

# Case tracker: key pensions cases

December 2020

	Case Summary	Status
<i>Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc and others</i> [2020]	<p>The High Court has handed down its ruling in the second major Lloyds case on GMP equalisation – for more information on the first decision, see next item.</p> <p>The latest decision considered issues related to past transfers out. The judge ruled that where a statutory transfer value was underpaid due to a failure to take equalisation into account, the trustees did not properly perform their statutory duty, and did not benefit from a statutory discharge (or, based on the scheme documentation in this case, a discharge based on the scheme rules or various example agreements with members). Claims would not be time-barred under statute. To read more about the decision, including in relation to non-statutory transfers and bulk transfers, <a href="#">click here</a>.</p>	
<i>Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc and others</i> [2018]	<p>The High Court has ruled that the GMP element of a pension is pay, so it is unlawful to pay unequal benefits as between men and women, and trustees have a duty to equalise scheme benefits for the effects of unequal GMPs. On the equalisation method, the court ruled that, if multiple methods produce equality of benefits, the method which results in 'minimum interference' with the rights of any party should be chosen. In this case the sponsor was entitled to insist on the cheapest method. The court also ruled that there is no applicable limitation period but, if scheme rules provide for forfeiture of unclaimed benefits after six years, this may operate to restrict the ability of beneficiaries to claim back payments.</p> <p>A <b>supplementary judgment</b> provides further guidance on GMP conversion. We acted for the trustee in this case. <a href="#">Click here</a> for more detail on the ruling.</p>	
<i>The Board of the Pension Protection Fund v Dalriada Trustees Limited and others</i> [2020]	<p>The High Court has clarified some issues concerning the operation of the Fraud Compensation Fund (FCF), including that claims arising from pension scams may be eligible for compensation. Depending on the quantum of any successful claims, it is possible that the industry levy funding the FCF may be increased in future.</p>	
<i>Heskett v Secretary of State for Justice</i> [2020]	<p>The Court of Appeal has concluded that an employer's need to reduce expenditure, and specifically staffing costs, can constitute a legitimate aim, in the context of objective justification of indirect discrimination. The case involved a claim of indirect age discrimination (an employee complained that the rate of pay progression for his role had been reduced as a result of the policy of austerity in public sector pay, which disadvantaged younger employees). To read more about discrimination claims in the pensions context, visit <a href="http://www.allenoverly.com/discrimination">www.allenoverly.com/discrimination</a>.</p>	
<i>Safeway v Newton</i> [2020]	<p>In this case, the scheme was administered on the basis that pension ages had been equalised at age 65 following member announcements, but the trust deed was not amended until several years later. Both the High Court and the Court of Appeal dismissed the argument that the announcements had the effect of amending the rules prospectively – the scheme rules required amendments to be made by deed (but under domestic law amendments could be retrospective). The Court of Justice of the European Union ruled that retrospective 'levelling down' of pension ages is prohibited, unless there is objective justification, and that it was for the Court of Appeal to 'verify' whether there was objective justification in this case. The Court of Appeal subsequently ruled that the introduction of the equal</p>	

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treatment rule in section 62 of the Pensions Act 1995 closed the Barber window from 1 January 1996 (the argument that the scheme had been equalised from the date of the announcement was not pursued after the CJEU decision). To read more about equalisation disputes, visit <a href="http://www.allenoverly.com/equalisation">www.allenoverly.com/equalisation</a> .	
<b>Schrems II [2020]</b>	The CJEU has handed down its decision on international transfers of personal data. It ruled that the EU-US Privacy Shield is invalid but upheld the general validity of the EC standard contractual clauses (SCCs) for cross-border data transfers. Read more about the implications of the decision <a href="#">here</a> .
<b>Hughes v Board of the Pension Protection Fund [2020]</b>	The High Court has ruled that the Pension Protection Fund (PPF) compensation cap is discriminatory on the grounds of age contrary to EU law, and that the relevant provisions in the Pensions Act 2004 must be disapplied.
<b>Pensions-Sicherungs-Verein VVaG v Bauer [2019]</b>	The Court of Justice of the European Union has stated that, although the Insolvency Directive does not require pension rights to be guaranteed in full, a reduction in benefits cannot be 'manifestly disproportionate'. The court considered that a reduction is manifestly disproportionate where, even though the individual is in receipt of at least 50% of their acquired rights, as a result of the reduction the individual is living, or would have to live, below the at-risk of poverty threshold for that member state (as published by Eurostat).
	The government and the PPF are seeking to appeal the decision.
	The PPF is considering the decision.

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