



**THINGS
TO
CONSIDER**

**GMP Equalisation Working Group
Supplemental Guidance on Transfer Payments**

Equalising for the Effects of Guaranteed Minimum Pensions

August 2021

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Note:

This Guidance Note is Supplemental to the Guidance already issued by the GMP Equalisation Working Group¹. It's expected users of this Guidance will be familiar with that Guidance and in particular the Guidance on Methods issued in September 2019.

¹ Guidance already issued is available at www.pasa-uk.com/guidance/gmp-equalisation/

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1. Introduction - Transfers and GMP Equality Adjustments

Historically, where a pension scheme which was contracted-out on a salary-related (COSR) basis calculated transfer values it would've done so on an unequalised basis (i.e. the transfer value wouldn't have taken account of the need to equalise a member's benefits for the effect of GMPs in respect of the Equalisation Period², where necessary). The value transferred may have been higher had the calculation reflected the need for GMP Equality.

Where a Receiving Plan³ received a transfer payment in respect of a member it would've provided the member with additional benefits. The style of additional benefits provided would vary between types of Receiving Plans and possibly between members within the same scheme. For example, where the Receiving Plan is a defined benefit (DB) scheme an individual may have been granted:

- an additional amount of pension (often a specified amount at retirement date)
- a service credit of additional years, or
- benefits which mirror those provided under the transferring scheme (this tends to be common on bulk transfers)

Where the transfer value included an allowance for a GMP and the Receiving Plan was a contracted-out salary related scheme⁴ it will have replicated the GMP (as notified by the Transferring Scheme⁵) and agreed a GMP revaluation basis, usually in line with the Receiving Plan's policy. Similarly, if the transfer payment included protected rights⁶ then these will have been converted into a GMP by the Receiving Plan if it was a COSR.

Transfers may have been the result of:

- an individual transfer - where a member requested a transfer value be paid from the Transferring Scheme to the Receiving Plan. Such individual transfers could be on either a statutory (Pension Schemes Act 1993) or a non-statutory (rules) basis; or
- a bulk transfer - under which the assets and liabilities relating to a class of members transferred from the transferring scheme to the receiving scheme, often without member consent (this typically happens as part of a scheme merger or following the sale of part of a business or corporate group).

Different considerations will apply depending on the type of transfer and the benefits provided. These are considered further in this Guidance.

² 17 May 1990 to 5 April 1997

³ In this Guidance a 'Receiving Plan' could be a defined benefit or defined contribution pension plan (whether or not sponsored by an employer). The plan the original transfer payment was made to will be a Receiving Plan. Potentially a top-up payment could be made to a different scheme, and this would also be a Receiving Plan for some purposes.

⁴ A small minority of defined benefit schemes were contracted out on a defined contribution (protected rights) basis – different considerations would apply to such schemes which are outside the scope of this Guidance.

⁵ A 'Transferring Scheme' is a defined benefit pension scheme which was contracted out on a salary related basis and so provides GMPs in respect of contracted out employment in the period 17 May 1990 to 5 April 1997. In this Guidance it is assumed the Transferring Scheme still exists.

⁶ Protected rights were contracted out rights accrued under contracted out money purchase schemes (COMPS)

This Guidance provides an update to the Guidance on Methods issued in September 2019 and reflects the November 2020 judgment concerning the Lloyds Bank pension schemes (**Lloyds 2020**). The impact of Lloyds 2020 is considered in respect of:

- (a) Transferring Schemes which paid individual transfer values to Receiving Plans – **Part A**
- (b) Receiving Plans which have received individual transfers from a Transferring Scheme – **Part B**
- (c) Bulk transfers between a Transferring Scheme and a Receiving Plan – **Part C**

Transfers only need to be considered where the member had a period of pensionable service⁷ in the Transferring Scheme during the Equalisation Period which qualified them for a GMP.

There remain some unresolved issues following the Lloyds 2020 decision. Given the high cost of court proceedings of this nature and the modest impact on individual transfer payments, it may well be these uncertainties are never resolved by the Courts and schemes will need to address the issues with their advisers.

This Guidance is meant to assist schemes and advisers to find a pragmatic approach to equalising historical transfers – noting the judge in Lloyds 2020 recognised the administration costs involved could easily exceed any correction payments needed.

For future transfers out, it's recommended schemes seek actuarial advice and adopt transfer value factors so the values are calculated in a way that eliminates any GMP inequalities in respect of the Equalisation Period.

Schemes in the public sector (or which provide public sector style benefits) and those which operate transfer club arrangements are outside the scope of this Guidance.

⁷ Including a period credited as a result of a previous transfer in (which may include a period representing converted protected rights).

PART A. ROLE OF TRANSFERRING SCHEMES – INDIVIDUAL TRANSFERS

2. Overview

Lloyds 2020 concluded COSR schemes which have paid statutory cash equivalent transfer values in respect of former members who had service in the Equalisation Period could be required to pay a top-up payment in respect of a former member. The right is to a top-up payment and not to a residual benefit in the Transferring Scheme, so the former member's entitlement is akin to a creditor of the Transferring Scheme (rather than a beneficiary).

Non-statutory individual transfer values (for example those within 12 months of normal retirement age) were treated separately in Lloyds 2020. It may be Transferring Schemes will choose to correct any non-statutory transfers in the same way as statutory transfers (unless there are exceptional circumstances). In practice, the administrator may not be able to differentiate between statutory and non-statutory transfers paid in the past.

Transferring Schemes which have paid enhanced transfer values, perhaps as part of a liability management exercise, should take specific advice on how Lloyds 2020 impacts on those transfer exercises⁸.

A top-up payment would be required to the extent the transfer value actually paid would've been higher at the time of payment had the value of the member's benefits and the mix during the Equalisation Period between GMP and excess been that of a comparator of the opposite sex. It's considered the transfer value assumptions originally used for the member should be applied when making the comparison (i.e. using the sex-based factors applicable to the former member for the comparator calculation). Care should also be taken in the calculation methodology to assess the uplift, for example by considering the original calculation methodology.

Interest will need to be added to any top-up payment. In Lloyds 2020 interest on top-up payments was set at 1% simple over bank base rates (from time to time). It's likely, unless a Transferring Scheme's rules prescribe a particular rate, the approach to interest adopted in Lloyds 2020 will be applied, although some administrators may prefer to use compound rather than simple interest for simplicity.

The type of Receiving Plan is immaterial as to whether a top-up payment is required from the Transferring Scheme. Transferring Schemes which paid transfers to Receiving Plans where the GMP was retained in the Transferring Scheme (for example because the Receiving Plan wasn't contracted out), will need to determine whether a top-up payment would be due. If there's no need for a top-up payment, or where a top-up payment is needed and has been discharged, the Transferring Scheme doesn't need to adjust the GMP pension when it comes into payment - even though different pension amounts would've applied to the opposite sex comparator and the comparator's GMP would come into payment at a different age.

⁸ Lloyds 2020 may also have an impact on pension sharing cases (see also the Method Guidance note)

(a) Time limits, forfeiture rules and discharges

For transfers out there is no statutory limitation period⁹. For the Lloyds Bank schemes the wording of their forfeiture rules and member discharges didn't apply. This means all past individual transfers out which covered periods of pensionable service in the Equalisation Period are potentially in scope for a top-up payment.

It's likely for most Transferring Schemes the forfeiture rules would likewise not apply to underpaid transfers even though they may have taken place more than six years previously and discharges (both member and statutory) will not be effective. However, Transferring Schemes may wish to seek legal advice on the specific wording of their forfeiture rules.

In some cases, Transferring Schemes may have been required by the Receiving Plan to provide specific equal treatment warranties or indemnities. These contractual arrangements between the schemes may need to be considered in the light of Lloyds 2020 but are outside the scope of this Guidance.

(b) Enforcement and Trustee Proactivity

Lloyds 2020 held a former member could bring a claim in the courts to enforce any right they may have to a top-up payment. In practice it would be impractical for an individual former member to make such a claim given the costs involved.

Lloyds 2020 also held for Transferring Schemes:

"... the Trustee does need to be proactive in that it must consider the rights and obligations which I have identified, the remedies available to members and the absence of a time bar and then determine what to do."

This statement indicates trustees need to be proactive in addressing historical transfer values, where an adjustment is needed. It also appears to permit trustees to think about factors such as cost of calculation, data issues and other practicalities when determining how to implement a correction process. In practice, Transferring Schemes will need to take advice as to whether their approach to past transfers is appropriate recognising (as mentioned below) there are a number of practical hurdles which will mean perfection cannot be achieved.

⁹ Limitation periods may apply where a scheme has wound up and no longer has any assets.

3. Considerations for Transferring Schemes

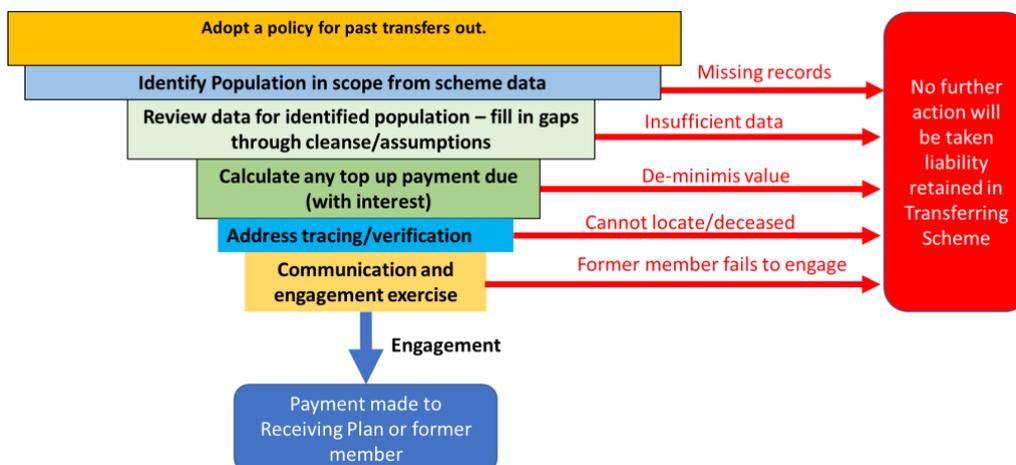
The lack of time limits and valid discharges means Transferring Schemes are likely to be faced with significant practical issues when seeking to identify whether top-up payments need to be paid for past transfers out. Even if a top-up payment is identified for a former member it's then necessary to locate and engage with them so payment can be made to discharge the Transferring Scheme's liability.

It's suggested Transferring Schemes discuss these practical issues with their advisers and adopt a policy for dealing with matters such as missing data, calculation issues, deceased or missing former members and how to settle top-up payments. These issues are discussed further in the remainder of this section.

There will, inevitably, be a number of transfer out cases where Transferring Schemes will be unable to calculate or discharge any top-up payment which may be due. For example, due to missing or incomplete data or where a former member can't be traced. For Transferring Schemes which are ongoing the retention of these undischarged liabilities (whether known or unquantified) shouldn't cause difficulties, particularly given the relatively low rate of interest applicable.

However, Transferring Schemes which are winding up will need to discuss with their advisers how to address undischarged liabilities as part of the winding up process. It's uncertain the extent to which trustees would be protected by statutory advertisements¹⁰ and/or if run off insurance cover would provide protection. In practice, employers may need to provide indemnities to trustees of schemes in wind up to cover such liabilities if they can't be resolved before completion of the wind up.

The chart below illustrates the key steps which need to be taken to correct historical transfers and the matters which may mean Transferring Schemes are unable to discharge their liabilities for top-up payments and therefore retain a liability (whether quantified or not).



¹⁰ Section 27 Trustee Act 1925

(a) Identify population in scope

As mentioned, all former members with contracted-out service in the Equalisation Period are in scope for review as to whether a top-up payment is due. However:

- It may be possible to conclude for some groups of former members a top-up payment won't be due based solely on the Transferring Scheme's benefit structure, knowledge of the basis used to calculate historical transfer values and/or the member's accrual cessation date. Such groups can then be excluded from the exercise
- There may be cases where the Transferring Scheme hasn't retained any record of a former member or of a transfer value having been paid. This could happen where on a change of administrator only 'live' member records were transferred to the new administrator.

For cases where no record remains there's little the Transferring Scheme can do but it should be recognised the potential liability remains and would need to be investigated if an individual came forward at a later date claiming to be a missing former member. In such cases it would be for the individual to provide evidence they were formerly a member of the Transferring Scheme during the Equalisation Period and a transfer payment was paid. Even then it may not be possible to find sufficient data to confirm whether a top-up payment is due. In those circumstances Transferring Schemes will need to decide what to do, such as contacting the Receiving Plan (assuming it still exists) to see if it's able to provide more detail.

(b) Review data and fill in gaps

For each former member who can't be excluded, it'll be necessary to calculate whether a top-up payment might be due. To do this the administrator or actuary will ideally need:

- Details of the original transfer value paid and the benefits it related to including accrued pension/GMP at date of leaving and revaluations awarded prior to transfer
- The transfer basis used to calculate the original transfer value and financial data as at the calculation date

For recent transfer payments it's expected sufficient data will be available to calculate whether a top-up payment is due. For historical transfers the data may not be readily available on the administration system but instead could be held on microfiche or in off-site archived files.

Inevitably there'll be cases where insufficient historical data can be found (or data can't be found without disproportionate expense) to calculate top-up payments with any degree of accuracy. Where this is the case the Transferring Scheme will need to decide what action to take. Depending on the extent of missing data this could include:

- Making assumptions to fill in gaps in data on a reasonable estimate basis
- Making enquiries of former administrators, Scheme employers and/or the Receiving Plan
- Attempting to contact the former member to request missing data
- Making a settlement offer to the former member in lieu of calculating a top-up payment
- Taking no action unless and until a person comes forward to make a claim

(c) Calculating top-up payments

Some Transferring Schemes will have comprehensive records of the actuarial bases and factors used to calculate and pay transfer values over time - other schemes won't have these records.

Where comprehensive records aren't available, Transferring Schemes will be unable to calculate accurate top-up payments and will need to take advice on whether to either:

- estimate a top-up payment using assumptions which are a reasonable estimate of the transfer value basis which might have applied at the time¹¹, or
- apply an appropriate adjustment to the original transfer value to reflect an estimate of the top-up payment (perhaps based on calculations for other cases where more complete data is available)

There will be costs involved for Transferring Schemes in calculating whether a top-up payment is due and not all cases will require a top-up. Transferring Schemes may therefore want to discuss with their advisers the scope for adopting a de-minimis policy to limit the number of past transfer out cases which will be reviewed as part of a bulk exercise. The lack of any limitation period means former members who transferred out and whose cases aren't reviewed because of a de-minimis policy would still be able to come forward to make a claim and, if they did so, Transferring Schemes would then be expected to investigate whether a top-up payment was required. Schemes may choose to obtain some indicative figures for likely top-up payments before setting de-minimis thresholds.

Where the calculation shows no top-up payment is required for the former member (as they were in the advantaged category) no further action need be taken, apart from recording the results on the administrator's system in case the former member approaches the Transferring Scheme in the future.

(d) Address tracing /Verification (including mortality screening)

In addition to the calculation process there's the need to locate former members who are due a top-up payment so top-up payments can be discharged by making a payment to a Receiving Plan or to the member.

Former members may well have moved address since transferring out and in some cases will have died. It may be possible to use the Department for Work and Pensions tracing service to find missing former members or to use professional tracing services. Contact may also be established through the administrators of the Receiving Plan to which the original transfer was paid assuming the former member is still a member of that plan.

Transferring Schemes will need to instruct administrators on the extent to which attempts are to be made to locate former members who aren't easily located such as former members who've emigrated. It may be a decision is taken

¹¹ For example the Minimum Funding Requirement (MFR) basis which applied under the Pensions Act 1995 was adopted by many schemes for a number of years.

not to spend resources trying to trace hard to find members but rather to retain the liability (quantified or not) to make a top-up payment if the former member comes forward or is subsequently located.

The administrator of the Transferring Scheme may also be instructed to undertake a mortality screening exercise to determine whether former members have died.

Transferring Schemes will need to decide a policy for cases where former members have died. In most cases it's likely there'll be no legal personal representatives of the deceased former member either because there was no need for them to be appointed following the former member's death or those appointed have ceased to act having finalised the distribution of the former member's estate. There may however be a surviving spouse or family member in respect of whom it is decided to pay the former member's top-up payment.

(e) Communication and engagement exercise

Having calculated a top-up payment is due to a former member¹² and located them, the Transferring Scheme then needs to engage with the former member so their top-up payment can be discharged¹³. Thought should be given as to how best to conduct this communication process particularly given data protection/privacy laws and publicity about scams concerning pensions.

There will be cases where former members fail to engage with the Transferring Scheme and where this is the case there's likely to be no option but to retain liability for a top-up payment in the Transferring Scheme. It may be, if asked, a Court would apply a limitation period (either statutory or under the scheme rules) where a Transferring Scheme makes reasonable efforts to contact a former member to process a top-up payment but the former member fails to respond.

(f) Discharging Top-up Payments/Settlement Offers

Only once a former member has engaged with the Transferring Scheme can a top-up payment be made to discharge the obligation. This assumes Receiving Plans will only accept a top-up payment with the former member's consent.

In Lloyds 2020 the assumption was the top-up payment would be paid to the Receiving Plan which received the original transfer. However, it won't always be possible for the Transferring Scheme to make a payment to the original Receiving Plan, for example:

- The original Receiving Plan may no longer exist – it could've merged into another scheme, wound up or transferred to the Pension Protection Fund (or Financial Assistance Scheme)
- The former member may no longer be a member of the original Receiving Plan – having taken a subsequent transfer out or on retirement taken a lump sum/purchased an annuity
- The Receiving Plan may decline to accept a top-up payment (see Part B)

¹² Where the former member has died this could include their personal representatives (if any) or next of kin.

¹³ It's assumed Receiving Plans will not agree to accept a top-up payment in respect of a former member without their consent.

- The former member may want the top-up payment to be paid to another pension arrangement prepared to accept the top-up payment

Where a Receiving Plan is unable or unwilling to accept a top-up payment the Transferring Scheme may choose to either seek to make a payment to the former member direct or to retain the top-up payment in the Transferring Scheme until the former member provides details of another pension arrangement prepared to accept the top-up payment.

If a Transferring Scheme chooses to pay the top-up payment directly to the former member as a cash lump sum the tax treatment would need to be considered. The pension tax rules allow for small lump sum payments and relevant accretions to be paid as authorised payments to former members, but conditions apply. It is not certain these conditions would be met in all cases where a top-up payment is paid to the former member and Transferring Schemes will need to take advice to ensure the payment is authorised for pension tax purposes. Alternatively, the sponsoring employer of the Transferring Scheme may agree to pay top-up payments to avoid any pension tax complications. Where a lump sum is paid to a former member, income tax may well need to be deducted under PAYE.

It's generally considered GMP Equality claims of members of schemes are covered by the sex equality requirements of the Equality Act and as such it's difficult or impractical to agree to compromise claims with individuals¹⁴. However, Lloyds 2020 held for transfers out:

"It would be open to the Trustee and a member to agree an alternative to the Trustee performing its duty to make a top-up payment."

This statement suggests for past transfers out it would be possible for Transferring Schemes (or potentially sponsoring employers) to agree to make payments direct to the former member in lieu of calculating and paying top-up payments. It remains to be seen whether practices will develop by which cash compensation payments are offered to former members who transferred out using, say, banded payments so as to avoid the expense of recalling historical data and calculating whether a top-up payment is actually due.

Schemes wishing to explore offering settlements to former members will need to take specific advice particularly on tax and legal issues. Large schemes may wish to obtain the approval of the courts to the settlement terms (see for example the Court of Appeal decision in *IMG v German*).

¹⁴ To be valid a settlement needs to comply with section 147 Equality Act 2010 which normally means the member/employee needs to be advised by an independent legal adviser.

PART B. ROLE OF RECEIVING PLANS– INDIVIDUAL TRANSFERS

4. Introduction

The legal obligations on Receiving Plans which have received transfers from Transferring Schemes remain uncertain after Lloyds 2020. Specific legal advice may be required for individual schemes before any adjustments are made for individual transfers in. These uncertainties are described below.

(a) The Coloroll Obligation – correcting unequal transfer values

The European Court held in the case of Coloroll:

"In the event of the transfer of pension rights from one occupational scheme to another owing to a worker's change of job, the second scheme is obliged, on the worker reaching retirement age, to increase the benefits it undertook to pay him when accepting the transfer so as to eliminate the effects, contrary to Article 119, suffered by the worker in consequence of the inadequacy of the capital transferred, this being due in turn to the discriminatory treatment suffered under the first scheme, and it must do so in relation to benefits payable in respect of periods of service subsequent to 17 May 1990."

The parties in the Lloyds cases all agreed the Lloyds schemes had an obligation to comply with Coloroll in respect of individual transfers received. However, there was no discussion or ruling on what this meant in practice. It wasn't argued in the Lloyds cases transfers "owing to a worker's change of job" excluded individual transfer payments made at the request of the member often some years after a member had left pensionable service and unconnected with any change in employment.

Read literally the Coloroll decision, where it applies, would appear to require a Receiving Plan to increase the benefits payable to a transferred in member to make good any shortfall in the transfer value originally received when the member reaches retirement age. In practice, to comply with this requirement a Receiving Plan would first need to know the transfer value originally received would have been higher had the Transferring Scheme made an adjustment to reflect GMP inequalities and the amount of this shortfall. Without this information it won't be possible to comply with the Coloroll requirements.

An outcome of Lloyds 2020 is Receiving Plans may now be approached by a Transferring Scheme with details of the shortfall – thereby providing the missing information required to comply with Coloroll.

(b) The Lloyds Obligation – equalising quantum of pension

The judge in the Lloyds cases held:

"In principle, the Trustee's obligation to equalise benefits for the effect of unequal GMP applies to benefits accrued on a contracted-out salary-related basis in other schemes during the Barber window which have been transferred into any of the Schemes;"

It's suggested this statement adopts a different approach to Coloroll because it refers to equalising the benefits provided by the Receiving Plan as a result of the transfer received¹⁵ to eliminate the effects of unequal GMPs granted in respect of the Equalisation Period. It's unclear whether this obligation is instead of, or in addition to, the Coloroll requirement to correct for the inequalities in the transfer payment originally received. In addition, it wasn't argued in Lloyds 2020 the transferred in benefits weren't 'pay' and therefore didn't need to be equalised.

5. Individual Transfers to Defined Benefit Receiving Plans

The uncertainties identified above concerning the interaction between the Coloroll and Lloyds judgments mean there could be situations where:

- The transfer value paid by the Transferring Scheme may have exceeded that of the comparator so no top-up payment is required (and so no obligation under Coloroll arises). However, the Receiving Plan may have awarded benefits in return for the transfer which could result in the member being disadvantaged when benefits come into payment (needing adjustment to comply with Lloyds)
- Alternatively, the Transferring Scheme may be required to make a top-up payment even though the service credit awarded by the Receiving Plan results in the member always being advantaged in the Receiving Plan

In practice defined benefit Receiving Plans will need to decide:

- whether to equalise the benefits granted by the Receiving Plan in respect of the original transfer value
- if it'll agree to accept a top-up payment if approached by a Transferring Scheme

These issues are dealt with in the following sections.

(a) Equalising the benefit granted on receipt of the original transfer value

Making adjustments to benefits granted as a result of transfers received as part of a wider GMP Equality project (e.g. using a year by year method or conversion approach) should satisfy the decision in Lloyds and means adjustments to benefits provided as a result of a transfer value will take place at the same time as the Receiving Plan adjusts all members' benefits to reflect GMP Equality. This would result in efficiencies in administration and assist communication.

¹⁵ Strictly, 'benefits' aren't transferred between schemes – rather a payment is made which the Receiving Plan converts into additional benefits for the member.

Receiving Plans will need to decide how benefits provided as a result of a transfer value will be treated as part of the wider GMP Equality exercise, for example:

1. Should the additional benefit, if it's a service credit, be treated as a separate tranche of benefit for GMP Equality or combined with the member's scheme benefits relating to pensionable service in the Receiving Plan during the Equalisation Period (if any). It should be recognised it may not be possible to separate the additional benefit granted from the member's other benefits¹⁶
2. Where the original transfer value wasn't solely in respect of pensionable service in the Transferring Scheme served during the Equalisation Period¹⁷ what part of the transfer credit will be deemed to relate to the Equalisation Period in the Receiving Plan
3. How to construct the opposite sex comparator's benefit which relates to the transfer in, bearing in mind the benefit awarded was a function of the transfer value received and doesn't relate to any period of pensionable service. This means the same transfer value would've provided a different benefit (higher or lower) for the comparator depending on how the Receiving Plan converted transfer values into GMPs and excess (even if unisex actuarial factors had been used)
4. How to apply GMP Equality to a fixed pension payable at retirement age which was granted in return for the receipt of transfer value

There may be no one right answer to these (and other) issues concerning transferred in benefits and Receiving Plans will need to take advice before deciding how to proceed.

Given the many uncertainties, schemes may decide to adopt an approach which treats the total transfer credit as if it relates to benefits earned in the Receiving Plan. Indeed, for some schemes it won't be possible to separate out a transfer credit from a member's other benefits (particularly where the pension is in payment). Using this approach, the Receiving Plan would compare the mix between the member's own sex GMP and excess in respect of the Equalisation Period against the mix which would've applied had the member's GMP been of the opposite sex for this period (adjusting the excess accordingly). This approach has the merit of consistent treatment with benefits which accrued in respect of pensionable service in the Receiving Plan during the Equalisation Period but it doesn't seek to construct the comparator's benefits by reference to the transfer value received.

(b) Accepting top-up payments

Following Lloyds 2020 a Receiving Plan may be approached by a Transferring Scheme with details of a top-up payment in respect of the transferring member with a request to pay the top-up payment to the Receiving Plan. This approach may be after the Receiving Plan has undertaken its own GMP Equality projects and perhaps adjusted benefits awarded as a result of transfers in to comply with Lloyds.

Two main questions arise for Receiving Plans offered top-up payments. They are:

¹⁶ See the Guidance on Data for further information

¹⁷ For example a pre-1988 GMP was awarded or the member left pensionable service in the Transferring Scheme after 1997

1. Is the Receiving Plan willing to accept a top-up payment?

There'll be administration costs involved in accepting a top-up payment and converting it into additional benefit and these could exceed the top-up payment actually received.

There's no legal obligation on a Receiving Plan to accept the top-up. Indeed, it could be said, provided the top-up payment is satisfied by the Transferring Scheme outside of the Receiving Plan (for example by paying the member direct or making a payment to an alternative defined contribution arrangement on behalf of the former member) the inequality in the original transfer value has been corrected (albeit outside of the Receiving Plan) and as a result the Receiving Plan has no obligation based on the Coleridge judgment (were it to ever be argued such an obligation existed)

2. If a top-up payment is received what additional benefits should be provided?

If a Receiving Plan accepts a top-up payment it'll need to decide what additional benefits (if any) to provide the member. In *Lloyds 2020* it was held if a Receiving Plan receives a top-up payment:

"...it can add that top-up payment to its assets and that will assist it to perform its obligations to the transferring member to equalise the benefits of that member under the receiving scheme."

This passage suggests a Receiving Plan could 'pocket' any top-up payment received from a Transferring Scheme and not adjust the benefits awarded to the member to correct the original underpayment provided the Receiving Plan had equalised the benefit awarded as a result of the transfer in. This may seem attractive to Receiving Plans, particularly if they've already completed their GMP Equality exercise and communicated the results to members.

However, there could be situations where the benefit provided by the Receiving Plan in respect of the original transfer didn't need to be increased by the Receiving Plan as the member is assessed as advantaged in the Receiving Plan (and will remain so). If that member were disadvantaged in the Transferring Scheme and a top-up payment was paid to the Receiving Plan the member may well consider it odd their benefits haven't been increased in the Receiving Plan to reflect the top-up payment¹⁸. Indeed, the member concerned would've been better off if the Transferring Scheme had paid the top-up payment to the member direct or to an alternative pension arrangement.

Where a Receiving Plan decides to adjust the member's benefits¹⁹ to reflect an accepted top-up payment, beyond any adjustment it has already made as part of its own GMP Equality exercise, there are a number of potential options, including:

- Reworking the original transfer calculation having regard to the top-up payment (discounting interest) and providing the additional benefit which would've been provided had the higher

¹⁸ It is assumed the Transferring Scheme would communicate the payment to the member to confirm that it has discharged its obligations.
¹⁹ There may be pension tax implications for members if benefits in the Receiving Plan are increased to reflect receipt of a top-up payment. These are outside the scope of this Guidance Note.

transfer value been received at the same time as the original transfer. This would be a complex (and hence expensive) task and in many cases the top-up payment received would fall short of the current value of the additional benefit provided. There may also be limitations in the availability of the data needed to rework the original calculation

- Converting the top-up payment into additional benefits using the Receiving Plan's current transfer in basis. This would be a more cost effective approach but, given the changes to transfer value factors over the last 30 years, arguably doesn't fully compensate the member for the original inequality in the transfer payment
- Allocating the top-up payment received to provide defined contribution benefits. Again, this is unlikely to compensate fully for the original inequality in the transfer payment and also would require the Receiving Plan to comply with the extra governance requirements now applying to defined contribution (DC) arrangements

It would be necessary for the Receiving Plan to communicate any additional benefits awarded to the member as a result of receipt of a top-up payment. Where the Receiving Plan has already completed its own GMP Equality exercise and included transferred in benefits as part of this exercise care should be taken in any subsequent adjustment communication to the member as it may cause confusion and indeed may result in the original GMP Equality adjustment turning out to be incorrect (depending on how additional benefits are provided).

6. Individual Transfers to DC Receiving Plans

Lloyds 2020 doesn't answer the important question as to whether a DC (money purchase) Receiving Plan is under an obligation to correct inequalities resulting from transfer values received.

Under a true DC arrangement benefits shouldn't be unequal as between the sexes provided the amounts paid in/received are equal²⁰. On this basis the equality requirements of the Lloyds decisions (as set out above) will be met.

As for any obligation on DC arrangements under Coloroll, it's suggested even were there to be an obligation on the Receiving Plan to equalise the transfer payment received (which is doubted²¹) a DC Receiving Plan wouldn't have access to additional resources to meet its obligation, because:

- if there's a sponsoring employer for the Receiving Plan its legal obligations are likely to be restricted to paying contributions in respect of its active members at the rate specified in the rules (and maybe expenses); and
- many Receiving Plans will have no sponsoring employer (such as a personal pension plan)

²⁰ Leaving aside the use of sex based factors for setting annuity rates.

²¹ The Coloroll case concerned a bulk transfer from one contracted out defined benefit scheme to another.

Given the above it's suggested DC Receiving Plans (whether or not sponsored by an employer) aren't responsible for correcting any past inequalities in the original transfer payment received from the Transferring Scheme. This Guidance therefore proceeds on this basis²².

It may be Receiving Plans which operate on a DC basis will be approached by Transferring Schemes seeking to pay top-up payments to discharge the Transferring Scheme's obligations under Lloyds 2020. It's expected the Receiving Plan will be prepared to accept top-up payments where the former member remains a member of the Receiving Plan, provided the former member consents and, in some cases, an administration fee is deducted from the payment.

Given some top-up payments may be small in amount, operators of defined contribution Receiving Plans may also decide to set a minimum level of top-up payment they're willing to accept.

7. Conclusions for receiving plans

Whilst it's still relatively soon after Lloyds 2020 and industry practice is likely to develop it's suggested in practice:

- DB Receiving Plans are expected to apply GMP Equality to the benefits awarded in respect of transfers in as part of their wider GMP Equality exercise. Having completed this exercise and communicated with members there may be reluctance to re-open the position by accepting a subsequent top-up payment if the advice is by accepting a top-up payment further adjustment would be required to the member's benefits
- DC Receiving Plans are likely to be willing to accept top-up payments if offered, subject to minimum levels and with member consent.

²² The position for money purchase schemes that provide GMP underpins is different as those schemes may be considered to be defined benefit in nature if the underpin bites.

PART C. BULK TRANSFERS

8. Bulk transfers

Normally on a bulk transfer, the Receiving Plan would agree to grant benefits to members by reference to their accrued rights (or the value thereof) in the Transferring Scheme, regardless of the value of assets transferred.

Many bulk transfers (such as scheme mergers) will have been conducted on the basis the transferred members are provided with mirror image benefits under the Receiving Plan. Such transfers differ from individual transfers in that, often bulk transfers are made without the consent of the members but with an actuarial certificate.

Lloyds 2020 considered a bulk transfer to a Receiving Plan on terms the transferring members were granted mirror image benefits. The judge held in those circumstances the Transferring Scheme wasn't not under an obligation to calculate top-up payments for the members transferred so, there should be no obligation, based on the Lloyds judgments, for a Transferring Scheme to make an adjustment to the amount of the original bulk transfer payment in such circumstances.

It's suggested Receiving Plans should assume an obligation to equalise and correct GMP inequalities which existed in the Transferring Scheme for those members whose benefit entitlements were bulk transferred into the Receiving Plan on a mirror image basis. However, not all bulk transfers were on a mirror image basis. In some cases, transferred members were granted service credits based on the Receiving Plan's benefit structure and in those cases specific advice should be taken.

Schemes might want to review any legal agreements entered into as part of the bulk transfer (whether they be scheme merger agreements or commercial agreements entered into by employers as part of a business sale) as these may contain indemnities which may, subject to any time limits, cover some or all of the additional liabilities and costs which arise as a result of implementing GMP Equality.



THINGS
TO
CONSIDER

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