

Scope and Summary

This note provides a practical summary of some key aspects relating to GMP equalisation as at September 2021.

In the landmark Lloyds case in 2018, the court held that under equality law pension schemes with GMPs must equalise benefits to account for the unequal effect of GMPs being tied to different ages for men and women. In line with the Barber case, GMPs earned from 17 May 1990 to 5 April 1997, when GMPs ceased to be the option available to 'contract out' of the State additional pension, must be considered.



Key takeaway points include:

- Schemes with GMPs must take action to identify and correct underpaid pensions, including paying arrears where required;
- Historic transfers out of pension schemes from May 1990 onwards may need to be revisited for GMP equalisation;
- There remain a number of questions unanswered by the courts;
- The industry is working hard to implement the judgment, which is a complex and detailed process.

The main requirements are:

- Schemes must choose which method to use to equalise, which may involve 'dual records' or a one-off change. It is not necessary to do the same for all members or in all circumstances.
- Employer consent is required for all methods except for the method known as 'C2' which is a dual records method which the judge found produced 'minimum interference' with member benefits.
- The court ruled that a one-off method is not permitted for arrears, and that interest should be paid. In the Lloyds case the judge awarded 1% over base rate.
- For ongoing schemes, a one-off change requires a statutory process called 'conversion'.
- If a scheme contains a forfeiture rule for unclaimed benefits, this may be used to limit the look-back period for arrears. Note that this is the most controversial aspect of the judgment.
- The court confirmed in a further Lloyds case in 2020 that former members who transferred out of a scheme under a statutory right can require a top-up to be paid. There is no limitation on the look-back period and general discharges signed by the former member or contained in scheme rules are unlikely to be effective. Schemes will need to decide how to approach these cases, and there are a range of options.
- Bulk transfers and discretionary transfers are different and it is possible that neither need to be revisited. Contractual terms may be particularly relevant in the former case.

Key points to consider and practical steps:

	Considerations	Wider context
Project governance	Consider a joint employer and trustee working party. Clear objectives help keep the project focused. Keep a clear audit trail with a summary document of approach, advice and decisions taken produced by the end.	A good summary will be useful at future key points in the scheme's life, e.g. a corporate acquisition or a merger or bulk annuity purchase.
Data	Data is critical to a GMP equalisation project. Initial analysis is required to define the project scope and scale. Consider with advisers which data elements are key and where assumptions can or need to be made.	<p>Consider whether the work required should be combined with other projects e.g. GMP rectification or data cleansing in readiness for future buy-ins.</p> <p>Consider availability and resourcing for the work to be carried out.</p>
Methodology	Consider the pros and cons of different methods with your advisers, keeping in mind the objectives set. Consider how any downsides might be tested or mitigated. Tax implications and uncertainties may drive particular approaches in some cases.	<p>The bulk annuity market is still developing its approach to GMP equalisation. If buy-out is part of the long-term strategy, consider insurer views.</p> <p>There are particular uncertainties over the tax implications of GMP conversion and HMRC has not provided guidance. This is most acute for deferred members who would be impacted by the annual allowance and members with lifetime allowance protections.</p>
Transfer and full commutation quotations	Consider adjusting to account for GMP equalisation ahead of the main project completing.	Following <i>Lloyds 2</i> , this has been widely implemented.
No further liability cases (past transfers, full commutations, deaths)	Some analysis is required to understand the scale of these cases for the scheme and the scheme-specific data situation. In time the scheme will need to decide how to approach these cases, potentially on a risk-based approach.	There are a host of practical difficulties in revisiting and potentially correcting former members' benefits. In practice, current members are generally being considered first. It may be that insurance solutions are offered in future.

Minimum level for correction?	This was a question left unanswered by the court in <i>Lloyds</i> . Schemes are likely to take a risk-based approach.	Industry practice will develop.
Forfeiture	Consider the scope and terms of any forfeiture rule, and (if applicable) whether to use it.	This is a relatively controversial part of the <i>Lloyds</i> judgment and the courts have since considered the point again in the <i>Axminster Carpets case of Punter Southall Governance Services Ltd v Hazlett</i> and may do so again in future.

In Summary

- Schemes with GMPs need to work closely with advisers and employers to implement the important ruling. As an industry-wide issue, there is a lot of thought going into how to deal with the challenging elements.
- Please contact us if you would like further information or advice on anything in this note.

This practical summary is not intended to be a full statement of the law on this topic and is not legal advice. It does not take account of any developments since it was written or last updated.

www.burges-salmon.com

One Glass Wharf, Bristol BS2 0ZX T +44 (0) 117 939 2000 F +44 (0) 117 902 4400
Atria One, 144 Morrison Street, Edinburgh EH3 8EX T +44 (0)131 314 2112 F +44 (0)131 777 2604
6 New Street Square, London EC4A 3BF T +44 (0) 20 7685 1200 F +44 (0) 20 7980 4966

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority.

It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol, BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the "Who we are" section of the Burges Salmon website at www.burges-salmon.com.