

the 2018 decisions

- 1 The first decision, [2018] EWHC 2839 (Ch), handed down on 26 October 2018, was that pension benefits payable under the bank's pension schemes including GMPs are pay, the unequal treatment of members resulting from unequal treatment of male and female members under the GMP legislation was sex discrimination, and therefore the total benefits must be equalised. A supplementary decision ([2018] EWHC 3343 (Ch)), about the form of the order in the first decision was handed down on 6 December 2018.
- 2 In one of my pension law updates for New Year 2019, I concluded that, for many pension scheme trustees and employers, the conversion of GMPs to scheme benefits under method D2 in the first decision will be the most attractive way to deal with equalising GMPs.

the 2020 decision

- 3 The decision in Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank Plc [2020] EWHC 3135 (Ch), handed down on 20 November 2020, deals with the liability of the trustees to make good shortfalls in the amounts of transfer values which included unequalised GMPs.
- 4 The effect of this decision is that trustees of contracted-out defined benefit occupational pension schemes are in breach of duty and liable to make top-up payments, if they had made payments in respect of members, who had transferred to another scheme, which were inadequate because benefits including GMPs has not been equalised. Trustees should be pro-active to perform their duty to make top-up payments and do not require a court order to do so.
- 5 This duty does not apply to all transfers.
 - (a) Inadequate transfers under the cash equivalent provisions of the Pension Schemes Act 1993 must be compensated.
 - (b) Inadequate transfers made in compliance with the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 reg 12 need not be compensated.
 - (c) Inadequate transfers made under a power conferred by the scheme's rules and with the preservation of benefit legislation need not be compensated.

Members in categories (b) and (c) wishing to claim compensation claiming would have to seek to have the transfers set aside.

Roderick Ramage

BSc(Econ) solicitor

authorised and regulated by the Solicitors' Regulation Authority number 231800

Copehale, Coppenhall, Stafford, ST18 9BW

01785-223030, roderick.ramage@law-office.co.uk, www.law-office.co.uk

- 6 Trustees are not discharged from their duty by the length of time since the breach occurred, any discharge forms signed by members or by any duty of a receiving scheme to equalise benefits.

notes and details

- 7 Para 3 to 6 are a scant summary of the judge's own summary of a judgment of more than 100 pages (over 400 paragraphs), in the course of which, in response to questions and problems raised in argument, the judge said this.

276 In these circumstances, all that I can usefully say is that the Trustee does need to be proactive in that it must consider the rights and obligations which I have identified, the remedies available to members and the absence of a time bar and then determine what to do".

The following points, some perhaps obvious, might, I hope, be a starting point for trustees and employers planning what to do pending the publication of the minute of order implementing the judgment.

- (a) GMPs accrued from 17 May 1990 to 5 April 1997.
- (b) The payment of a pension is not a transfer but a benefit to be equalised in accordance with the 2018 decision.
- (c) Identify all members in the three categories (a), (b) and (c) in para 5 above and gather all available information (including information about GMPs transferred in) about them and the transferee schemes and their contact details.
- (d) Assume in respect of members in category (a) that the requirement for trustees to be proactive includes a requirement to discharge the liability to make top-up payments.
- (e) Consider deferring any decisions about members in categories (b) and (c) until claims if any are made by former members or transferee schemes.
- (f) Make broad brush estimates of amounts of the top-up payment, being the difference between the original transfer payment and what would have been paid if benefits had been equalised at the time, with simple interest at base rate plus 1% pa (mainly paras 254, 255 and 263 of the judgement).
- (g) Identify in respect of members in category (a) what information is unavailable or incomplete, about which some robust and pragmatic decisions might be necessary.

END