty over whether these needed to be equalised as long as the State pension benefits remained unequal.

The High Court ruling in the ‘Lloyds Bank’ case has now brought a <u>degree</u> of certainty.

So, what do we know?

We now have clarity that pension benefits must be adjusted to allow for the inequalities in GMPs. This ruling only applies to GMPs accrued between 17th May 1990 and 5th April 1997 (when GMP accrual stopped). Adjusting benefits is expected to add between 1%-3% to scheme liabilities.

What are GMPs? GMPs arose in (mostly) defined benefit pension schemes as a consequence of employers choosing to use the pension scheme to contract their employees out of the State Earnings Related Pension Scheme (SERPS). By doing so, the pension scheme members lost their entitlement to a SERPS benefit and as a result both they and their employer paid a lower rate of National Insurance contributions. Instead of the SERPS benefit, the pension scheme has to provide a pension benefit which replicates that lost under SERPS. This is known as the guaranteed minimum pension.

Why are there inequalities? Because GMPs replicated the SERPS benefit which did not provide for equal pensions. GMPs accrued using a prescribed statutory basis which gave higher rates of accrual to women for identical ages, service and earnings. GMPs are also paid at different ages, with women becoming entitled to their GMP from age 60 and men from age 65.

What don’t we know?

Whilst the Court ruling gives clarity over the need to equalise the benefits, it didn’t go so far as to clarify how to do this, instead setting out several alternative options. Trustees must now seek their own advice as the most appropriate method for their pension scheme.

However, what is clear is that the GMPs themselves cannot be changed, as they are statutorily calculated. Instead, trustees must adjust pensions in excess of the GMP to ensure that members do not lose out. This adjustment applies to all pensions in payment and deferred pensions yet to come into payment. Pensions must be equalised retrospectively, potentially as far back as 1990 and there is no backstop of time limitation on any claim unless the scheme rules have their own limitation clause. Where underpayments have been made these must be made good, with interest; where overpayments have been made, future pension payments can be adjusted to compensate.

What should trustees be doing?

Trustees should now be seeking advice and considering which method of equalisation is most appropriate for their scheme. Any equalisation project is likely to take many months to complete and it is possible that further clarity will be sought over issues such as whether a ‘de-minimis’ level of pension applies (where it is not cost effective to modify the benefits) and whether the ruling extends to benefits that have been transferred or bought out. Trustees may wish to delay taking some actions until further clarity is forthcoming.

However, there are immediate issues of dealing with current and future retirements and transfers out (as these must be equalised), and trustees need to urgently consider how to treat these.

Need help? If you would like to discuss how the ruling may affect your pension scheme and members or how we can support you with ongoing secretarial, actuarial and administration services, please contact us for more information.

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