A Silver Anniversary for Equalisation – but will GMPs be invited to the party?

Matthew Giles and Alexandra Morton discuss the confusion that still surrounds GMP equalisation on the 25th anniversary of the Barber ruling.

The 17 May 2015 will mark 25 years since the landmark ECJ judgment in the case of Barber v Guardian Royal Exchange. Trustees, administrators and their advisers are, by now, well-seasoned in dealing with the equalisation of normal retirement ages between men and women. However, a question mark still remains over whether guaranteed minimum pensions (GMPs) accrued between 17 May 1990 (the date of the Barber judgment) and 5 April 1997 (the date GMPs were replaced with "reference scheme test" benefits for future contracted-out service) need to be equalised – and, if so, how it should be done. With an increased focus on GMPs, as many pension plans look to reconcile their records with HMRC ahead of the cessation of contracting-out in April 2016, and a new Pensions Minister who will be acutely aware of the issue, perhaps now is the time that the industry will finally settle upon a sensible approach.

In the years that followed the Barber judgment, occupational pensions plans attempted (with mixed success) to comply with the ruling by levelling their retirement ages. During the period since, many in the industry have been trying to unravel the errors that were made, which in some cases invalidated the changes

and resulted in significant extra pensions liabilities accruing. The resultant wave of professional negligence claims against advisers has largely come to an end as we are beyond the statutory limitation period (although a few "loss of opportunity" claims continue against advisers who were later appointed and did not flag the potential claim against their predecessor). However, the issue of how to equalise the GMP component of pension entitlements remains largely unaddressed.

With the abolition of contracting-out on 6 April 2016 fast approaching, many pension plans are going through the process of reconciling their GMPs with HMRC's records. This is bringing renewed focus to GMPs, even though they have not accrued for over 18 years. Reconciling GMP records will remove one of the many hurdles connected with GMP equalisation, as pension plans will at least be able to tackle equalisation in the knowledge that their GMP records are accurate.

GMP equalisation has reared its head several times over the last few years – only to be kicked firmly back into the long grass. Back in 2012, the DWP issued a consultation and draft secondary legislation which, it was hoped, would settle the matter. However, the pensions industry raised a number of concerns with the DWP's approach, with particular concerns surrounding the lack of clarity on how GMP equalisation should be achieved (the DWP's suggestion was a "possible method" only) and the potentially disproportionate costs associated with doing so (Aon Hewitt estimated in January 2012 that the cost of providing the increased benefits alone could be in the region of £5 to £10 billion). Cost issues will be of particular concern to trustees and sponsoring employers, given that the equalisation uplift is likely to be nominal for most pension plan members.

We have been expecting further DWP comment ever since the consultation document with an announcement being first delayed until Spring 2014 and then into 2015. It appears that Steve Webb ran out of time for this with his busy reforming agenda keeping him fully occupied until the 2015 General Election. As a result, it is a likely to be a key item on his handover note to Ros Altmann. She, like he, will fully understand the complexity of the issue, but the question is whether she will have the appetite to tackle it.

The way forward remains uncertain and so, for now, trustees and administrators can continue to defer taking action to equalise their GMPs. If the opportunity presented by the pre -2016 focus on GMPs is missed, we may well be continuing to debate the issue at a future milestone anniversary of Barber!

Written by Squire Patton Boggs partner and head of Birmingham Pensions Practice Matthew Giles and associate Alexandra Morton.