

UK Pensions Briefing: GMP Equalisation

The need to equalise past transfers

December 2020

Introduction

In the most recent episode of the Lloyds Bank GMP equalisation saga, the High Court has held that since May 1990 statutory cash equivalent transfer values (CETVs) should have reflected equalised benefits, and that members may be able to claim where this was not the case.

The [decision](#) follows the first Lloyds Bank GMP equalisation judgments in October and December 2018 which confirmed that trustees of various types of occupational pension schemes have a duty to alter scheme benefits to correct the inequality created by GMPs which were not equal for men and women. This included an obligation to equalise benefits in respect of persons who had transferred-in.

Historic statutory transfers

The Court has now held that, notwithstanding the obligation of any receiving scheme to provide benefits on a sex-equal basis, including allowance for equalising for the effect of unequal GMPs (reflected in the ECJ decision in *Coloroll* and the first Lloyds Bank GMP case), trustees had an obligation to *pay* CETVs which reflected fully equalised benefits. In principle members whose CETVs did not reflect equalisation for the effect of GMPs could bring claims for top-up transfer payments. Trustees could also make such payments without a court order.

Limitation Periods and Forfeiture Rules

The Court held that claims from members would not be time-barred under statutory limitation provisions. It also considered five different forms of forfeiture provisions in the various Lloyds Bank schemes and concluded that none would operate to preclude a member's claim.

Discharge provisions

The Court also clarified that where trustees had failed to pay the full amount of the CETV to which the member was entitled, the statutory discharge provided under legislation did not operate to protect them from the obligation to pay the full CETV.

The Court also reviewed a number of non-statutory discharge provisions and held that in each case the discharge language did not operate to prevent the trustees from having a continuing obligation to the member.

Bulk transfers and non-statutory transfers

The position may be different for non-statutory transfers and bulk transfers.

For non-statutory individual transfers (e.g. transfers made in the year before Normal Pension Age) made in accordance with the preservation requirements and the transfer out rules of the scheme, the transferring member may no longer have rights to an additional payment unless there has been a breach of duty on the part of the trustees. This would depend on the circumstances of each case.

The judge made limited comments on bulk transfers, save that those made on a "mirror-image" basis and subject to actuarial certification under the preservation legislation would not need to be revisited.

Interest

Justice Morgan concluded that, as in most cases the sums involved would be small, it was impractical to allow for interest adjustments by reference to lost investment return or a revaluation basis and instead said that the top-up payments should be increased by 1 per cent above base rate per annum for the period since the original transfer took place.

Next steps

The implementation of this decision raises a number of important practical difficulties. Issues which will now need to be considered include the following:

- Documentation

The scheme rules and transfer documentation will vary from scheme to scheme which might raise the possibility that different conclusions might be reached. However, the Court considered a number of different sets of documentation in the case and reached the same conclusions in each instance.

- Proactive or reactive

While the Court did not reach a definitive conclusion on the need for trustees actively to pay top-up sums, and recognised the likelihood of administrative difficulties and cost concerns, Morgan J was clear that trustees had committed a breach of their fiduciary duties and at the very least had an obligation to proactively consider the position of members who had been disadvantaged.

- Reviewing records/date

As a first step trustees should review what records they have regarding transfers out, including whether those records identified the details of the underlying benefits and the receiving scheme.

- Buy-ins/buy-outs

Specific consideration will need to be given to the terms of buy-ins and buy-outs particularly regarding the benefit specification provisions. In many cases GMP top-up payments for past transfers will not have been included as an obligation of the Insurer.

- Past equalisation communications

Different schemes have taken different approaches to transfers after the first Lloyds Bank judgments. If you promised a top-up later if it was needed, that exercise needs to be initiated now. On the other hand if you delivered equalised transfer payments from quite early on, you may have less to do now.

Comment

As so often seems the case, while this judgment may define principles which seem clear from a legal perspective, their practical application is likely to be far from straightforward. Little has been clarified regarding the seemingly competing obligations of transferring and receiving schemes to pay equalised benefits and ultimately there will need to be a significant degree of pragmatism.

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Contacts



Lesley Browning

Partner

Tel +44 20 7444 2448

lesley.browning@nortonrosefulbright.com



Peter Ford

Partner

Tel +44 20 7444 2711

peter.ford@nortonrosefulbright.com



Shane O'Reilly

Partner

Tel +442074443895

shane.o'reilly@nortonrosefulbright.com

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