



BRIEFING PAPER

Number CBP-8427, 6 February 2020

GMP equalisation

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Summary

When the State Earnings Related Pension Scheme was introduced in April 1978, it was possible to contract-out of it into an occupational pension scheme. A condition of it being used to contract-out was that the scheme provided a defined benefit (known as a GMP). The requirement to provide a GMP was removed from April 1997 but schemes still have to provide them for rights built up before that date.

The legislation ([Pension Schemes Act 1993](#), s14 to 16) requires GMPs to be calculated on an unequal basis, with the age at which it can be drawn and rate at which benefits build up, different for men and women.

On 17 May 1990 the Court of Justice of the European Union ruled that occupational pensions were deferred pay and, as such, schemes had to treat men and women equally: “the Barber judgment.” The judgment, which applies to rights built up from 17 May 1990, imported an equal treatment rule into occupational pension scheme rules, meaning that where a scheme rule would result in a member of one sex being treated less favourably than one of the opposite sex, it must be read as though it does not do so.

The Government took the view that the Barber judgment required schemes to equalise GMPs and consulted on a proposed approach to this in [2012](#). However, because of concerns that this would be particularly onerous to implement, the Government withdrew the draft regulations in 2013. In [2016](#), it launched a further consultation on an alternative methodology, which was generally considered to be a distinct improvement.

The position regarding whether there was a legal requirement to equalise GMPs remained uncertain until the judgment of the High Court on 30 October 2018 in the case of [Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank PLC and others](#). The court held that the Trustee was “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 Government said the judgement had endorsed its long-held view that schemes should equalise for the effect of inequalities in GMPs. It would make further changes to the GMP conversion legislation to facilitate the methodology on which it had consulted ([HC Deb 14 February 2019 c1961](#)).

The arrangements for increasing GMPs in payment are discussed in Library Briefing Paper [CBP-4956](#) (May 2018).

1. Background

The State Pension for people who reached State Pension age before 6 April 2016 had two tiers – the basic State Pension (paid at a flat rate for people with the requisite number of ‘qualifying years’ – of National Insurance contributions or credits), and the additional State Pension, which was earnings-related.

From the time the additional State Pension was introduced in 1978 in the form of the State Earnings Related Pension Scheme (SERPS), there was an option to contract-out into an occupational pension that met certain criteria.¹ Individuals who were contracted-out, and their employer, paid a reduced rate of National Insurance (via a contracted-out rebate), in recognition that they were forgoing rights to the additional State Pension for that period and building up rights in a private pension scheme instead.

At State Pension age, a “contracted-out deduction” is made from their State Pension to reflect this. A 2011 pensions Green Paper explained the rationale:

This reflects the fact that people in contracted-out schemes do not contribute to the additional State Pension and thus pay a lower rate of National Insurance (the National Insurance rebate). The rationale for the rebate is that people receive an amount of pension from their contracted-out scheme at least as good as the state pension given up [...] The purpose of the contracting-out offset is to ensure that all provision funded by the taxpayer, including that funded by the National Insurance rebate, is taken into account when calculating people’s entitlement to the state pension.²

For more detail, see Library Briefing Paper [CBP 7202](#) (pp11-15).

¹ See Library Briefing Paper CBP-07202 [Pensions 2015](#) (May 2015), section 2.3

² DWP, [A state pension for the 21st century](#), Cm 8053, April 2011, chapter 2, p 32; For more on the background, see Library Briefing paper, CBP-4822 [Contracting out of the State Second Pension](#) (March 2011)

2. What is a GMP?

When the policy was first introduced in 1978, occupational pension schemes used for contracting-out had to provide an individually calculated defined benefit known as the Guaranteed Minimum Pension (GMP).

Schemes that provided GMPs were usually defined benefit (i.e. provided specified pension benefits, usually based on salary and length of service). However, defined contribution schemes (in which the level of pension depends on contributions made, how these are invested and the annuity purchased) could also contract out by providing a GMP as a defined benefit underpin.

A Department of Health and Social Security (DHSS) leaflet, *New Pensions: a more secure future*, (NP34), issued in January 1978, shortly before the new scheme came into force, explained how it would work:

The new state pension will operate in partnership with good occupational schemes... if your employer operates such a scheme he can apply to contract you out...of the state scheme's additional pension and you would then pay lower contributions to the state scheme ... Your basic pension would then be provided by the state scheme and your additional pension by your employer's occupational scheme, with inflation-proofing after the pension is in payment provided by the state (...)

Guaranteed minimum pensions

A contracted-out occupational pension scheme must provide you with at least a guaranteed minimum pension, to match the additional pension you would have earned from the state scheme ... Your occupational pension may, of course, be much higher than the guaranteed minimum pension, particularly if you are already a member of a scheme.

The *Pensions Act 1995* abolished the future accrual of GMPs with effect from 6 April 1997. However, schemes still have to provide GMPs in terms of rights accrued to that.³

The *Pensions Act 2007* included provision to allow pension schemes to convert GMPs to scheme benefits from 6 April 2009.⁴

2.1 Why are GMPs unequal?

The GMP rules broadly follow those of the State Earnings Related Pension Scheme.⁵ DWP explains that the legislation requires them to be determined on an unequal basis, with the age at which it can be drawn and rate at which benefits build up different for men and women:

3.11 Legislation requires GMPs to be determined on an unequal basis: under the *Pension Schemes Act 1993* (PSA93), a woman's GMP accrues at a greater rate than that of a man in recognition that a woman's working life for State Pension purposes was give

³ IDS Pension Service, *Pension Scheme Design*, May 2010, para 8.43

⁴ [Pensions Act 2007, section 14](#); [Pensions Act 2007 \(Commencement No. 3\) Order 2009 \(SI 2009/406\)](#); Pensions Bill Deb, 1 February 2007, c234; [The background to this is in Library Research Paper RP 07-05, January 2007](#), section III A

⁵ [Pension Schemes Act 1993](#), s14-16

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years shorter than that of a man. As a result, where a woman and a man have an identical working history, the woman's overall GMP will be greater than that of the man.

3.12 The requirement that GMPs are calculated are paid on an unequal basis flows through to result in an inequality of the overall scheme pension in payment. This is compounded by the requirements for preservation, revaluation and anti-franking legislation in PSA93 that benefits above GMP ("excess benefits") be determined with reference to this unequal GMP and the fact that revaluation and indexation provided on the excess benefit can and usually differs to that on the GMP element (depending on the legislation and the rules of the scheme).

3.14 As a result, it can become far from clear which sex receives the greater total scheme benefit. It is also possible for the position to change over the course of a lifetime so that an individual who is advantaged on the basis of sex when the GMP is first paid becomes disadvantaged later. In other words, which sex is advantaged may fluctuate over the course of a lifetime.⁶

Although the State Pension age for women is now equal with men (having reached 65 in November 2018), the Government decided not to increase their GMP age because to do so would "interfere with an individual's accrued rights under their occupational pension scheme."⁷

2.2 Are schemes required to equalise GMPs?

On 17 May 1990 the Court of Justice of the European Union ruled that occupational pensions were deferred pay and, as such, schemes had to treat men and women equally: "the Barber judgment."⁸ The judgement was incorporated into UK domestic law and applies for any accruals from 17 May 1990.⁹

The judgment imported an equal treatment rule into occupational pension scheme rules. This means that, where a particular rule would treat a member of one sex less favourably than a member of the opposite sex, it must be read as though it did not treat that member less favourably.¹⁰

However, for many years it was unclear whether this translated into a requirement to equalise GMPs. In 2000, the Pensions Ombudsman ruled that it did. However, this was appealed by the employer and trustees. The High Court ruled that the Ombudsman did not have jurisdiction to determine complaints which could only be remedied by steps which adversely affect other parties. Counsel for the employer had argued that it had been counsel's intention that GMPs should be equalised, then it should have changed pensions legislation. On the other hand, this might not be needed if it was considered that there was a general statutory rule providing that benefits must be calculated on the most

⁶ DWP, [A proposed methodology for equalising pensions for the effect of GMPs – Public consultation](#), November 2016

⁷ [HC Deb 17 September 2012 c535W](#) [Steve Webb] ; [See also HL Deb 13 Oct 2004 GC103-4](#) [Baroness Hollis].

⁸ [Case C-262/188 IRLR 240, \[1990\] ECR I-1889](#)

⁹ [Equality Act 2010](#), s64 and 67 to 70, previously section 62 of the *Pensions Act 1995*

¹⁰ DWP, [A possible method for equalising pensions for the effect of the GMP](#), January 2012

favourable basis i.e. considering whether a member would be better off being treated as a man or a woman.¹¹

In January 2010, the then Pensions Minister Angela Eagle said the Government's view was that there was a requirement to equalise GMPs:

The examination of the relevant legislation and case law has led the Government to conclude that where a scheme member has accrued entitlement to a guaranteed minimum pension after May 1990, European law requires that any inequality in scheme rules which results from the legislative provisions governing GMPs should be removed, whether or not a person can show that a comparator exists.

The Government intend to bring forward amending legislation when Parliamentary time allows. However, in the meantime, it is the Government's opinion that, in order to ensure full compliance with European law, trustees and others should act as if existing domestic legislation requires equalisation in respect of differences resulting from GMPs whether or not real comparators exist.¹²

A 2012 consultation document said:

5. It has been the position of successive Governments that the Barber judgement and the *Pensions Act 1995* did not require schemes to equalise that proportion of the scheme benefits representing the amount of GMP. Rather it required schemes to equalise overall scheme benefits which accrue from 17 May 1990 and, for the period 17 May 1990 to 5 April 1997, this includes any inequality arising from the GMP legislation.

6. The Government understands the current position is that contracted-out schemes which hold GMP liabilities are already under an obligation to:

- Equalise pensions for the effect of the GMP for any accruals from 17 May 1990 to 5 April 1997. This flows from Barber and current domestic legislation; and
- Assume a comparator exists for the purposes of this exercise. This flows from a line of case law from the Court of Justice of the European Union, most notably the case of *Allonby* (see paragraphs 80 to 84 of that judgment) which imposes EU law obligations directly on schemes.¹³

On 19 April 2012, the then Pensions Minister, Steve Webb said it was "difficult to estimate the costs of equalisation or the administrative burden, as these will depend on the structure of individual schemes and what they have already done to equalise benefits."¹⁴

There has been debate in the pensions industry as to whether Brexit will impact on schemes' requirements to provide equal pensions. In March 2017, the Government said that while the UK remained a full member of the EU, it would "continue to negotiate, implement and apply EU legislation." The requirement to provide equal pension benefits had been reflected in UK legislation:

¹¹ Lloyds Trade Union to fight GMP equalisation battle, *Occupational Pensions*, October 2016, p12

¹² [HC Deb 28 January 2010 c66WS](#)

¹³ DWP, [A possible method for equalising pensions for the effect of the GMP](#), January 2012

¹⁴ [HC Deb 19 April 2012 c466W](#)

4.7. The Government set out its position in the consultation document. Following the EU referendum on 23 June where the people of the United Kingdom voted to leave, the Government's position is that, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

4.8. Furthermore, this principle of equal pensions was established by the European Court of Justice, on 17 May 1990 (in the Barber judgment) - occupational pension benefits are now regarded legally as pay, and benefits and ancillary arrangements must be equal for men and women. The Government has reflected this requirement in domestic legislation, currently through the provisions of the *Equality Act 2010*.¹⁵

2.3 How should this be done?

In a 2012 consultation DWP set out a method by which GMPs could be equalised:

7. The Government is aware that a degree of uncertainty exists as to how schemes should amend their benefits in order to equalise where a GMP entitlement exists. It wants to offer as much help to pension schemes as is possible and is therefore putting forward one possible method of equalising pensions that schemes could choose to use.¹⁶

Its proposed method required an additional calculation – for benefits accrued from 17 May 1990 to 5 April 1997 – to compare what a member would get under scheme rules and the relevant legislation if they were treated as being a person of the opposite sex:

15. The first set of question is:

- What age do I need to start paying this member a pension under the rules that apply to them?
- What age would I need to start paying a pension to this member's opposite sex notional comparator under the rules that would be applicable to them?
- 16. If the opposite sex notional comparator would be entitled to a pension earlier than applicable to the member under the rules, the pension due to the opposite sex notional comparator should be put into payment at that earlier age.
- 17. The second set of questions to be asked at each payment date thereafter is:
 - What is the amount of the overall pension this member would be paid under the applicable rules (the unequalised calculation);
 - What is the amount of the overall pension the member would be paid under the applicable rules if they had been a

¹⁵ [Government response: Occupational pension schemes regulations 2017, occupational pensions legislation reviews and a proposed methodology for equalising pensions for the effect of GMPs](#), March 2017

¹⁶ DWP, [A proposed methodology for equalising pensions for the effect of GMPs – public consultation](#), November 2016

member of the opposite sex (the opposite sex notional comparator calculation);

and the higher of the two should then be paid as the member's entitlement.¹⁷

However, because of concern from industry that its proposed approach would be particularly onerous to implement, the Government withdrew the draft regulations in 2013. In 2016, it launched a further consultation on an alternative methodology:

3.22. The method put forward by the group is one which compares the value of the future expected cash flows for the member in the period that needs to be adjusted for GMP inequalities (i.e. during the period from 17 May 1990 to 5 April 1997) with that for the opposite sex comparator, allowing for contingent benefits. If the opposite sex comparator has the greater discounted value of expected cash flow, then that greater value is delivered. (Schemes will have to consider whether it is appropriate to use the cash equivalent transfer value method, or whether another method would be more appropriate).

3.23. In order to avoid having to then comply with the unequal requirements of the GMP legislation, the GMP is also converted into a benefit that is not subject to the requirements of the GMP legislation. Because of the benefits that simplification provide, it is likely that all the GMP will be converted; not just that which accrued between 1990 and 1997. The pension that accrued alongside the GMP that is to be converted may also be put through the conversion process. All of this is achieved through the GMP conversion legislation set out in sections 24A to 24H of the *Pension Schemes Act 1993*.¹⁸

In its response to the consultation in 2017, DWP said there was broad agreement that the proposed methodology was a distinct improvement on the 2012 proposal and offered a relatively simple way to convert GMPs into ordinary scheme benefits.¹⁹

Pension Protection Fund

The Pension Protection Fund (PPF), set up under the [Pensions Act 2004](#) to provide compensation to members of defined benefit pension schemes that wind up underfunded on the insolvency of the sponsoring employer. The Act required that there should be no discrimination between men and women when calculating entitlement to PPF compensation.²⁰

In 2011, the PPF carried out its own consultation on how this should be implemented. A [statement](#) in December 2012 said that schemes transferring to the PPF from June 2013 onwards would be expected to calculate compensation taking account of equalisation for GMPs and the statutory minimum prior to transfer. It set out the procedure schemes would be required to take (para A.5). There is [guidance on its website](#).

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid, para 4.2

²⁰ Section 171

Public service pension schemes

In 2016, the Government launched a consultation on how it should continue to meet its obligations to index-link and equalise the GMP entitlements of public service pension scheme members.²¹ It explained that until April 2016, the additional State Pension (SERPS/S2P) had provided a mechanism that equalised and fully indexed public service pensions. However, the introduction of the single tier State Pension in April 2016 would remove that:

1.1 On April 6 2016, the government introduced the new State Pension (nSP), designed to radically simplify pension provision, while ensuring that pensioners have security in retirement. This simplification removed layers of complexity from the system, harmonised the rate of National Insurance contributions (NICs) paid by employees and employers, and is promoting private saving by giving people a better understanding of the amount of support they can expect to receive from the State when they reach State Pension age (SPa).

1.2 Among the layers of complexity removed was the Additional Pension (AP) – a complex earnings-related element of the old state pension. With the removal of the AP, the government needed to consider how public service pension payments for a specific group of members should be increased in future. Specifically, those who were in 'contracted-out' employment during the period 6 April 1978 to 5 April 1997 and accrued a guaranteed minimum pension (GMP) from their public service pension scheme.

1.3 Under the arrangements that previously applied the public service pension and the AP system worked in tandem. This provided a mechanism that equalised and fully indexed pension payments (of both state pension and occupational pension) for public servants, in line with commitments made to these members by previous governments. These included statutory provisions legislated for in 1979 that provided for the GMP earned during membership of a public service scheme to be increased by the scheme when it was not in effect being increased through the AP. However, with the removal of the AP, that particular mechanism no longer works. An estimated 2 million members of public service schemes with GMPs, who reach their SPa until 2050, may be affected.

1.4 If the government does not act, men and women would be treated differently and GMP pension payments would no longer be in effect indexed.²²

In March 2016, the Government announced an interim solution. It would continue to price protect the GMPs of public servants who reached State Pension age after 5 April 2016. In January 2018, it announced that it had decided to extend this interim solution, during which time it would investigate the alternative long-term methodology on how to convert GMPs into ordinary scheme benefits.²³

²¹ HM Treasury, [Indexation and equalisation of GMP in public service pension schemes](#), 28 November 2016

²² HM Treasury, [Indexation and equalisation of GMP in public service pension schemes: government response](#), January 2018

²³ Ibid

2.4 Lloyds Bank case

On 26 October 2018, the High Court issued its judgment in the case of [Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank PLC and others](#).²⁴ At issue was whether the Trustee was under an obligation to equalise GMPs:

6. In the present case, a number of female members of some of the pension schemes with which this case is concerned took action to enforce what they said were their rights to equality of treatment in relation to pension benefits. In response to that action, the trustee of the three pension schemes with which this case is concerned has brought these proceedings to obtain the ruling of the court on a number of issues which have been identified. In summary, the principal issues are:

- (1) is there an obligation to equalise benefits?
- (2) if so, what method should be adopted in order to equalise the benefits?

The court determined that the Trustee was “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.” It ruled on which methods of equalisation could be used and said beneficiaries were entitled to receive arrears of payments due to them.²⁵

Lawyers acting for the beneficiaries highlighted the following aspects of the judgment:

In particular, the Judge held that:

- a. The totality of benefits paid to members under the schemes had the character of pay for the purposes of Article 157 of the Treaty on the Functioning of the European Union.
- b. Whilst he did not need to decide the point (because of his conclusion on the application of Article 157), on the literal wording of section 67 of the *Equality Act 2010* it could be strongly argued that the payment of unequal benefits under the schemes was unlawful under section 67 itself.
- c. It was not open to the Trustee to say that it was lawful to pay the unequal benefits on the ground that there is an objective difference between the position of males and females arising from the GMP legislation. The unequal treatment in issue arose from the GMP rules which were a proxy for the difference in sex (the Judge thus rejected the Banks attempt to rely, by analogy, on *Roberts v Birds Eye Walls Ltd* (C-132/92) [1994] ICR 338 and *Hlozek v Roche Austria GmbH* (C-19/02) [2005] 1 CMLR 28).
- d. For the same reason, it was not lawful to pay unequal benefits on the ground that the defence of material factor under section 69 of the *Equality Act 2010* applied.²⁶

In a statement, Lloyds welcomed the clarity provided by the judgment:

The hearing focused on what is a complex and longstanding industry-wide issue. The group welcomes the decision made by the court and the clarity it provides. The group and the pension

²⁴ [2018] EWHC 2839 (ch), 26 October 2018

²⁵ *Ibid* Part IX

²⁶ [‘Judgment in the Lloyds GMP Equalisation case’, Outer Temple Chambers, 26 October 2018](#)

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scheme trustee will be working through the details in order to implement the court's decision.

It estimated the cost of the ruling as far (as it was concerned) to be between £100 and £150 million.²⁷

Experts estimated the cost across all contracted-out schemes at £15 bn – a figure that was lower than previous estimates, in part due to the fact that the court had decided that arrears could be restricted to six years if scheme rules allowed.²⁸ Lawyers for the beneficiaries of the judgment said it would have “significant financial and legal consequences”:

In 2012 the Occupational Pension Schemes Joint Working Group estimated the cost of implementing GMP equalisation programmes for all private sector contracted out schemes on a basis of equalising actuarial values (which the Judge held was not a permissible method because it breached the principle of minimum interference) at £13 billion (with up to £300 million in implementation costs). The Pensions Management Institute estimated GMP equalisation costs to be in the region of £10 – 20 billion. The limitation issues that arise from the decision on s21(1)(b) of the *Limitation Act 1980* and section 134 EA 2010 will be relevant in a wide range of contexts (not least professional negligence claims).²⁹

BTU, the trade union representing Lloyds staff who had taken the case, said the judgement would have profound implications for schemes.³⁰

Former Pensions Minister Steve Webb said the judgement was likely to create “a big headache for schemes and employers.”³¹ Some pension schemes have issued notices to their members on the implications of the judgment.³²

In response to a debate on 14 February 2019, Work and Pensions Minister Baroness Buscombe said that the High Court judgment had endorsed the Government's long-held position that schemes must equalise for the effect of inequalities in GMPs. The Government intended to make further changes to GMP conversion legislation to facilitate the methodology on which it had consulted. The representative beneficiaries in the Lloyds case sought leave to appeal on two points of the judge's decision concerning the methodology favoured by them and the requirement to provide back-payments. However, leave to appeal had been refused.³³

In September 2019, the Pensions Administration Standards Association issued guidance on [Equalising for the Effects of Guaranteed Minimum Pensions](#).

²⁷ [Companies face £15bn bill after court bans unequal pension payments to men and women](#), *Financial Times*, 26 October 2018

²⁸ *Ibid*

²⁹ [‘Judgment in the Lloyds GMP Equalisation case’, Outer Temple Chambers, 26 October 2018](#)

³⁰ [Union wins landmark legal case, BTU, 26 October 2018](#)

³¹ [Bank faces £150m bill after landmark pensions ruling](#), *People Management*, 29 October 2018

³² [Railways Pension Scheme, Lloyds Bank – GMP Ruling Statement, 1 November 2018](#)

³³ [HC Deb 14 February 2019 c1961](#)

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