

GMPs and Equal Treatment

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Agenda

- Background to inequalities of GMPs
- What Government bodies have said
- Do the inequalities need to be equalised
- Are GMPs separate tranches of benefits

Health and safety warning

The opinions in this presentation are personal to Duncan Buchanan and are no substitute for legal advice

Background to GMP inequalities

- GMPs are inherently unequal as between sexes
- Accrual rates and GMP pension ages (60/65)
- Anti-franking compounds problem
- Knock on inequality for “non-GMP benefits”
- GMPs replaced from 6 April 1997
- Members’ SERPS pension is reduced by the GMP
- GMP disappears under PPF compensation

What Government Bodies Have Said

- **The Equalisation Requirement**

“Trustees should act as if existing domestic legislation requires equalisation in respect of the differences resulting from GMPs whether or not a real comparator exists” – Pensions Minister

- **The Tranching Requirement**

“The Board has received advice that if a GMP element of pension is payable at a different normal pension age to the “excess” then the two tranches will be different parts of a pension for the purposes of paragraph 34(2) of Schedule 7”

Are the Government Bodies Right

- The Equalisation Requirement – Maybe!
- The Tranching Requirement - No

The Equalisation Requirement

- Easy to spend someone else's money
- Not just the cost of the additional benefit
- Cost of administration
- Need to go back to adjust payments already made (limitation?)
- Conflicts of interest
- Cost estimates – PPF estimates

Arguments for the Equalisation Requirement

- Article 141 EC Treaty
- Section 62 Pensions Act 1995 (Equal treatment rule)
- GMPs mean that a man and woman with equal work history will receive different benefits – therefore unequal pay
- This unequal pay must be equalised

Arguments against Equalisation Requirement

- GMPs are not pay
- European law allows state benefits to be unequal
- GMPs are a replacement of a state benefit
- Employers can objectively justify the inequality
- If Section 62 was meant to equalise GMP inequalities then Pension Schemes Act would have been amended

Case law to date

- European cases
 - Barber (1990) and Coloroll (1994) etc
 - Birds Eye (1994)
 - Beune (1994)
 - Newstead (1988)
 - Allonby (2004)
- English cases
 - Marsh Mercer Pension Scheme (2001)
 - Leadenhall Independent Trustees Limited (2004)
 - Houldsworth v Bridge Trustees (2008 / 2010)

What the Mercer case said

- Jurisdiction of the Pension Ombudsman
- Cannot equalise GMPs (as they are what statute says)
- GMPs are calculation factors not separate elements of pay
- The “broader unanswered” question
- Section 62 probably does not override 1993 Act
- Apart from jurisdiction point all *obiter*

Why the Tranching Requirement is wrong

- Tranching treats GMPs as a separate element of pension
- Tranching increases the level of benefit by ratchet up
- PPF compensation (element at 60 and element at 65)
- Equal treatment applies to all **elements** of pay
- GMP as a calculation factor is not an **element**
- There is only one pension
- Large reduction in the PPF/FAS compensation

Conclusion - Where next

- Significant concerns in way public bodies are moving forward – high cost option
- Need a fully argued test case – ECJ
- If it turns out that equalisation is required on a tranche basis – possible claims against the Government