Equalising the effects of GMPs

The Government's proposals

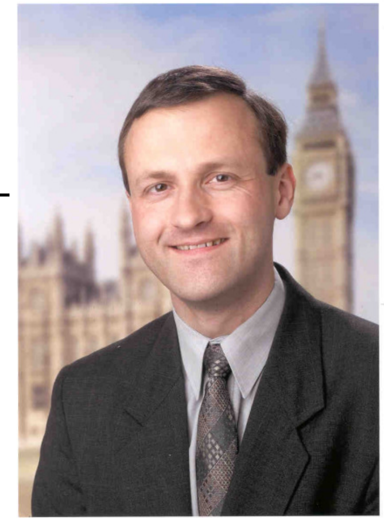
Duncan Buchanan
Charles Young

February 2012

A Talk in Three Parts

- **Part 1**
  - the Government's proposals
  - Discussion from floor
- **Part 2**
  - Problem areas in practice
  - Discussion from floor
- **Part 3**
  - How to simplify the problem
  - Discussion from floor

Part 1 – Government Proposals



13 April 2011 – Steven Webb

I …remain of the opinion that schemes must equalise for the effect of GMP rules….As a consequence I have decided to take the amendment forward…

I wish to offer **as much help as is practicable** and so I have asked my officials to **draft guidance** on how a scheme might approach equalisation.

It is currently my intention to consult on the guidance in draft alongside the proposed legislation before the end of the year

Why are GMPs unequal

- GMPs are a function of legislation
- Inequalities mirror those of SERPS so:
  - Different GMP pension ages – 60 (f) 65 (m)
  - Females enjoy a higher accrual rate
  - Rates of revaluation in deferment
  - Rates of increase in payment
  - Anti-franking requirements
- GMPs can only be equalised if legislation changed
- Schemes can however adjust total benefits so as to equalise

The Current Position

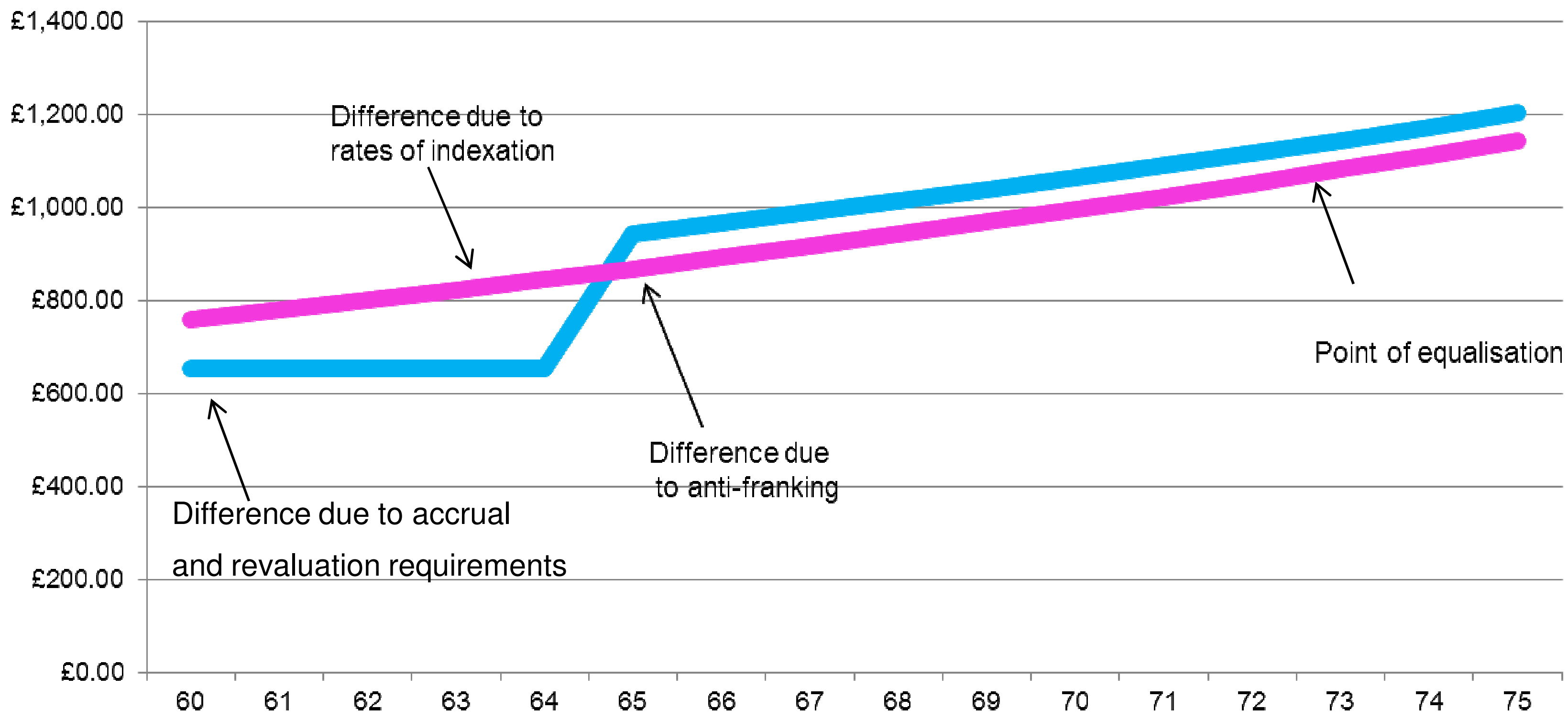
- 20 January DWP issued:
  - Draft Regulations
  - Draft guidance on how to equalise
- Consultation ends in April
- Cost of compliance
  - Around 1% or 2% of scheme liabilities
  - £10 or £20 billion
  - Plus implementation costs (record keeping and systems, legal and actuarial advice)
- Too complex for general media comment

The Draft Regulations

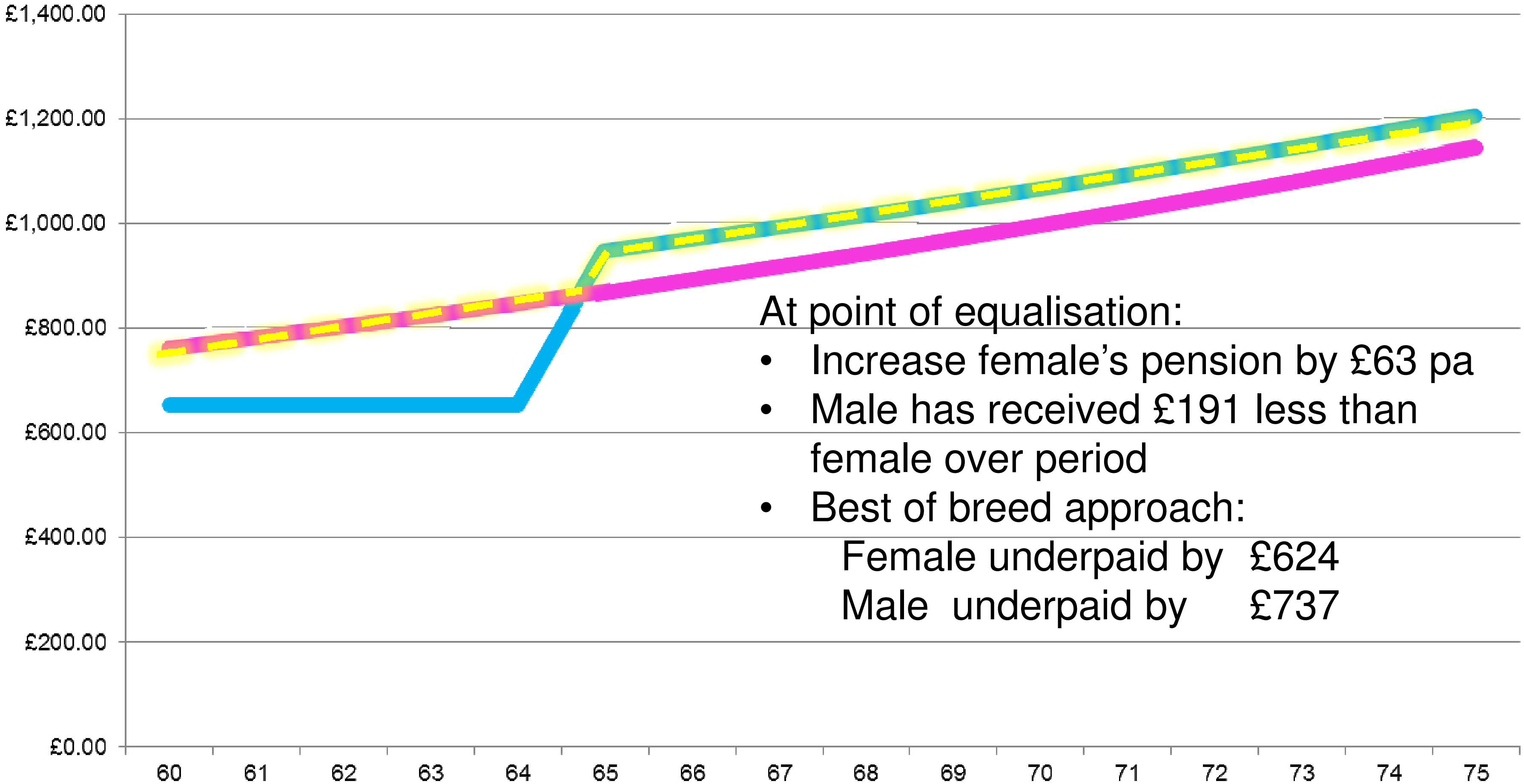
- Government's statement – Allonby
- No need for comparator when equalising GMPs
- Draft regulations actually go much further:
  - Amend provisions of the Equality Act
  - Also amend Pensions Act – PPF compensation provisions
- Concern is amendments impose positive obligation on schemes to equalise the effects of GMPs
- Government view is that this obligation already exists – so why need to legislate at all
- Use of European Act 1972 being considered

Draft Guidance

- Adopts a "best of breed" approach
- Pay member the higher benefit of male or female



Draft Guidance – Best of Breed



At point of equalisation:

- Increase female's pension by £63 pa
- Male has received £191 less than female over period
- Best of breed approach:

  Female underpaid by £624

  Male underpaid by £737

Thoughts on Guidance

- Best of breed is the most expensive option
- Guidance silent on practical problems (part 2)
- Legal status of guidance
- Will schemes rush to follow it?

- **Discussion from floor**

Part 2 - Problem areas in practice

- What is not addressed in Guidance
  - Interest on payments
  - Missing membership data
  - Discretionary pension increases (past and future)
  - Transfer payments
  - Scheme wind ups and buy out
  - Members who have died
  - State Scheme Premiums
  - Tax issues
  - Married women paying lower NIC
  - Pension sharing on divorce

Jurisdiction and Time Limits

- Breach of sex equality rule (s67 EA)
- Employment Tribunal in first instance (s127 EA)
- Trustees can apply for a declaration (s127(4)EA)
- Claims brought within six months of end of employment (s129EA) unless concealment
- Time limits likely contenders:
  - 17 May 1990 (Barber Day) – PPF's approach
  - Six years (s 134 EA) unless concealment case
- Compensation for injured feelings (s126 EA)
- Can Trustees take commercial decisions

Ways to resolve problem areas

- **Test case – potentially to ECJ**
  - DWP will not support
  - Concerns about European Court rulings
  - Could SERPS be an occupational pension
- **Pathfinder Scheme**
  - Government thinks public sector schemes are immune
  - Regulation 3 is unclear – can we all use it?
- Discussion from Floor

Part 3 – Ways to Simplify the problem

- Method One
- Government amend legislation:
  - Remove anti-franking requirements
  - Equalise GMP pension ages at 65 (or above)
  - Clarify SI2010/2132 Regulation 3
- Significant political hurdles to overcome
- Does Government have the political will
- Adopt as part of red tape reduction exercise

One alternative method

- Make use of the existing legislation on GMP conversion
- Convert (unequal) GMP into (equalised) scheme benefit
- Statutory procedure
- Trustee needs to be satisfied equal actuarial value
- Member consultation and actuarial certificate – needed
- For the past apply strict time limits on bringing claims and on amount of retrospection

What are we doing?

- Joint Working Group have met DWP representatives
- DWP feel obligation to reflect Allonby decision in UK regulations
- Example method: DWP trying to be helpful
- DWP not enforcing implementation
  - But will tPR or auditors do so?

What are we doing?

- Doing
  - Encouraging DWP to limit regulations just to deal with Allonby
  - Providing DWP with examples of complexity
  - Trying to get DWP to link issue with state pension reform
  - Get shared understanding about retrospection rules
- Thinking about doing
  - ECJ test case
  - Explain to DWP how public sector schemes are affected

Negotiation options

- Status quo - will not be accepted by DWP
- Sponsor test case (potentially to ECJ)
- Just new regulations to reflect Allonby
  - Sweep issue back under the carpet
- Legislation to simplify eg remove anti-franking rules
  - Fairness issues for DWP
- Require GMP equalisation,
  - no guidance on methods
  - specified method (value)
  - specified method (dual records)

Discussion from Floor

www.hoganlovells.com

Hogan Lovells has offices in:

Abu Dhabi	Colorado Springs	Houston	New York	Silicon Valley
Alicante	Denver	Jeddah*	Northern Virginia	Singapore
Amsterdam	Dubai	London	Paris	Tokyo
Baltimore	Dusseldorf	Los Angeles	Philadelphia	Ulaanbaatar*
Beijing	Frankfurt	Madrid	Prague	Warsaw
Berlin	Hamburg	Miami	Riyadh*	Washington DC
Brussels	Hanoi	Milan	Rome	Zagreb*
Budapest*	Ho Chi Minh City	Moscow	San Francisco	
Caracas	Hong Kong	Munich	Shanghai	

"Hogan Lovells" or the "firm" refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses, each of which is a separate legal entity. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia.

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Rankings and quotes from legal directories and other sources may refer to the former firms of Hogan & Hartson LLP and Lovells LLP. Where case studies are included, results achieved do not guarantee similar outcomes for other clients. New York State Notice: Attorney Advertising.

© Hogan Lovells 2011. All rights reserved.

* Associated offices