



PENSIONS VICTORY

THE MAKING OF HISTORY

Mark V Brown, General Secretary

It's a little known fact but the principle of equal pay for work of equal value, which was at the heart of our recent pension case, can be traced back to the Treaty of Versailles 1919 (Article 427), which brought World War 1 to an end. The fact that our pension case was won (26th October 2018) almost 100 years to the exact date the fighting stopped (11th November 1918) makes our victory on pensions equalisation for millions of women that much more significant and poignant.

What Was It All About?

Individuals could accrue an entitlement to an earnings-related addition to their basic state pension, called the State Earnings Related Pension Scheme (SERPS). Employers could 'contract out' their pension schemes, which is what Lloyds did, if they provided a pension at least as good as a statutory minimum known as the Guaranteed Minimum Pension (GMP). The GMP is part of a member's total pension.

GMPs are inherently unequal and how those inequalities arise can be seen in figure 2 overleaf. In its simplest form the issue was about how pensions, in particular GMPs, are increased under the rules of the Bank's pension schemes.

The outcome is straightforward. The pensions of female members of the pension schemes increase at a lower rate than the pensions of male members. We argued in the High Court that was discriminatory on the grounds of sex, or, put another way, women receive less pay than men for doing the same work.

What The High Court Said

In the Lloyds Banking Group Pensions Trustee Ltd v Lloyds Bank plc and others, Mr Justice Morgan agreed with us that pension benefits - including guaranteed minimum pensions (GMPs) - are in fact "pay" under Article 157 of the Treaty of Rome and it is not lawful to pay unequal benefits between men and women.

He found that the Trustee: "is under a duty to amend the Schemes in order to equalise benefits for men and women so as to alter the result which is at present produced in relation to GMPs".

The Court also ruled that Scheme members are entitled to receive arrears of payments due to them together with simple interest at 1% above base. The period for which beneficiaries are entitled to receive arrears of payments is governed by the rules of the Scheme. On the case of Lloyds, that's six years from his/her claim.

What's It Worth?

The Union's GMP equalisation victory will affect almost all final salary pension schemes.

We believe that up to 5 million members of those schemes, the vast majority of whom are women, will benefit from GMP equalisation payments. In its submissions to the High Court, the Government's legal team estimated that the cost of putting things right would be between £10 - £20bn.

The Next Steps

The judge will make a holding Order, effectively adjourning further proceedings until the parties have agreed the terms of the declaration the judge will be asked to make. That declaration will determine exactly how the judgement will be implemented for the LBG pension schemes.

There will a further hearing to deal with the questions relating to transfers out of the pension schemes. We expect that hearing to be in 2019.

We will keep members informed of developments through regular Newsletters.

GMPs

A BRIEF HISTORY OF TIME

1990 – in the Barber case (17 May 1990), the European Court ruled that occupational pensions were deferred pay and, as such, schemes were required to treat men and women equally. As a result, schemes “equalised”

“As GMPs are not expressly excepted from the application of the equal treatment rule then, in my judgement, by virtue of that rule, they must be equalised.”

Williamson (2000)

their retirement ages, often at age 65, and adjusted their benefits accordingly.

However, as GMPs were designed to integrate with

the then state pension, and the rules governing them are set out under legislation, there was some doubt as to whether Barber applied.

2010 – in her statement to Parliament on 28 January 2010, the then Pensions Minister (Angela Eagle) announced that “domestic legislation requires equalisation in respect of differences resulting from GMPs whether or not real comparators exist” (namely, a worker of the opposite sex who is being treated more favourably). Two Government consultations on possible methods for achieving this followed.

2012 – the first method consulted on would have required schemes to compare, on a year by year basis, the position of a male against a female and pay the better of the two benefits. But this method was criticised for being “administratively expensive” and resulting in better benefits for both sexes than either sex would otherwise have received. As a result, the DWP set up a working group in 2013 to consider other possibilities.

2016 – the DWP’s subsequent method involves a one-off calculation and actuarial comparison of the benefits a man and woman would have, with the greater of the two converted into an ordinary scheme benefit under the legislative facility for converting GMPs. However, the DWP made clear that trustees would not be obliged to use this method, as it did not consider providing a “safe harbour” method for achieving equalisation would be appropriate.

2016 - TBU took advice from Andrew Short QC (he represented the 3 female members at the High Court hearing) who concluded that GMPs were discriminatory and must be equalised. He said that an Employment Tribunal

would conclude that the pensions of female members should be increased to the higher rate that applies to men.

2016 - August. The Union wrote to the Bank and Trustee claiming that female members are the victims of discrimination.

2016 - September. TBU put together a class action lawsuit to present to the Employment Tribunal on behalf of members that you were victims of discrimination. Members could register their details and thousands signed up.

2016 - November. The Bank, the Trustee and Union agreed jointly to refer the Union’s landmark legal action on Guaranteed Minimum Pensions (GMPs) to the High Court.

Under what’s called a ‘Part 8’ referral the High Court was to be asked to determine the answers to a series of questions on the equalisation of GMPs. Those questions were agreed

by the respective legal teams.

“Each Member State shall ensure that the principles of equal pay for male and female workers for equal work or work of equal value is applied. (Art.157).”

Formerly Article.119. Treaty of Rome.

2018 - July. The case goes before Mr. Justice Morgan in the High Court.

2018 - October. Mr. Justice Morgan says that GMPs must be equalised.

The Methods For Equalising GMPs

There were 4 basic methods of equalisation considered by the Court and those are set out below and in figure 2 overleaf. In summary the key methods were as follows:

Method A

“takes each aspect of the pension calculation separately and adjusts to remove any inequality on an aspect-by-aspect approach”, on an annual basis.

As a variation on this, Method A3 would recognise any equalising increase as a non-GMP excess benefit, attracting increases under the scheme rules on this basis (as opposed to on a GMP basis) in subsequent years.

Method B

Rather like the Government's 2012 method, this would involve a year on year calculation of and comparison between the member's actual benefits and what he/she would have received if they were of the opposite sex. The greater of the two calculations would then form the basis of the payment to the member. Unlike Method A, this is not an element by element approach but involves a single calculation on the male and female basis.

Method C1

Uses the same initial calculation as Method B but is designed, in effect, to equalise cumulative pension paid (not pension paid each year) so as to avoid overcompensating members. So, if the annual benefit comparison reveals that the previously advantaged sex has now become the disadvantaged one (ie the two sexes have traded places), instead of applying an automatic increase to the now disadvantaged sex, the lower of the two calculations is paid "until such time as the accumulated excess prior to the switch equals the accumulated loss after the switch".

Method C2

And this one was ultimately favoured by the judge in the Lloyds Banking Group case uses the same calculation except that interest is allowed for "when comparing accumulated gains and losses in the case of a switch in calculation from one sex to the other".

Method D1

This would involve a one-off actuarial calculation of the future rights to benefits of male and female comparators, with any difference paid to the disadvantaged members as additional pension. As a variation on this, Method D2 would involve using the GMP conversion legislation

and providing "a pension which converts GMP structures into an alternative format (for example in line with non-GMP benefits) and is of equal actuarial value to the larger of the compared values". This method is akin to the Government's 2016 proposals, although the judgment notes that there may be differences in detail.

(It was also noted that versions of Method D have been used when schemes have been buying out benefits with an insurer although, in those circumstances, "the commercial imperative to achieve risk transfer in the buy-out will outweigh the risks of the equalisation approach subsequently being deemed inadequate".)

The vast majority of those pension scheme members are female and most of those will receive pension scheme increases that are lower than male members of staff.

The Issues Left Unanswered

Having concluded that the obligations in relation to GMP equalisation apply to benefits accrued in other schemes post-Barber which have been transferred in to the Schemes, the judge stopped short of reaching any conclusions about the position on transfers out. In doing so, he stated that "it might be undesirable to deal with the arguments at a high level of generality and without regard to specific facts".

Another issue left unanswered was whether a different equalisation method should be adopted for members for whom "the estimated cost of calculating and implementing Methods A to D is the same as or greater than the projected additional benefits" to which they would then be entitled.

Members with any questions on this Newsletter should contact the Union's Advice Office on 01234 716029 (Choose Option1) or they can email us at 24hours@tbuonline.co.uk.

FIG 1: THE METHODS FOR EQUALISING GMPs

Method A

Equalise each unequal aspect of benefit (revaluation in deferment, anti-franking split, indexation in payment) separately.

Method B

Provide the better of male/female comparator pension on a year-by-year basis.

Method C1

As for Method B, but if favoured sex changes from one gender to the other, allow offsetting of accumulated gains in years prior to change until exceeded by divergence in payments after change.

Method C2

As for Method C1, but also make an allowance for interest on the accumulated gains prior to the change (so reducing overall cost).

Method D

One-off calculation of actuarial value based on one of Methods A to C plus either (Method D1) the provision of additional benefit of equal actuarial value to the shortfall, or (Method D2) the conversion of the higher value into non-GMP benefits.

WHAT THE PAPERS SAID...

MILLIONS TO SHARE PENSIONS WINDELL

MILLIONS of women are in line for a pension boost following a High Court ruling on multi-billion pound Lloyds Banking Group

By Sarah O'Connell
had to equalise men and women's pension schemes. The High Court ruled that the GMPs were different and schemes followed different rules before men. The Court of Justice ruled that the rules equalising men and women's pension schemes should apply to GMPs. The High Court ruled that the GMPs should be equalised. Today



COMMENT
BARONESS ALTMANN
Ex-pensions minister

could have enormous problems. Firstly, data records are often incomplete and inaccurate. Secondly, the actual calculations are so complicated that it is almost impossible to get it right. Contracting-out ended in 2016 and all schemes must reconcile GMP records with the Inland Revenue to ensure they are correct. In reality, most will see very little change in their pension payments. However, pension schemes may have to spend billions checking GMPs and increasing pensions, as well as paying arrears.

the High Court ruled that the GMPs do have to be equalised. However, there are two major problems. Firstly, data records are often incomplete and inaccurate. Secondly, the actual calculations are so complicated that it is almost impossible to get it right. Contracting-out ended in 2016 and all schemes must reconcile GMP records with the Inland Revenue to ensure they are correct. In reality, most will see very little change in their pension payments. However, pension schemes may have to spend billions checking GMPs and increasing pensions, as well as paying arrears.

Lloyds Banking Group Women gain under ruling on final salary pensions

Lloyds to pay £150m to female pensioners as court rules

issue. The group welcomes the decision made by the court and the clarity it provides. The group and the pension scheme trustee will be working through the details in order to implement the court's decision."

The case revolved around guaranteed minimum pensions (GMPs) for women who contracted out of the state pension scheme.

Lloyds told to overhaul their pensions in landmark ruling

By Lucy Burton

BRTAIN'S biggest high street bank has been told that it must overhaul its pension scheme so that male and female staff are able to enjoy the same benefits.

A decades-long dispute came to a head yesterday after the High Court ruled that Lloyds Banking Group's

for staff who worked there in the Nineties, means that Lloyds faces a bill of between £100m and £150m.

"The hearing focused on what is a complex and long-standing industry-wide issue," a Lloyds spokesman said. "The group welcomes the decision."

The ruling will have implications for other companies that are facing similar cases.

Under the law at the time, GMP pensions were calculated differently for men and women so that it mirrored the state pension scheme.

Former pensions minister Steve Webb said that "thousands" of other companies would now face similar bills and should be putting money aside in preparation.

"This is the test case," he said. "Everyone's been waiting for this one. You would expect other companies to follow suit now. This will be pretty difficult following years of paying down deficits."

Pensions consultancies have been warning for decades that the industry has been choosing to ignore the complex issue due to the expense and administrative headache.

Former pensions minister Steve Webb says other companies should be putting money aside for similar cases



Webb was "under a duty to ensure that pension schemes in order to equalise men and women's pension schemes after the ruling comes into effect. Disparities in pension payments for men and women were allowed to continue, which affects 80 per cent of minimum pensions."

The DWP has said it will provide guidance on how to calculate the extra

Business



Gender equality ruling on pensions may cost British firms £20bn

It is estimated that Lloyds will face a bill of between £100 million and £150 million. The hearing focused on what is a complex and long-standing industry-wide issue. The group welcomes the decision. The ruling will have implications for other companies that are facing similar cases. Under the law at the time, GMP pensions were calculated differently for men and women so that it mirrored the state pension scheme. Former pensions minister Steve Webb said that "thousands" of other companies would now face similar bills and should be putting money aside in preparation. "This is the test case," he said. "Everyone's been waiting for this one. You would expect other companies to follow suit now. This will be pretty difficult following years of paying down deficits." Pensions consultancies have been warning for decades that the industry has been choosing to ignore the complex issue due to the expense and administrative headache.

FROM PAGE ONE
supported by their trade union BCU, claimed they faced sex discrimination because their guaranteed minimum pensions increased at a lower rate than their male colleagues. Around 33,000 Lloyds pension scheme members are likely to receive a minimum refund of £500. Of those 33,000, about 8,000 could receive at least £3,000 over their lifetime. The outcome of the case will have profound implications for

Pensions ruling brings equality for women... but schemes face a crisis

FIG 2: HOW DO INEQUALITIES ARISE?

