

All things equal

Matthew Swynnerton looks at the publication of the DWP's guidance on the GMP conversion legislation

Since the High Court's October 2018 landmark judgment, which held that pension schemes must equalise benefits to compensate for the effects of Guaranteed Minimum Pensions (GMPs) accrued between 17 May 1990 and 5 April 1997, dealing with this issue has been a subject high on the agenda for trustees of affected schemes.

The more immediate issues that trustees had to consider following the judgment included how to deal with requests for transfer values, but the wider question of what method to use to equalise benefits and funding implications are also key issues for trustees and employers. The High Court concluded that there are a number of methods that can be used to equalise benefits including completing an actuarial equivalence calculation and converting GMP benefits into non-GMP benefits using the existing GMP conversion legislation.

On 18 April the Department for Work and Pensions (DWP) published guidance, produced with the assistance of an industry working group, describing how schemes could use the GMP conversion legislation to achieve equality going forwards.

The DWP's guidance

The guidance sets out a 10-stage process that results in the adjustment of an individual's benefits to compensate for post-16 May 1990 GMP inequalities, as well as conversion of all of the individual's GMP. The guidance is said to simply describe one way of equalising for the effect of GMPs and also states that the government is not placing any obligation on schemes to use the method it sets out.

The 10-stage process covers reaching an agreement with the employer, selecting the members for conversion and agreeing which benefits are to be converted and the form of the new benefits, setting the conversion date, pre-conversion consultation, valuation, equalisation, determining the post conversion benefit, actuarial certification, modification of the scheme to effect conversion, and post-conversion notifications. The guidance also looks at some of the detailed aspects of the calculations discussed at stages five to seven, although noting that the calculations described are just one implementation of DWP methodology.

In a further judgment issued in December 2018 the High Court noted that the conversion method can only operate for the future and a different method would need to be used in relation to past payments. In a section relating to pensioners, the guidance considers the issue of the payment of arrears, providing a reminder of points made in the October 2018 judgment about limitation provisions in scheme rules and payment of interest, as well as providing information on the method of payment of accumulated arrears and the interaction of arrears payments with future payments.

Throughout the guidance a number of issues are flagged that may require legal advice including: how (or whether) the employer consent requirement applies where the participating employers have changed over the years; the position regarding conversion and equalisation of benefits granted on transfers in; and whether any GMP inequality calculation should be undertaken in respect of



those who are no longer members of the scheme, for example, because they have transferred out.

Next steps

Whilst it is useful for affected schemes that guidance has been issued on this equalisation method, it is notable that there are further developments still to come. The DWP explains that the government is considering changes to the GMP conversion legislation to clarify certain issues and that the guidance will be updated from time to time to reflect any future changes to legislation and any material developments in case law. The guidance also notes that HMRC is considering pensions tax issues arising in relation to GMP equalisation and will provide further information through future pension schemes newsletters (with taxation issues being relevant whichever method of equalisation is used).

Even though schemes may not yet be in a position to fully implement equalisation, the publication of this guidance provides a useful opportunity for trustees and employers to consider further whether conversion is a method that they might use to equalise benefits and, if so, to start considering relevant action points in the guidance. With further developments to come, and given the complexity of this issue, GMP equalisation looks set to continue to be a key issue on the agenda for trustees of affected schemes.



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