

# Sixty second summary

## GMP equalisation update: data issues & lump sum taxation

The Guaranteed Minimum Pension Equalisation Working Group (GMPEWG) has published guidance on how to prepare scheme data prior to equalising pensions for the sex-based disparities generated by GMPs.<sup>1</sup> Hard on its heels, Her Majesty's Revenue and Customs (HMRC) published a Newsletter devoted to the implications of GMP equalisation for various types of lump sum payment.<sup>2</sup>

### Data guidance

The GMPEWG is a cross-industry partnership formed under the banner of the Pensions Administration Standards Association (PASA) to help trustees conduct GMP equalisation exercises. This is the third guide that it has produced: previous instalments covered equalisation methods and the timing of efforts to rectify member records.<sup>3</sup>

The goal of the guidance is to enable trustees to discuss with their administrators and advisers the actions that can be taken to prepare for equalisation. It is agnostic as to the equalisation method that will be used; however, that will determine the nature and extent of the data required (for example, if GMP conversion is to be used the exercise may take into account service periods beyond those strictly within scope of the legal obligation to equalise for GMP differences, which only applies to those with service from 17 May 1990 on).

The guidance provides a considerable amount of technically detailed information about the data that might be required, as well as potential problems that may arise and some possible workarounds that could be useful if they do. However, it also provides a summary of the main data-related tasks facing trustees that are undertaking GMP equalisation exercises:

- identify the data that are needed and what are available (more data may be required for the equalisation exercise than was needed for day-to-day benefit administration);
- decide whether it is most cost-effective to obtain all of the required data at once, or whether they can prioritise those groups that will be affected soonest or for which the impact of equalisation will be most material;
- decide which advisers will be responsible for data-related work and ensure that if more than one is involved they are able to communicate effectively;
- consider the need for consistency between data-related decisions in connection with GMP equalisation and those made with regards to similar projects such as *Barber* equalisation, and GMP reconciliation and rectification;
- based on the available data and characteristics of the scheme and its members, choose the appropriate method of calculating the pension elements for hypothetical opposite-sex comparators for affected members.

<sup>1</sup> *Guidance on Data* (July 2020) <[www.pasa-uk.com/wp-content/uploads/2020/07/GMPE-Data-Guidance-vFINAL.pdf](http://www.pasa-uk.com/wp-content/uploads/2020/07/GMPE-Data-Guidance-vFINAL.pdf)>.

<sup>2</sup> *Guaranteed Minimum Pension (GMP) Equalisation Newsletter—July 2020* <[www.gov.uk/government/publications/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020](http://www.gov.uk/government/publications/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020)>.

<sup>3</sup> *Guidance Note on Methods* (September 2019) <[www.pasa-uk.com/wp-content/uploads/2019/10/Equalising-for-the-Effects-of-GMPS-September-2019-FINAL.pdf](http://www.pasa-uk.com/wp-content/uploads/2019/10/Equalising-for-the-Effects-of-GMPS-September-2019-FINAL.pdf)>; *When to Rectify* (March 2020) <[www.pasa-uk.com/wp-content/uploads/2020/04/GMP-Rectification-March-2020-FINAL-formatted.pdf](http://www.pasa-uk.com/wp-content/uploads/2020/04/GMP-Rectification-March-2020-FINAL-formatted.pdf)>.

Different approaches are discussed for calculating pension elements. They include a method that makes *pro rata* adjustments to members' benefits, calculation from first principles using Contracting Out Earnings data, and use of HMRC's 'Dual Calculation Service' (AKA the 'GMP Checker'). A broad-brush approach is also considered for cases where significant data are unobtainable. The guidance highlights that approaches for constructing opposite-sex records should align with scheme practice for own-sex records.

With the release of this data guidance, and HMRC issuing final data cuts to schemes, many trustees will now wish to make progress in preparing their data for GMP equalisation. In practice, obtaining all of the data needed from recent decades to create opposite-sex records may not be possible: the practical options in the guidance will be helpful for those who find themselves in this situation. Trustees will need to assess and balance carefully the cost and precision of the different approaches.

### Tax aspects: lump sums

HMRC's *Newsletter* allays some fears about the potential adverse tax consequences of equalisation when benefits have been paid out in the past in lump sum form. As well as trivial commutation and small lump sums, the update covers lump sums paid where a member has retired on the grounds of serious ill-health and those used to discharge liabilities as a part of a winding up.

It is a condition of many of the lump sums authorised by the tax legislation that they extinguish completely the member's entitlement to benefits. One concern that arose was that an equalisation exercise could mean that, in retrospect, the 'extinguishment' condition had not been met, making the payment unauthorised and triggering penal tax charges. The *Newsletter* says that the identification of an additional entitlement because of GMP equalisation will not by itself 'de-authorise' the earlier lump sum payment: the deciding factor is what was reasonably known at the time. Furthermore, it seems to say that, in '*the exceptional circumstances associated with GMP*', reasonable knowledge about the additional entitlement is only assumed to have been gained '*once the scheme administrator adopts their chosen GMP equalisation methodology*'. This suggests that some trustees who have put payments on hold pending clarification of the tax implications of equalisation could resume making them.

The situation is more complicated for a trivial commutation lump sum. Retroactive de-authorisation is a prospect if GMP equalisation means that a member did not, with hindsight, meet the conditions for a trivial commutation lump sum because the value of his or her benefits exceeded the '*commutation limit*' that applied at the time. It might be possible to pay out additional amounts arising from GMP equalisation without adverse tax consequences in some cases under the £10,000 'small lump sum' rules. Otherwise the risk is that a payment will be unauthorised.

As anticipated, the guidance does not cover GMP conversion, and says that '*more detailed work needs to be done on the wider issues associated with that methodology.*'

The industry will welcome the additional clarity brought by HMRC's guidance. Since the *Lloyds* judgment, many schemes have been wary of potential adverse tax consequences from continuing to offer lump sums to members where GMP equalisation could alter their benefits. The guidance explains what could cause a tax charge and restricts it to a relatively narrow set of circumstances. This will allow those schemes that have put some lump sum payments on hold to consider reintroducing these options if they now wish to do so. However, some complexity remains, and trustees are likely to want to discuss this with their advisors before taking any immediate action.