



12 April 2012

Our ref: ICAEW Rep 50/12

Steve Webb MP
Minister of State for Pensions
Department for Work & Pensions
Caxton House
Tothill Street
London SW1H 9DA

Dear Steve

Equality Act 2010 and Guaranteed Minimum Pensions

ICAEW welcomes the opportunity to comment on the consultation paper *Draft Occupational Pension Schemes and Pension Protection Fund (Equality) (Amendment) Regulations 2012* published by Department for Work & Pensions on 20 January 2012, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

Seven leading bodies represented on the Occupational Pension Schemes Joint Working Group, who liaise with Government on workplace pension policies, have written this joint letter (attached as an appendix) to the Pensions Minister opposing the way in which the Government is proposing that pension schemes equalise guaranteed minimum pensions.

Yours sincerely

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APPENDIX

OCCUPATIONAL PENSION SCHEMES JOINT WORKING GROUP

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Dear Steve

Equality Act 2010 and Guaranteed Minimum Pensions

I am writing on behalf of the Occupational Pension Schemes Joint Working Group bodies in relation to the Department for Work and Pensions' consultation on draft regulations on the subject of gender equalisation of Guaranteed Minimum Pensions (GMPs). The industry organisations comprising the JWG will be responding individually to the DWP consultation. **However, on discussion, it is apparent that we all share some major concerns about the scope and proposals of the consultation.** This letter sets out those concerns, and suggests an approach that we believe to be proportionate for government to take in the current circumstances.

Background

The consultation takes a court case (*Allonby*) and legal advice received by the DWP on a relatively minor point (the need or otherwise for a comparator in equalisation tests for GMP) as the catalyst for an exercise to promulgate the view that there is now a clear need for all pension schemes to equalise for the effects of GMP. Our members who are pensions lawyers believe that doubts remain about the need for equalisation, which would need a court case to clarify.

The approach by the DWP is based on an assumption that contracted out pension schemes should have equalised the effects of unequal GMPs since the European Court judgement on the *Barber* case in 1990. This is notwithstanding the facts that it was government legislation that perpetuated unequal GMPs until 1997, and that, since then, no practical solutions have been offered by government. The great majority of pension schemes equalised their overall benefits in the early 1990s, which in most cases meant bringing scheme pension ages into line with one another. The reason for setting GMPs to one side, was because trustees and employers did not want to try to tackle legislative requirements without knowing what they needed to do, if

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indeed there was any legal obligation to do anything at all, rather than because they were trying to evade costs.

The DWP has stated that there is no need for the DWP to provide an impact assessment of the proposed new legislation, on the grounds that no new liability is created. We disagree. **We estimate that implementing equalisation programmes for all private sector contracted out schemes on a basis of equalising actuarial values would add in the region of £13 billion to pension scheme liabilities, and could absorb up to £300 million in implementation costs. To impose costs of this magnitude on UK industry at a time of economic uncertainty is unacceptable.**

Both of these figures would be significantly higher if the possible equalisation method set out in the DWP's consultation document is adopted. The costs of the DWP approach are hard to quantify, but we expect they would easily double the figures shown above. Under the DWP method, it is entirely possible that a male and a female with identical service and earnings history will both receive increases to their unequalised benefits at different points in their lives. Surely it should be possible to offset overs and unders, so that the value of benefits received does not exceed the higher of the two unequalised values?

The DWP method would also require pension schemes to run duplicate records and duplicate calculations for each member, an arrangement which no pension administration system is set up to provide.

Who will benefit from GMP equalisation?

It really is impossible to identify specific groups who will benefit from GMP equalisation. The position will depend on the complex interaction of factors. Typically women will have higher GMPs than men, and so conversely lower non-GMPs than men. The effects will depend on:

- the design of each pension scheme, and in particular the level of pension increases given for non-GMP for service between 1990 and 1997, compared with GMP increases (inflation-linked with a 3% pa cap). If non-GMP increases are higher than GMP increases, equalisation will tend to favour men, and vice versa.
- whether or not the member leaves service before retirement age. For those leaving service before retirement age, equalisation will tend to favour women, because the "revaluation" of pension prior to retirement age is usually higher for GMP than for non-GMP.
- a complex interaction of the scheme's pension age, the pension age for GMPs (65 for men, 60 for women), and the age at which a member chooses to retire. It is quite possible for the woman's pension to exceed the comparable man's pension from 60 to 65, and then for the position to swap thereafter.
- a host of other issues, such as whether the member has significant non-pensionable earnings (e.g. overtime), or whether the member's salary exceeds the upper earnings limit, all of which will affect the balance between the member's GMP and non-GMP.

In summary, it is impossible to generalise about who will benefit from GMP equalisation. We suspect that equalisation will benefit more men than women. It is hard to describe the GMP equalisation issue as one that has victims.

Our concerns

The proposed changes to legislation go further than are required to bring the *Allonby* case (the case in relation to comparators) into effect. This is a case of "gilding the lily", introducing legislation to deal with a European

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issue that goes further than European law requires. Arguably, no legislation is needed at all as the courts will take the *Allonby* case into account. If nevertheless the government wishes to introduce changes to implement *Allonby*, the JWG members strongly urge the government to pare back the draft regulations so that they do not introduce other additional requirements in relation to GMPs that are not currently in law.

The Association of Pension Lawyers has commissioned advice including draft regulations that achieve this, and we strongly commend them to the government.

Our second major concern relates to the specific equalisation method that the DWP has chosen to suggest as a method that is intended to be acceptable for equalisation purposes. The method is probably the most expensive of those that the DWP could have chosen to support. It works on the assumption that every instalment of a member's pension would be calculated twice, the first time based on male benefits and the second based on female benefits. For each pension instalment, the higher of the two figures is paid. As discussed above, this can result in a man and a woman with the same employment history both receiving uplifts to their benefits. In our view this is unjustified expense: a more appropriate method would focus on raising the overall value of benefits for the gender with the lower actuarial value up to the higher actuarial value of the other gender.

If the DWP is unwilling to support an equalisation method that equalises values, we would prefer there to be no DWP approved method. Indeed, as our analysis suggests that there will be a number of scheme specific issues and cases that cannot sensibly be covered in a standard piece of DWP guidance, our view is that guidance is unlikely to turn out to be helpful. **We strongly recommend removing equalisation guidance.**

Our third concern is that we can see future developments which may change the way in which GMPs may be equalised, or perhaps even eliminate the need for equalisation. The government has confirmed that it will be reforming the State pension system, with an expectation of combining and simplifying the existing complex and confusing mix of Basic State Pension, SERPS/S2P and Pension Credit. We broadly support the direction that the government is considering here.

However, if SERPS, S2P and contracting out are swept away, it seems to us that there is a good chance that GMP terms will be altered in the process, or possibly that GMPs will even be eliminated. It would be particularly unfortunate if the UK pension industry had incurred the costs of implementing an equalisation exercise that turned out to have been unnecessary because of a later change in State pensions. **We strongly recommend that the government identifies the interactions between these two projects before taking any steps that push schemes into a GMP equalisation exercise.**

Finally, we believe that the DWP has overlooked the effect of GMP equalisation on public sector pension schemes. Public sector schemes link pension increases after retirement and pension revaluation for leavers before retirement, to inflation, without the caps on the level of increases that typically exist in private sector schemes. In the case of GMPs in payment, part of this inflation linking is provided through the pension scheme, and the rest through SERPS component of the state pension. While the public sector scheme in isolation provides unequal pensions because of the GMP rules, it is argued that this is compensated for by opposite differences in the state pension. Hence it is argued that GMP equalisation does not result in any issues for public sector schemes.

We think that this oversimplifies the situation. The GMP is still payable at different ages for men and women, with different adjustments for men and women to calculate the pension payable from a member's chosen retirement age. This will also reflect so called "anti-franking" requirements, which are not the same for men and women. We agree that the problem is less significant for public sector schemes, but it is not non-existent.

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Further, State pension reform may have significant effects on public sector schemes. If SERPS / S2P are replaced by a system that provides equal pensions for men and women, the legal provisions that allow public sector pensions to be discriminatory will no longer apply, potentially with significant impact.

Conclusion

In conclusion, therefore, we believe that the scope of the draft equality legislation should be reduced, so that it does no more than implement the *Allonby* case.

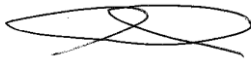
We strongly believe that the DWP's proposed possible equalisation method goes far further and is far more complex than the law requires.

We recommend removing equalisation guidance.

Overall, we recommend that the government does not push pension schemes into a GMP equalisation review while major changes are proposed for State pension provision, which may have significant knock-on consequences for GMPs.

Kind regards,

Yours sincerely,



Stuart M Southall

Chairman of the Occupational Pension Schemes Joint Working Group and
Association of Consulting Actuaries

Letter co-signed by:

Joanne Segars, Chief Executive, National Association of Pension Funds

Kevin LeGrand, President, Society of Pension Consultants

Mark Atkinson, Chairman, Association of Pension Lawyers

Vince Linnane, Chief Executive, Pensions Management Institute

Lucy Ashton, Policy Adviser, Savings & Retirement, Life, Savings and Protection Directorate,
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