

Bulletin – Pensions Round Up

The Pensions Regulator

Response to consultation The Regulator has published its response to the consultation on the future of trusteeship and governance, announcing that it will review and update its “Trustee Knowledge and Understanding Code of Practice” and the Trustee Toolkit, as part of measures to protect savers and improve member outcomes. The published intention is to then contact a large number of schemes to test levels of TKU, and engage directly with those schemes whose response is inadequate.

An industry working group to be set up to find ways of supporting schemes to develop initiatives to improve trustee diversity.

The consultation also sought views on whether it should be mandatory for trustee boards to include a professional trustee and if governance standards for sole trustees should be strengthened. No immediate measures have been suggested in relation to these proposals, with the Regulator to support the creation of industry standards and accompanying accreditation framework instead (see below).

Recent cases

Discrimination

Miller v Miller

The Supreme Court has held that a claim for part-timers discrimination in relation to pension accrual can be brought within three months of the service to which the accrual relates, or within three months of the date on which the pension comes into payment.

The case concerned four judges who had each had a period of part-time working, had been refused entry to the judicial pension scheme during that period, but who had been a member during other periods. The Court was asked to decide when the less favourable treatment had taken place, for the purposes of applying the three month time limit for bringing a claim. The Court held that the unfavourable treatment occurred both at the time during which the individuals were denied entry to the pension scheme, and the later date on which benefits from that scheme became payable.

PPF compensation levels

This case concerns the level of compensation that a national pensions lifeboat arrangement (such as the UK’s Pensions Protection Fund) must provide. The Court of Justice of the European Union has previously held that individuals must receive an amount equal to at least 50% of the benefits to which they were entitled

**Pensions-Sicherungs
Verein VVaG v Gunther
Bauer**

in their employer's pension scheme. In this case the CJEU held that, in addition to the 50% threshold, the reduction between the original entitlement and the compensation must not have a manifestly disproportionate effect on an individual. This is an objective test, based on whether the individual will have to live below the Member State's "at-risk-of-poverty threshold" (determined by Eurostat).

Whilst this test may not have a material effect on the level of compensation that the PPF must provide, it seems likely to increase the costs of administering the PPF, as checks will be required in individual cases where there is a risk of dipping below this minimum standard.

Contribution notices

Dominic Chappell

The Regulator has confirmed details of the decision of its Determinations Panel to impose two contribution notices on Dominic Chappell, requiring him to pay £9.5 million in respect of the two BHS pension schemes, after his appeal was dismissed.

Pensions Ombudsman

Pensions liberation

**Mr Y (PO-21261) and Mr S
(PO-12324)**

The Ombudsman has dismissed two similar complaints regarding transfers to scam pension schemes.

The first complaint related to a transfer that took place in March 2010, before the Regulator had issued guidance in relation to pensions liberation. The administrator of the transferring scheme checked that the receiving scheme was registered with HMRC, but no further checks were carried out before the transfer was made to what turned out to be a scam scheme. Had the administrator carried out more in-depth checks it may have discovered that at the time of the transfer the Regulator had suspended the receiving scheme's administrator for fraud. However, at the time such extra checks were not common practice and the Ombudsman held that sufficient due diligence had been undertaken in accordance with industry standard at the time.

The second complaint involved similar circumstances, but related to a transfer that took place in March 2013, just after the Regulator's scam guidance had been issued. The complaint was not upheld, as the Ombudsman determined that the administrator had carried out sufficient checks in accordance with common practice at the time and administrators needed time to put new processes into place. Further, the administrator did provide the member with a warning document about the possibility of pension liberation.

**Trustee's duties and
disclosure**

Mr D (PO-27469)

The Deputy Ombudsman has heard a complaint from a member in relation to how the pension scheme was measuring and managing the potential risks of climate change. The trustee engaged with the member, addressing his queries and offering to meet to discuss his concerns. However, the trustee refused to provide requested investment strategy, risk management framework or internal management documents as this went far beyond what they were required to

provide under legislation. The Deputy Ombudsman dismissed the complaint, refusing to agree with the member's assertion that the trustees' disclosure duties had been extended by case law. She also found no evidence of maladministration.

Other

Brexit

The UK's membership of the EU has ended, although UK legal obligations will largely remain the same until at least 31 December 2020 (the end of the transition period). Whilst the future position is being decided, trustees should continue to administer their scheme in accordance with the current obligations, taking account of any impact Brexit is likely to have on the sponsoring employers' covenant and the scheme's investments.

GMP equalisation – further guidance

HMRC has issued guidance in relation to pensions tax aspects of GMP equalisation. It confirms that any increase to benefits as a result purely of GMP equalisation is not a new entitlement or new accrual, so will generally not need to be tested against the annual allowance or prejudice lifetime allowance protections already in place. However, adjustments might have an impact on the amount of any previous and future benefit crystallisation events, which may result in a lifetime allowance charge becoming due.

The guidance does not cover GMP conversion and further guidance is expected in relation to other tax issues associated with GMP equalisation such as the treatment of lump sum and death benefit payments.

The PASA GMP Equalisation Working Group is also due to issue further guidance in relation to various aspects of GMP equalisation including data issues and past transfers out, but no timescales have been publicised. The courts are also due to consider another aspect of the *Lloyds Bank* case (dealing with past transfers out) in April/May this year.

DB transfers code of practice consultation

The Pensions Administration Standards Association has begun a consultation on its DB transfers code of practice. The stated intention of the Code is to "create faster, well-communicated, efficient and cost-effective strategies" that administrators can execute. The Code will also assist trustees in defining service levels for their scheme administrators.

Professional trustee accreditation programme

The Association of Professional Pension Trustees and the Pensions Management Institute have launched an accreditation programme for professional trustees. Applications for accreditation will open from 24 February.

Employees' ethical beliefs

A preliminary employment tribunal hearing has flagged the growing importance of ESG considerations in relation to pension scheme investments. An ex-employee of an animal welfare charity has claimed that he was unfairly dismissed for raising concerns that the default fund for the charity's pension scheme did not

invest solely in ethical investments. The case highlights the possibility that the ethics of pension fund investments may become an increasingly controversial issue as trustees and employers seek to strike a balance between protecting members' financial interests and taking their ESG views into account.

Looking ahead

Pension Schemes Bill

The Government has reintroduced the Pension Schemes Bill that failed to progress through Parliament as a result of the general election. The new Bill is largely unchanged from its predecessor, introducing new powers for the Pensions Regulator, allowing for collective defined contribution (CDC) schemes to be established and setting out the legislative framework for pensions dashboards. New criminal offences contained in the Bill are causing concern among the pensions industry, as they are potentially very wide and are punishable by a jail sentence and/or a fine.

Regulator consultation

The Regulator is due to begin the first of its two consultations on a dual path approach to funding defined benefit pension schemes. The first consultation will consider the principles of the proposed new approach and will begin in March 2020.

RPI consultation

A consultation on the reform of RPI is due to commence on 11 March. The RPI is to be altered so that it aligns with the CPIH and the consultation will focus whether the proposed changes should be made before 2030 (the current timetable) and, if so, at what point between 2025 and 2030 the changes should have effect.

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