CARTWRIGHT

GMP EQUALISATION – REVISITING PAST TRANSFER VALUE PAYMENTS

The judgment in the first "Lloyds Bank" court case in October 2018 confirmed that trustees of defined benefit pension schemes which were contracted-out of the State Earnings-Related Pension Scheme (SERPS) between 1990 and 1997 must take action to address the inequalities in members' benefits which are a result of Guaranteed Minimum Pensions (GMPs) being calculated differently for men and women. If a member's benefits would be higher by calculating their benefits accrued since 1990 using the GMP applicable to an individual of the opposite sex, then they must be increased accordingly, including paying arrears to members who have already retired. This is known as "GMP Equalisation".

A recent judgment in another Lloyds Bank court case has now confirmed that this obligation to implement GMP Equalisation also covers transfer values paid out of schemes since 1990. Trustees will now need to consider the implications of this judgment and how to address the considerable practical difficulties which may be faced in its implementation.

The Judgment

Where a member has exercised their statutory right to a Cash Equivalent Transfer Value (which covers the vast majority of transfer cases) and the amount transferred would have been greater allowing for GMP Equalisation, the trustees of the transferring scheme must pro-actively take steps to make a top-up payment to the receiving arrangement, regardless of any discharge forms completed at the time.

An individual is only entitled to a top-up payment as a result of GMP Equalisation, not an additional benefit in the original transferring scheme. This top-up payment is to be calculated at the original date of transfer and then increased with interest at 1% above bank base rate.

There is no Statutory Limitation for claims to be made by members who have transferred out, so trustees will have to consider transfer values from 1990 onwards.

Comments

There will be significant practical difficulties in implementing this judgment. Does the data required to calculate the top-up payment exist? Can the trustees contact the individual affected? Is this individual still a member of the original receiving arrangement and is that arrangement willing to accept a top-up payment? Are there any de minimis limitations and can a pragmatic approach be taken on grounds of materiality?

Trustees will need to work through these issues with their advisers. It is also anticipated that industry-wide pension organisations such as the Pensions Administration Standards Association (PASA) will consider the practical issues involved and issue guidance on possible approaches.

More immediately, employers considering their year-end accounting disclosures may wish to discuss with their auditors the extent to which, and how, the potential additional liabilities should be reflected in their accounts

If you would like to discuss any of these matters further, please get in touch with your usual contact at Cartwright.

November 2020

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