

Pensions Team Bulletin

JULY 2020

Welcome to our Special Bulletin on GMP Equalisation

This month we have seen further publications from HMRC and the industry working group concerning GMP equalisation. In this bulletin, we provide a summary of the key messages and invite you to get in touch with your usual contact in the pensions team if you would like to know more about the potential implications for your scheme.

A number of issues raised in the original Lloyds Bank case were deferred for consideration at a supplementary hearing and we understand that a judgment is due in autumn. The issues under consideration include whether there is an obligation on the trustees of the Lloyds Bank pension schemes to top up “unequalised” transfer values paid from those schemes. Following the publication of HMRC’s most recent newsletter on GMP equalisation (see below), many will consider the judgment in the supplementary hearing to be the final piece of the puzzle prior to commencing equalisation exercises in relation to their scheme.

HMRC publishes its latest GMP Equalisation Newsletter

The newsletter sets out HMRC's approach to the treatment of lump sum payments impacted by GMP equalisation.

Many authorised lump sum payments are subject to the condition that they extinguish the member's rights under the pension scheme. GMP equalisation could result in further rights being identified in respect of a member who has previously received a lump sum, casting doubt on whether the lump sum met the conditions to be an authorised payment. Helpfully, HMRC has confirmed that a lump sum will not stop being an authorised payment purely because, due to GMP equalisation, further rights are subsequently identified.

With regards to trivial commutation lump sums, however, HMRC advises that the value of the member's rights will need to be recalculated to take account of GMP equalisation. If the recalculated value exceeds the relevant limit for trivial commutation (in force at the time the payment was made), the lump sum will be unauthorised. As a consequence of GMP equalisation, members whose rights were valued at the cusp of the relevant threshold could now be liable for an unauthorised payments charge on historic trivial commutation lump sums.

The process of GMP equalisation is likely to reveal that a number of lump sums have been underpaid. HMRC advises that the subsequent payment of a "topping-up" lump sum will need to meet the conditions of one of the authorised lump sums under the Finance Act 2004 in order to avoid a tax charge. Due to the lapse of time between the payment of the original lump sum and the payment of the top-up, it may not be possible for the latter to meet the conditions applicable to the original lump sum. In these circumstances, the top-up payment will need to meet the conditions of an alternative authorised lump sum, for example, a small lump sum payment.

Comment: HMRC's assessment of the impact of GMP equalisation on trivial commutation lump sums could lead to the imposition of tax charges many years after such payments have been made. This will require careful communication with affected members. It is clear that the application of the newsletter will require careful navigation; trustees should speak to their advisers to understand the potential implications for their scheme.

At the end of the newsletter, HMRC comments that it *"is unable to provide any supplemental guidance on conversion, as more detailed work needs to be done on the wider issues associated with that methodology"*. This would suggest that guidance on the tax issues relevant to the conversion method will not be forthcoming any time soon, if at all. If trustees are delaying GMP equalisation whilst they wait for further guidance from HMRC, they may now wish to consider with their advisers how they move forward with the exercise given HMRC's comment.

The GMP Equalisation Working Group issues Guidance on Data

The equalisation methods approved by the High Court require schemes to compare a member's benefits with those of his opposite sex comparator in order to determine whether the benefits require adjustment to take account of unequal GMPs. However, pension schemes may not possess the data necessary to calculate the comparator's benefits with accuracy.

The Guidance on Data identifies different "Calculation Solutions" depending on the quality of a scheme's available data. Calculation Solutions describe the different ways of obtaining a comparator's pension in payment, including reconstructing benefits at date of leaving pensionable service, rolling back the current pension in payment to date of leaving pensionable service, and taking a broad-brush approach where poor data prevents trustees from making use of other solutions. The Guidance also suggests workarounds where a particular piece of member data is missing.

The Guidance includes a helpful checklist of the data that is likely to be needed for a GMP equalisation project.

Comment: The Working Group is comprised of representatives from across the pensions industry and its guidance should be a good barometer of developing practice in the area of GMP equalisation. Trustees should be engaging with their advisers to understand the quality of their scheme's data and the impact of any missing data on the availability of different Calculation Solutions, including the knock-on effect on member outcomes. In deciding whether to adopt a particular Calculation Solution and / or to run a data collection exercise, trustees should balance the relative cost against the risk of poor data leading to inaccurate calculations and benefit adjustments. Trustees may wish to speak to their advisers about cost, risk, and proportionality.

If you would like to contact us please email
kate.buckham@wrigleys.co.uk

www.wrigleys.co.uk

