

# Schemes required to equalise past transfer values for GMP inequalities



## What you **need to know**

- The latest High Court judgment in relation to the Lloyds Banking Group Pension Schemes has confirmed that trustees of defined benefit (DB) pension schemes will need to revisit individual transfer payments made since 17 May 1990 to check if an additional amount is due to equalise for the effects of unequal guaranteed minimum pensions (GMPs).
- This does not change what trustees should already be doing to equalise the benefits of current members for GMPs, and certainly should not distract attention from this. However, the additional category of members will add a significant section to the GMP equalisation project.
- Trustees and sponsors will also need to assess the impact of this addition on schemes' liabilities. A pragmatic approach will be needed given the likely gaps in the historic data.
- Although the cost of checking members' entitlement may outweigh the additional payments due, trustees still have duty to establish the extent of their obligation and determine a reasonable and proportionate approach. Indeed, the High Court judge stated that trustees must be proactive in doing this. Given that members are likely to ask about their entitlement, and have already started to do so, trustees will need a process to manage this.



## **Actions** you can take

- **Assess** the impact. It is important to do this both at scheme-level and member-level to understand what the scheme's obligations are and how any decisions may affect members.
- **Get in touch** with former members or their receiving scheme. This should include mortality screening to check they are still alive, and tracing and verification methods to ensure the correct person has been found.
- **Determine** how to provide these additional benefits.

## Types of transfers considered in the judgment

Item	Transferring scheme	Receiving scheme
<b>Statutory transfers (cash equivalent transfer values or CETVs)</b>	Need to identify the additional amounts owed to members and how these can be provided to them	Need to adjust the benefits provided to equalise in relation to GMPs – it is unclear if this also applies to defined contribution (DC) schemes or personal pensions
<b>Bulk transfers (between two DB schemes)</b>	No action likely to be needed where 'mirror image' benefits were provided. If not, trustees will need to undertake further investigation	Need to adjust the benefits provided to equalise in relation to GMPs
<b>Non-statutory transfers under scheme rules (e.g. where members were close to retirement or took a partial transfer)</b>	Trustees may need to pay additional benefits if a member can show a 'breach of duty' was committed due to the payment not being calculated on an equalised basis	Need to adjust the benefits provided to equalise in relation to GMPs – again, it is unclear if this applies to DC schemes or personal pensions

# The finer detail: Key areas to consider for revisiting transfers for GMP equalisation

<b>Data</b>	Given the likely lack of data, trustees may need to take a pragmatic approach to the calculations.  Although trustees may not wish to set a 'de minimis' limit on top-up payments, estimated amounts could be used to determine how much additional data to collect.
<b>Tracing members</b>	Trustees will need to establish an approach to tracing and verifying former members who have transferred out. This could be done before calculating payments in case members can be excluded.
<b>Time limits</b>	As there are no time limits on claims from transferring members, neither under the scheme rules nor under the Limitation Act 1980, trustees will need to review all cases dating back to 17 May 1990. Trustees may also wish to consider their approach to applying a limitation period for back payments to current members for consistency with this.
<b>Provision of top-up benefit</b>	Any top-up payment made to the receiving scheme should reflect the shortfall due at the date of the transfer plus interest at 1% pa above base rate. Alternatively, trustees could agree a different solution with the member, such as a payment to another scheme, cash payment (in certain circumstances) or residual benefit in the original scheme. Trustees will need a process to do this, since many of the original receiving schemes may not be able to accept additional transfers.
<b>Transfer-in review</b>	Trustees need to ensure their equalisation projects take account of any GMP inequalities arising from transfers received, whether on an individual or bulk basis, and regardless of whether they receive a top-up payment from the transferring scheme.
<b>Impact on overall approach to GMP equalisation</b>	This addition should not distract from ongoing GMP equalisation projects. Decisions taken for current members could be applied to the review of transfer values, or trustees may choose to take a different approach to some decisions, such as the equalisation method used.
<b>Any exceptions?</b>	The judgment confirms that transferring scheme trustees cannot rely on any forfeiture provisions in their scheme rules, nor on any statutory, scheme-based or express agreement from a member to discharge their duty to make a top-up payment. This includes any discharge forms signed by individual members at the time of the transfer.  There is a possible exception for non-statutory transfers, where trustees have properly exercised their discretionary powers: in this case, it will be down to the member to prove to a court that the trustees had committed a breach of duty at the time of the transfer.
<b>Impact on scheme liabilities</b>	The impact on year-end company accounts and funding liabilities is likely to require an estimate based on incomplete data.
<b>Considering other benefit rectifications</b>	The judgment could have wider implications for other past transfer payments which turn out to be incorrect for reasons other than GMP inequalities, such as other benefit rectifications. These may also need to be considered as part of this exercise.

For further information, please get in touch with **Vicky Mullins** or **Lisa Hayes** or speak to your usual XPS Pensions contact.



**t** 0203 725 7017  
**e** vicky.mullins@xpsgroup.com



**t** 0118 918 5006  
**e** lisa.hayes@xpsgroup.com

**twitter** @xpsgroup

**linkedin** xpspensionsgroup