

Client briefing

Protecting Defined Benefit pensions schemes

White paper

Protecting Defined Benefit Pension Schemes

The government has published its white paper on the future of DB pension schemes “Protecting Defined Benefit Pension Schemes”. Overall, the government views the current protection and regulation regime positively. However, it highlights some areas that it believes would benefit from improvement in the form of additional legislation or guidance, and increasing the powers of the Pensions Regulator (“tPR”). Upcoming actions include:

- Giving tPR the power to impose punitive fines
- Reviewing the notifiable events and clearance frameworks
- Requiring businesses to consider and declare the impact on the pension scheme of various corporate transactions
- Improving tPR’s information gathering powers
- Imposing a requirement for DB schemes to elect a chair of trustees, who will produce a triennial chair’s statement
- Promoting the possibility and benefits of consolidation

New legislation

Deferring employer debt

New regulations take effect on 6 April 2018, that will allow employers in multi-employer schemes to defer calculation of a section 75 debt when the employer ceases to employ active members.

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 have been passed following the government’s consultation in spring 2017. Although aimed at non-associated employers in multi-employer schemes, any employer who meets the relevant conditions, including trustee consent, can utilise this additional flexibility.

Once deferred, the employer would continue to be treated as participating in the scheme for the purposes of scheme funding and administration. The deferral ends on the occurrence of various events including by agreement between the trustees and the employer.

Bulk transfers without consent

Under current legislation, members of a former contracted-out salary-related scheme, cannot be bulk transferred without their consent to a scheme that has never been contracted-out. Since the abolition of contracting-out on 6 April 2016, it has not been possible for such a transfer to take place to a new scheme.

Towards the end of last year, the government consulted on regulations that would address this issue and allow such transfers to be made in certain circumstances. The Contracting-out (Transfer and Transfer Payment) Regulation (Amendment) Regulations 2018 will take effect on 6 April 2018.

DC to DC transfers

The process for making a without-consent bulk transfer from one pure DC arrangement to another (such as a master trust), should become simpler from 6 April 2018.

The Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018 will remove the need to obtain an actuarial certificate in relation to such a transfer. The certification requirement has always sat uncomfortably in the context of DC transfers, having originally been drafted with DB schemes firmly in mind. A DC focused alternative test will apply instead, together with protections for members.

Statutory guidance on the new requirements should be available before the end of April.

DC disclosure requirements

Trustees of occupational DC schemes will be required to provide additional information about the charges and costs associated with the different investment options. The new obligations are contained in the Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018. Trustees will need to disclose the information within 7 months of the end of a scheme year ending on or after 6 April 2018. Certain information will have to be published on the internet, available to members and non-members alike

The FCA has imposed corresponding requirements on those managing investments, to provide the relevant information to trustees.

The measures are intended to increase transparency for members, and promote a healthier market by allowing easier comparison between providers.

Automatic enrolment

From 6 April 2018, a worker must earn £6,032 per annum in order to be eligible for automatic enrolment. The minimum level of contributions (see below) will then be payable on salary between £6,032 and £46,350.

On the same date, the statutory minimum employer contribution for an automatic enrolment DC scheme, will rise to 2%, and the minimum total contribution (for employer and employee, including tax relief) will increase to 5%. On 6 April 2019, these will increase again to 3% and 8% respectively.

Advice and transfers

Trustees are required to check that members with non-DC benefits over £30,000 have taken appropriate independent advice before transferring those benefits to a DC arrangement. The method of calculating the value of the benefits will change from 6 April 2018, to a CETV basis but disregarding certain elements.

There is a transitional window from 6 April to 26 April for trustees to write to members if they have been told on or after 1 October 2017 that they require advice, but no advice is required under the new regime.

HMRC

Anti-money laundering

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force last year, imposing new duties on trustees of occupational pension schemes. If trustees have paid particular categories of tax during a tax year, they have until the following 31 January to register with HMRC (if they are not already registered) and provide certain information about the scheme and its beneficial owners.

HMRC has confirmed that it will take a risk-based approach to applying penalties for late registration or failure to notify HMRC of changes following registration. If HMRC is satisfied that trustees have taken reasonable steps to comply with the regulations, no penalty will be payable. Otherwise, a fixed penalty will apply, ranging from £100 for up to a 3 month delay to the greater of £300 or 5% of the tax liability for a delay of more than 6 months.

HMRC has also announced that it will consult later this year on the penalties to be applied in relation to money laundering offences under the same regulations.

The Pensions Regulator

Management of service providers

TPR has issued a statement setting out how it expects trustees to manage their relationships with service providers. It is largely common sense, but it provides a helpful checklist for trustees and should be taken into account in relation to both existing and future appointments.

Freedom of information

The Information Commissioner has supported tPR's decision not to release information in response to a FOI request.

TPR received a request to provide information on any proceedings or action take in relation to a named hotel. TPR declined to either confirm or deny whether it held such information. It relied on an exemption under the FOIA, because, under the Pensions Act 2008, tPR was not at liberty to disclose "restricted information", being information obtained by tPR in the exercise of its functions which relates to the business or affairs of any person. Although tPR does sometimes disclose information in relation to named individuals or organisations, it does so at its own discretion and at a time when such disclosure would not prejudice any action that tPR is or may take.

Master trusts

TPR has released a statement setting out how it will protect pension savers by regulating master trust pension schemes. From October 2018, master trusts will have to apply to tPR for authorisation to operate in the market. They will be required to provide evidence to tPR in relation to five key areas before authorisation will be given. Master trust schemes that do not obtain authorisation must exit the market, and tPR intends to work with them through the wind up process to ensure that members are safely transferred to another scheme.

A draft code has been published for consultation, and guidance is due to follow.

Fine for NOW: Pensions

TPR has fined the trustee of NOW: Pensions £70,000 and has issued it with an Improvement Notice. A related Third Party Notice has been issued to the trust manager. The fines relate to a failure to ensure that all contributions were collected and invested promptly over a 28 month period, and a failure to keep some members properly informed.

The two notices impose deadlines by which the trustee and manager must take actions to remedy issues. Other actions have been taken voluntarily, including the establishment of a compensation fund for affected members.

Naming of non-compliant trustees

TPR has published a list of six pension schemes whose trustees have been fined for producing non-compliant chair's statements (required in relation to DC schemes). It also names four professional trustees who were appointed to the schemes at the relevant time.

The list is to be updated every three months, in an effort to encourage trustees to provide adequate information to members.

Cold-calling

TPR, in conjunction with the police, has launched an investigation into a number of pension schemes suspected of being linked to cold-calling. Although cold-calling isn't yet an offence, tPR is concerned that members are being persuaded to transfer their funds into poorly-run schemes, after being contacted by cold-callers. It urges people not to respond to cold-calls, but instead to report them to Action Fraud.

Pensions Protection Fund

Bridging pensions

New rules have come into force that allow the PPF to take bridging pensions into account when determining the level of compensation payable. Previously, PPF compensation was calculated based on the pension a member was receiving on the assessment day. If the member was receiving a bridging pension at that time, the compensation he would receive from the PPF could, over the long term, have ended up being higher than the pension that would have been payable from the scheme.

Recent cases

Pensions Ombudsman – Mr S (PO-17674)

Mr S complained to the Pensions Ombudsman when increases on his pension were suspended (in common with others under the scheme).

The scheme rules provided for pensions to be increased in accordance with the RPI capped at 5% “as specified by order under section 2 of schedule 3 of the Pension Schemes Act [1993]”. From January 2011, orders made under that Act were by reference to increases in the CPI, rather than the RPI. The trustees of the scheme obtained counsel’s opinion on the correct way to increase pensions. They were advised that they should use the index specified in the order under the Act as it stood from time to time i.e. apply CPI increases. The trustees suspended further pensions increases until pensions in payment reached the level that they ought to have been if the correct level of increases had been applied since January 2011.

The Deputy Pensions Ombudsman concluded that the trustees had acted reasonably in seeking and acting on advice, and had not made an error of law, so the complaint was dismissed.

Also in the news

Professional trustees

Consultation has recently closed on the Professional Trustee Standards Working Group’s draft standards for professional trustees. The standards are intended to improve the quality of professional trustees. Although the standards would not be enforced by legislation, professional trustees (anyone fitting tPR’s description in its August 2017 policy document) will be expected to operate on a “comply or explain” basis, and it is anticipated that those looking to appoint a professional trustee would take this disclosure into account. TPR supports the standards and will consider compliance with them as an indicator of fitness and propriety.

The final standards are expected to be published in April/May 2018. The Group also anticipates that details of an accreditation scheme will be published later this year.

Extension of dormant assets scheme

The government has published its response to the Independent Dormant Assets Commission report. The report recommends that the current scheme, which includes dormant funds in banks and building societies, should be expanded to include other assets, such as those held by pension schemes.

In its response, the government encourages pension firms to consider how their products could be included in an expanded scheme. A pensions industry “champion” is to be announced to focus on ensuring an appropriate approach to pension scheme assets.

Looking ahead

Protected rights – April 2018

As part of the arrangements for the abolition of contracting-out on a protected rights basis, trustees of schemes that were contracted-out on this basis have had a statutory power to amend their scheme to remove relevant rules. On 5 April 2018, the period for exercising this statutory power ends.

General Data Protection Regulation – May 2018

The GDPR comes into force on 25 May 2018 and will govern the processing of personal data. With no transitional period, trustees must be ready to comply with the requirements by this date.

Restrictions on statutory transfers – end of 2018

In August 2017, the DWP and HM Treasury published a joint paper on various measures aimed at addressing the growing issue of pension scams. Included in the paper was a proposal to restrict members' right to a statutory transfer where the receiving scheme may be fraudulent. It is anticipated that these restrictions will be finalised later this year.

Lifetime allowance – 2018/19 tax year

The Lifetime Allowance for tax year 2018/19 will increase to £1,030,000, reflecting the increase in CPI inflation.

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