

Time for Some Spring Cleaning? Ombudsman's Determination Shows Need to Press on With GMP Equalisation

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With the Pension Schemes Bill on its way in “late Spring”, now might be a good time for trustees to take stock of their trustee agendas and to brush off some items that may have been left to gather dust. A recent Pensions Ombudsman [determination](#) serves as a useful reminder that, for most schemes, GMP equalisation is not yet done and dusted.

The determination concerned a former member of a pension scheme (Mr N), who had taken a transfer out of the scheme some 30 years earlier. His complaint related to seeking a recalculation of his transferred-out benefits in light of the requirement to equalise for GMPs.

The key takeaways from Mr N's case are that:

- **Trustees should continue to progress their GMP equalisation projects diligently and promptly.** Don't put off collaborating with the employer or taking professional advice. It is important to formulate and implement an appropriate methodology.
- **GMP implementation involves many stages and will take some time to complete.** The Pensions Ombudsman (TPO) made the point that GMP equalisation is a difficult and complicated project and it is important to ensure it is carried out correctly. TPO said that although it should not be unnecessarily delayed, it is understandable that it will take a reasonable amount of time to implement. Notwithstanding TPO's comments, trustees should bear in mind that the longer it takes to carry out GMP equalisation, the more likely trustees are going to encounter complaints from members and other beneficiaries.
- **Good communication with those affected by GMP equalisation projects is paramount. If a member or, indeed, former member asks for an update on progress, provide it.** As trustees are painstakingly aware, it is real people who are affected by a delay in the recalculation of benefits. During a cost of living crisis in particular, the uncertainty of being in long-term financial limbo can create anxiety, even if benefit adjustments are likely to be minimal and represent an improvement. Good communication is key.

A Bit of Background

The first Lloyds case in 2018 confirmed a requirement for schemes to equalise for the effect of GMPs. This decision left a lot of unanswered questions, some of which were considered in later judgments. In particular, the November 2020 judgment ([Lloyds 3](#)) dealt with the treatment of past transfers. In Lloyds 3, the court ruled that in the case of transfers made under the cash equivalent legislation, the trustee of the Lloyds schemes remained liable for a failure to pay the correct (i.e. equalised) cash equivalent transfer value amount. Note that the position was different where the transfer from the Lloyds schemes was as a result of a bulk transfer, or was a non-statutory individual transfer under the relevant Lloyds scheme rules.

How Was This Relevant to the Case of Mr N?

Mr N had taken a transfer out of his occupational pension scheme some 30 years earlier. It seems not at all surprising that the actual details of Mr N's benefits were no longer available, although the scheme appears to have retained a record of the transfer out. The lack of data relating to his records formed part of Mr N's complaint, along with a lack of a plan or timetable for carrying out GMP equalisation. While the pension scheme trustee of Mr N's former scheme had provided updates to existing members about the Lloyds decisions and the steps that the trustee was taking, it had not, understandably, provided updates to past members.

What Did The Pensions Ombudsman Decide?

TPO agreed with the opinion of his Adjudicator, which was summarised in the determination. Mr N was awarded £500 for distress and inconvenience caused by the trustee's maladministration. But what maladministration took place?

Lack of a Plan or Timetable for Carrying out GMP Equalisation

What you might expect to form the main basis for a finding of maladministration, did not. The Adjudicator and TPO agreed that in the circumstances of Mr N's particular scheme, the events complained about were taking place in 2023 so five years since the passing of the first Lloyds decision in 2018 and three since Lloyds 3 and that was not an unreasonable period of time to take to resolve all the issues. The Adjudicator considered all the steps the trustee had taken and was taking to deal with GMP equalisation and thought that those measures (e.g. forming a joint working group with the employer and involving professional advisers to develop and adopt an appropriate methodology), comprised appropriate actions to address the issues. The timescales involved were not considered unreasonable in the circumstances.

Lack of Past Member Records

Likewise, there was no specific criticism of the lack of complete records in relation to Mr N. The Adjudicator noted that TPR guidance does require some limited record retention in relation to past members but, again, the Adjudicator was not so concerned with the retention (or lack of retention) of records in this particular case saying that this did not amount to maladministration. Significantly TPO said that Mr N had failed to show that he incurred any loss as a result of the perceived maladministration.

In case you were wondering, [TPR's record keeping guidance](#) requires the retention of:

- member's name
- transfer terms

- name of the scheme into or out of which the member has been transferred
- transfer date
- date of receipt or payment of money or assets.

Lack of Communication with Mr N

This is the hurdle at which the trustee fell. While the Adjudicator acknowledged that it would be difficult for the trustee to easily establish communication with all members impacted by the review, in particular those like Mr N who left the scheme many years before, he considered that it nonetheless had a responsibility to attempt to do so and that it was unclear why the trustee failed to update Mr N, specifically, on progress when it was aware that Mr N was clearly concerned about progress.

In addition, TPO opined “Mr N originally contacted the trustee to ask how the [Lloyds 1] and [Lloyds 3] judgments affected him. Having started that line of communication with the trustee, and provided contact details, the trustee agreed to keep him updated on the progress of the project. However, it did not do so. Therefore, I agree that the trustee’s failure to keep Mr N informed of progress, as it undertook both to Mr N and to TPO to do, will have caused him unnecessary distress and inconvenience.” Mr N was awarded £500 for maladministration.

Some Final Thoughts

This determination, while recognising the complexity of GMP equalisation, does highlight the likelihood that the longer it takes schemes to implement GMP equalisation, the more likely it is that schemes will receive member complaints. Trustees should knock the cobwebs off their GMP equalisation plan and consider it afresh. Outstanding issues should be analysed and addressed, and advice taken where appropriate so that trustees can move forward with good quality data ensuring that members know where they stand in relation to their benefit entitlements.

And if that wasn’t a good enough reason to revisit their GMP equalisation plan, implementation will mean that trustees are one step closer to complying with their [general code requirements](#) to keep accurate and complete data, and they will be one step closer to being dashboards ready.

A final thought. In a [recent speech](#) at the Pensions Age Conference, Patrick Coyne, Interim Director of Policy and Public Affairs, said that improving data must be the first step to innovation in pensions. He commented on feedback that the pensions industry wants to increase the use of automation and pointed out that “if the data going into the system isn’t up to scratch, you’re automating rubbish.” Enough said!

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