



GMP EQUALISATION WORKING GROUP

Reconciliation & Rectification Sub-Group

When to Rectify

March 2020

GMP Equalisation - When to Rectify Guidance

Section	Content	Page
1	Introduction	3
2	Step 1 - Understanding the data	5
3	Step 2 - Understanding the nature of the task	8
4	Step 3 - Consider the impact on members of any delay	10
5	Step 4 - Consider and document other factors influencing the timing of GMP rectification	11

Feedback

The GMPEWG welcomes feedback on this guidance. If you have any comments, please send these to info@pasa-uk.com

About This Document

This document forms part of a series of documents offering information to UK pension schemes on principles for adjusting benefits earned in the period 17 May 1990 to 05 April 1997 to correct for the inequalities of GMPs accrued in this period (commonly referred to as GMP equalisation). The High Court's decision in the Lloyds Bank case requires schemes to address this GMP inequality issue. The High Court also set out a range of methods which could be adopted. However, the Lloyds Bank case could not deal with all the complex issues arising in relation to GMP equalisation.

Our series of documents aim to support the implementation of GMP equalisation in a practical and pragmatic way. We have issued guidance on Methodologies. Later, we will suggest 'good practice' approaches to deal with common issues regarding the remaining 3 main aspects: Data, Impacted Transactions, and Tax. We will also seek to tackle issues not addressed by the High Court and which are unlikely to be subject to judicial scrutiny.

This document has been prepared for use predominantly by Trustees but will be of interest to everyone who is involved with the operation and governance of a pension scheme that may be impacted by GMP equalisation, including administrators, sponsors and advisers. It might also be of interest to other parties. It has been assumed:

- Readers will have some knowledge of GMPs and why they can produce unequal benefits between male and female members.
- Readers will be familiar with other industry guidance issued to date by other organisations, including the Department for Work and Pensions (DWP).
- Employers and trustees will work collaboratively involving scheme administrators and advisers as appropriate.

We recognise in addition to a GMP equalisation project, some schemes will also take the opportunity to undertake a wider reshape of benefits - i.e. going beyond the GMP conversion legislation and DWP guidance.

Acknowledgments

PASA is grateful to the authors of the Guidance and the active Members of the Rectification sub-group of the GMP Equalisation Working Group and their employers.

Matt Ashton-Smith	ITM Limited
Jane Bailey	Willis Towers Watson
Geraldine Brassett	Capita Employee Solutions and Group Chair
Alan Casey	LCP LLP
John Doherty	XPS Ltd
Aled Edwards	Quantum Advisory
Edward Hopkins	SAUL
Andrew Linster	Mercer
Owen McCrea	Barnett Waddingham
Melissa Stanford	XPS Ltd

1. Introduction

GMP rectification involves calculating and correcting data (and for pensioners, benefits in payment) for those members where the GMP reconciliation process resulted in a change in the GMP held by the scheme administrator.

Prior to the Lloyds judgment, schemes would have undertaken GMP rectification once the GMP reconciliation was complete or nearly complete.

The need, however, to also undertake a project to equalise benefits for the effects of unequal GMPs may result in schemes questioning whether to undertake their GMP rectification exercise as outlined above or defer this and combine it with the project to achieve benefit equality, referred to in this document as GMP equalisation.

This is a scheme specific decision. The starting position should be that GMP rectification should be progressed in a reasonable timeframe. In cases where GMP rectification is delayed in order to combine it with GMP equalisation, the evaluation of the impact of doing so and the rationale for deferral should be clearly documented.

There are four steps Trustees need to undertake NOW in order to make the right decision for the scheme as follows:

Step 1

Understand the data, specifically:

- a. The current position on the GMP reconciliation exercise;
- b. The number of members who will require rectification, those in scope for GMP equalisation and the overlap between these two groups. This information should be split by status (e.g. active, deferred and pensioner members);
- c. The data needed to undertake GMP rectification and equalisation, the quality of that data and the work involved in completing any gaps in the data or correcting any data issues.

Step 2

Understand the nature and the timing of the task required to rectify benefits and the potential approaches available. For non-pensioners the task may well be straightforward. For pensioners and dependants several different approaches could be adopted.

Step 3

Consider the impact on members (particularly pensioners) in scope for GMP rectification of any delay whilst finalising the equalisation approach.

Step 4

Consider and document the scheme's position on other factors that will influence the decision on when to undertake GMP rectification exercise for those potentially impacted by GMP equalisation. Some areas to consider are detailed later in the guidance.

Further important information on GMP rectification and reconciliation is contained in the existing PASA guidance which can be found at: <https://www.pasa-uk.com/guidance/gmp/>.

The position in relation to GMP rectification for former members who have transferred out leaving behind a potential GMP equalisation issue has not been considered. If appropriate, further guidance on 'no further liability' cases may be issued after the judgment from the next Lloyds Bank hearing is published if that clarifies the position.

Below is more detailed guidance on each of the four steps outlined above.

2. Step 1 - Understanding the data

GMP reconciliation (step 1a)

GMP rectification should generally be undertaken once GMP reconciliation is fully or largely complete. This makes it imperative that Trustees ensure there is a focus on completing the GMP reconciliation. It is the reconciliation process which ensures schemes have the right GMP information on which to progress both GMP rectification and equalisation exercises. Trustees should ask their administrator to:

- Confirm the current status of the GMP reconciliation and, if this is not yet complete, discuss the estimated timescale for completion and request details of the members whose GMPs have not yet been reconciled
- Detail any decisions which need to be made by the Trustees in order to complete reconciliation, for example in relation to stalemate cases. More information on stalemate cases is contained in existing PASA guidance and it is recommended Trustees review this in advance of making any decisions on stalemate cases. The guidance can be found here <https://www.pasa-uk.com/guidance/gmp/>

Whilst many schemes have completed their reconciliation based on the information already received from HMRC, they cannot be certain all queries have been resolved until the final listings are received from HMRC. HMRC has now started issuing these although some schemes have yet to receive their final listing. HMRC will continue to provide updates on the timing of the release of the listings and other information relating to GMP reconciliation via its Countdown Bulletins which can be found here: <https://www.gov.uk/government/collections/national-insurance-services-to-pensions-industry-countdown-bulletins>

Understanding the populations in scope for GMP rectification and equalisation projects (Step 1b)

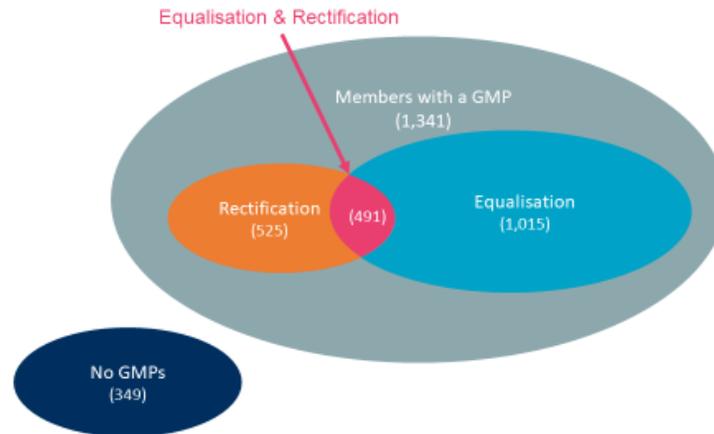
The diagram below is designed to illustrate the different populations needing to be considered and where these might overlap. This will vary for each scheme but understanding the number of members in scope for each exercise and where there is the potential for overlap is an important input into the next step which is to understand the impact on members. Questions Trustees should ask include:

- How many members, split by status, that are in scope for rectification are also in scope for any GMP equalisation exercise? This is particularly important in respect of pensioners and forthcoming retirements because this could affect the amount of pension they receive.
- How will the approach to equalisation impact the population in scope? For example, implementing solely equalisation is likely to mean that only members with post 17 May 1990 GMP accrual are impacted whereas GMP conversion could potentially include all members with a GMP.

The diagram below contains illustrative numbers and Trustees should ask their administrator to populate this with the information relevant for their scheme.

High level summary

How many members are in scope of each population?



1

The number of members in scope for GMP rectification should also be split between active, deferred and pensioner members and then broken down further to show those who have post 17 May 1990 GMP accrual (so it is clear which members in scope for GMP rectification might also be impacted by GMP equalisation). Care will need to be taken when doing this in relation to those members who have had a transfer-in which includes a GMP, for example a member who joined on or after 06 April 1997 might have a transferred in GMP that is in scope for equalisation.

Having clarity of the potential populations at the outset will allow Trustees to:

- Make appropriate decisions
- Avoid rework
- Have visibility of progress on both projects

- Satisfy themselves all members in scope of the projects are rectified and (where necessary) equalised
- Ensure rectification and equalisation dovetail with other scheme exercises such as pension increases

Data needed for GMP rectification and equalisation (Step 1c)

To help decide on when and how to progress GMP rectification, Trustees need to understand:

- Details of any significant data gaps which will be a barrier to GMP rectification (these are also likely to be a barrier to GMP equalisation). Ensuring the data cleanse required for the in-scope population for rectification is considered alongside that required for the equalisation exercise is important in terms of achieving the maximum return on investment of any data cleanse activity.
- Whether any assumptions have previously been made in addressing data gaps i.e. because the data needed was not available
- Details of the proposed approach to undertaking the GMP rectification calculations, how this compares to potential approaches to calculating arrears for GMP equalisation and how both might allow for any known data issues.

3. Step 2 - Understanding the nature of the task

For non-pensioners the rectification may simply involve updating the GMP stored on the administration system, with a corresponding update to the excess over the GMP (sometimes called re-tranching or re-splitting the benefits). Completing this work will mean Trustees are less likely to put incorrect benefits into payment. It will also provide a firm foundation for undertaking the GMP equalisation project.

In making these updates the wider needs of on-going administration and potential needs for the GMP equalisation project should also be considered. For example, some of the potential approaches to identifying the tranche of the member's pension to be equalised and calculating the comparator benefit involve the use of a full National Insurance earnings history. If these approaches are to be used the rectification should involve not just updating the GMP and pension in excess of the GMP, but also the National Insurance earnings history. Likewise, there may be further data identified as part of the GMP reconciliation that will be needed for the GMP equalisation project, such as dates of birth, starting contracting out, ceasing to contract out, commencement of payment of GMP and death. If this data is currently not held for some members it could be included in the GMP rectification update. Where rectification has started already, deferred benefits may have been re-tranched to assist the administration going forwards, but National Insurance earnings may not have been updated (as there was no need at the time), so a separate update may be required or the data can be extracted from HMRC's online GMP checker for calculation purposes. The National Insurance earnings updated should be consistent with the agreed GMP. It is important to note that the GMP checker can also provide an opposite gender calculation.

For pensioners (and dependants) any change in the GMP, as a result of GMP reconciliation, may generate differences in deferred revaluation, differences in increases in payment and, in a small number of cases, differences arising from anti-franking treatment. Three potential approaches to rectifying for this include:

- Full re-administration: this would involve reconstructing the original administration calculations
- A 'differences' approach: this involves exchanging the change in GMP for non GMP at leaving date and using formulae to follow this through to the current date
- Reflecting the correct GMP in the current pension split: this would involve changing the constituent parts whilst leaving the overall pension unchanged with no past under or overpayments.

Similarly for non-pensioners, the data requirements for GMP equalisation can move the 'goal posts' in terms of what cleansed contracting out data should be added back onto the administration system and thereby made available for GMP equalisation. For example, if a GMP is in payment, the GMP rectification project may have only updated the payroll GMP in payment. However, base data underlying this GMP in payment is likely to be required for GMP equalisation, for example if there is a transferred in post 88 GMP, then the details of the transferred in GMP may be required if it includes GMP accrued on or after 17 May 1990, the date of the Barber judgment.

Trustees should also consider with their advisors the extent to which, for pensioners, the same approach or tools can be used for GMP rectification and the arrears calculations for GMP equalisation and the extent to which one project can build on the other or the synergies of running the two together.

Further information on 'How to Rectify' is contained in the existing PASA guidance which can be found at: <https://www.pasa-uk.com/guidance/gmp/> and which also covers GMP reconciliation.

4. Step 3 - Consider the impact on members of any delay

Trustees should ensure that any new pensions put into payment are based on the reconciled GMP information wherever possible to avoid an increase in the rectification population. The same considerations should apply in respect of members seeking to transfer out immediately and those entitled to lump sum payments on health grounds.

In making the 'when to rectify' decision, there is a need to consider the impact on members, particularly pensioners, of any delay. Some pensioners may be being overpaid and the longer the overpayments are made the greater the sum involved and the harder it may be to seek repayment. Some pensioners may be being underpaid and could potentially die before GMP rectification is undertaken if this is being done at the same time as GMP equalisation.

Trustees should generally complete the rectification and implement the revised pensions as soon as possible for those pensioners who have no post 17 May 1990 GMP accrual and hence will not be in scope for GMP equalisation. The position should then be considered for those pensioners who have post 17 May 1990 GMP accrual where the GMP rectification calculation indicates they have been underpaid. For these pensioners the likelihood is GMP equalisation will either result in no change to their pension or a small increase. The impact of GMP equalisation on the member's pension will however need to be reviewed prior to any corrective work being undertaken for these members. The population where the position is perhaps more complex is those members with post 17 May 1990 accrual where the GMP rectification calculation shows that the member has been overpaid and as a result of the combined effect of GMP rectification and equalisation the current overpayment may need to be removed in whole or in part, but also possibly adjusted upwards. Trustees may wish to discuss the actions to be taken regarding this population with their advisors.

Further information on the impact on members can be found in the GMPEWG methodology guidance at the following web address: <https://www.pasa-uk.com/guidance/gmp-equalisation/>

5. Step 4 - Consider and document other factors influencing the timing of GMP rectification

For Trustees to fulfil their duty it is important they can be seen to have taken an informed decision regarding the timing of GMP rectification which considers the factors listed below and any others relevant to their scheme. Where not covered earlier in this guidance, some further information is provided aimed at helping Trustees make the right decision for their scheme. Trustees should:

- Consider their duty to pay the right benefit to the right member at the right time.
 - Some of the over/under payments arising from GMP reconciliation exercises may be substantial.
 - There is a risk of potential reputational damage and breach of Trustee fiduciary duty if benefits are not rectified at the earliest opportunity.
 - If seeking to recover overpayments there may be a limitation and legal advice should be considered.

- Complete calculations to understand the impact on members before making decisions
 - In order to make an informed decision the Trustees need to understand the impact on members' benefits by undertaking the rectification calculations. Once these calculations have been completed a decision should be taken about which members' benefits should be rectified and whether to pause for any populations and rectify those members' benefits as part of the GMP equalisation exercise.

- Talk to their advisors about the capacity they have available to undertake the GMP equalisation exercise, the proposed timescales for that project and how these relate to the timing of GMP rectification
 - Due to expected capacity constraints within the industry, there is likely to be a queue to undertake GMP equalisation exercises and industry expectations are that for many schemes these exercises will not start before the end of 2020 and some schemes will not be implementing equalised benefits until 2023 and potentially beyond this date.
 - If the GMP rectification is delayed, the Trustees need to understand where the cleansed contracting out data is going to be held and its accessibility if it is not going to be put into the administration system before GMP equalisation to ensure members benefits coming into payment in the interim are correct.

- Consider the proposed timescales for rectification and equalisation and how these might be impacted if equalisation takes longer than expected

- Take into account any strategic projects:
 - Current or future plans for any key scheme strategic activities, for example related to de-risking, may drive the need to implement rectification and/or equalisation within a particular timescale.
 - If these projects are not considered upfront and later become a priority it may not prove possible to deliver changes within required timescales.
 - It will be important for the Trustees to liaise with the employer to understand if they have any plans which may impact on timescales.

- Factor in the timing of scheme events, for example, the annual pension increase or a forthcoming valuation.

- Plan the strategy for communicating with members
 - Will writing to members once in relation to GMP rectification only to be followed up by a communication about GMP equalisation manage expectations appropriately? An alternative option would be to complete the GMP rectification calculations and only then decide when to implement and communicate the rectification for some or all impacted members.
 - To maintain confidence communicating GMP rectification/equalisation should form part of the communication strategy and complement existing approaches.

- Assess the impact on costs of undertaking separate exercises or one combined project
 - Consider the cost of implementing GMP rectification as a separate exercise versus the benefit to members and alongside a view on likely timescales and costs for equalisation.
 - The decision should not be taken solely based on costs and the impact on members will be a material consideration.

- Capture decisions made as part of previous rectification exercises especially in relation to overpayments
 - Review previous decisions made in relation to any past benefit rectification exercises. These might cover back payments, interest, application of any forfeiture rules and so on.
 - Consider why past decisions were made and whether there are good reasons for making different decisions in relation to GMP rectification.
 - Confirm whether record keeping is accurate enough to enable Trustees to identify members in scope for GMP rectification whose benefits have previously been adjusted as part of a previous rectification exercise?



THE PENSIONS ADMINISTRATION STANDARDS ASSOCIATION

Get in touch:

info@pasa-uk.com

www.pasa-uk.com