

Bulletin – Pensions Round Up

The Pensions Regulator

New transfer guidance

From 9 December 2019, extra checks may be required on advisers in a DB to DC transfer request. Due to a change in the Financial Conduct Authority's approved persons regime, extra steps will need to be taken to verify that an adviser is authorised to provide the member with advice. It is anticipated that the extra checks will be required for approximately the next twelve months whilst the FCA updates its directory. The Regulator has updated its DB to DC transfers and conversions guidance to set out the steps that trustees should take.

New investment guidance

With effect on and from 10 December, there will be a change to way in which trustees deal with their investment advisers. They will be expected to run competitive tenders for fiduciary management and investment consultancy services, set written strategic objectives for their investment consultants and monitor performance against those objectives.

These changes come about as a result of an Order issued by the Competition and Markets Authority, following an investigation into market practice. Even if not strictly required to do so under the Order, the Regulator has issued new guidance encouraging trustees to follow this approach as a matter of good governance.

It is also anticipated that the Department for Work and Pensions will legislate to bring the requirements of the CMA Order into pensions legislation.

Recent cases

Rectification

Chas A Blatchford

A drafting error that substantially increased the pension increase provisions in a pension scheme has essentially been set aside by the High Court.

An amendment made to the scheme documents changed the increases applied for a group of members from LPI 5% to a minimum increase of 5%. The employer applied to court to rectify the documents i.e. amend the documents retrospectively in line with the parties' common intention.

In reaching a decision, the judge considered how to apply a recent Court of Appeal case on rectification in the context of a pension scheme. The judge held

that “an outward expression of accord is not required in pension cases. If there was a joint continuing common intention to make no change, the consensus (albeit a negative one) is established.”.

Pensions Ombudsman

Reinstatement after pension scam

Mrs H (PO-21489)

The Ombudsman has directed a council, as an administrator of a fund under the LGPS, to reinstate a member’s accrued benefits that were transferred to a scam scheme and subsequently lost to the member.

Red flags in the case included that the member was living on state benefits, had made the transfer request following a cold call, the scheme had only recently been set up, its sponsoring employer was unrelated to the member’s previous work and was based some distance away from where the member lived. However, the council found no evidence of illegal activities and, after receiving confirmation from the member that she had read the Regulator’s scam literature, made the transfer on the basis that the member had a right to it.

The Ombudsman found that the member did not have a right to the transfer as she was not an “earner” as she was living on state benefits, so the council should not have made it.

Other

Opposite sex civil partnerships

New regulations in force on and from 2 December 2019 will extend civil partnerships to opposite sex couples. Trustees should check whether their rules will need to be updated as a consequence, although for many the statutory change will carry through to their rules without any amendment being required.

Levy consultation

The Department for Work and Pensions is consulting on increasing the general scheme levy. This levy, payable by occupational and personal pension schemes, funds the cost of providing the Regulator, the Ombudsman and the pension related activities of the Money and Pensions Service.

The DWP is consulting on four options for increasing the levy, including imposing an initial 10% increase on 1 April 2020 with further increases following a wider review, or alternatively a phased increase beginning with an increase of 30% on 1 April 2021 followed by further 25% increases (compared to the current rate) for each of the seven years thereafter.

Pensions Schemes Bill

Following the Queen’s Speech on 14 October, the Pensions Schemes Bill was published. In line with expectations, the Bill would have introduced new powers for the Pensions Regulator, allowed for collective defined contribution (CDC) schemes to be established and set out the legislative framework for pensions dashboards. The general election has stopped the progress of the Bill, but as

there is considerable cross-party support for the Bill, we expect it will be reintroduced in Parliament once a new Government is elected.

GMP equalisation HMRC guidance

In addition, HMRC has announced that it is aiming to publish high level guidance in December 2019 dealing with the impact of GMP equalisation in relation to the lifetime allowance, lifetime allowance protection regimes and the annual allowance.

Looking ahead

FRC Stewardship Code

The Financial Reporting Council has published a new stewardship Code, which will come into effect on 1 January 2020. Although the Code is voluntary, it complements the legislative requirements that recently came into force for pension scheme trustees in relation to their investment decisions and reporting obligations.

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