summary of the Lloyds Bank judgement

1.1 The Lloyds Bank decision was by the High Court on 26 October 2018, and it is possible that there will be an appeal. It is safe to assume that, even if there is an appeal, there will still be a legal obligation to equalise GMPs from either a higher court or legislation.

(a) The main issue decided by the Court is that GMPs are pay and therefore must be equalised.

(b) The short answer to the question how they are to be equalised is that there are four possible methods, A to D and variants of them.

method A: equalise each unequal aspect separately;

method B: provide better of male or female comparator pensions each year by setting off the separate elements each year;

method C: provide better of male or female comparator pensions each year, subject to accumulated offsetting;

method D: complete one-off actuarial equivalence.

1.3 Methods A to C require additional records to be kept and year by year equalisation calculations and so are suitable only for continuing Schemes. These methods are likely to be unsuitable for schemes to be wound up or bought out and small scheme which do not wish to make additional periodic equalisations in the future.

1.4 The judge reached the following conclusions about methods A to C.

> Section 393 The result of the above is that method A3, promoted by the RBs [representative beneficiaries], infringes the principle of minimum interference, judged from the standpoint of the Banks and method D1, promoted by the Banks, infringes the principle of minimum interference, judged from the standpoint of the beneficiaries. If one rules out method A3 and method D1 on those grounds, that leaves methods B and C for consideration. Method C is somewhat less costly than method B and method C2 is somewhat less costly than method C1. In those circumstances, applying the principle of minimum interference again, the Banks are entitled to say that the Trustee must adopt method C2 and may not adopt method C1 or method B.

1.5 Method D is divided into methods D1 and D2. In each the unequalised benefits and his or her comparator are valued actuarially as a one-off exercise without the need to reconsider equalisations in future years.

(a) In D1, if the present value of a member's entitlements is less than that of the comparator, it is increased to the present value of the

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comparator's entitlements, and the difference is calculated as an annuity, which is added to the member's prospective pension.

(b) D2 involves removing the GMPs from the benefits by converting them to scheme benefits of equal or greater value, which is provided for in s13(1A) and s24A to s24H of the Pension Schemes Act 1993, inserted by the Pensions Act 2007 s14. This method requires the employer's consent.

The judge's conclusions included two about method D.

> Section 472 In summary, my conclusions are as follows:
>
> …
>
> The Trustee is not entitled to adopt method D1 because that method infringes the principle of minimum interference judged from the standpoint of the beneficiaries;
>
> Method D2 is not at present available to be adopted as the Banks have not consented as required by section 24E(2) PSA 1993. However, in principle, it is a lawful method to which the Banks could consent and the GMP conversion legislation used in Method D2 does enable conversion of survivor's benefits;

the judge's second thoughts

2.1 In section 392 of the judgement (extract below), the judge gives the example, which employers and trustees might use to equalise GMP as a one-off exercise, and then convert them to scheme DB benefits.

> This point can be illustrated by an example. If the Trustee first amended the Schemes by using method C2 and thereby provided equal benefits in a way which I have held is permissible, the Trustee could thereafter use the power to convert given by sections 24A to 24H of PSA 1993 (providing the consent of the employers was obtained). That would produce a result similar to method D2, whereby all members are treated equally on the basis of actuarial equivalence. That result would be permitted by the statutory provisions and would not infringe Article 157 or section 67 EA 2010.

2.2 On 6 December 2018 a judgement was given on consequential matters, including the order to be made, on which the judge had heard submissions on the 3rd. The judge had second thoughts about the conversion of GMPs to scheme benefits and concluded that method D2 is lawful without the need for it to be preceded by equalising pensions.

conclusion

3 It is likely, it seems to me, that, for many pension scheme trustees and employers, the conversion of GMPs to scheme benefits under method D2 will be the most attractive way to deal with equalising GMPs.

END