

Bulletin – Pensions Round Up

COVID-19

Pensions Regulator hub

The Regulator has established a COVID-19 hub on its website, containing its guidance in relation to the pandemic situation. The essential message is that trustees should concentrate on ensuring critical processes are maintained, whilst being flexible and pragmatic, and maintaining accurate work logs to be able to deal with less urgent issues when time allows. Some regulatory restrictions have been temporarily relaxed.

Pensions Ombudsman

After a brief suspension, the Ombudsman has announced that it has recommenced accepting new applications and enquiries, but only those made electronically. Due to staff working remotely, it is still unable to accept applications or correspondence by post. The Ombudsman has confirmed that, wherever possible, he will be using his discretion to expand the three year time limit on affected new applications.

Pensions Administration Services Association

PASA has published guidance for administrators, which acknowledges that not all administrators will be robustly positioned to deal with the current challenges. Reflecting the priorities set out in the Regulator's COVID-19 guidance, PASA's guidance identifies basic enablers required to ensure that those priorities can be met, including: prioritising payroll run and benefit settlements at the expense of lower priority matters if necessary; liaising with investment managers and AVC providers to move away from requiring wet signatures; and making payments electronically, rather than by cheque.

Job Retention Scheme

The Government's Job Retention Scheme may be relevant to any pension scheme that is open to accrual. Trustees will need to work with the employer to understand which members may be affected, and check the impact that the JRS will have on contributions, benefit accrual and death in service benefits.

A recent Treasury Direction has clarified that a furloughed worker may continue to act as a trustee for his/her employer's pension scheme during the period of furlough.

The Pensions Regulator

Annual funding statement The Regulator's annual funding statement has been issued. It includes guidance on how the Regulator expects trustees to take account of the effects of COVID-19 in valuations that are either in the process of being completed, or the valuation date for which falls over the last few months. It advises that valuation assumptions do not need to be revised to take account of post-valuation experience, but it should be factored into the recovery plan. For schemes with valuation dates in March/April, the Regulator advises that it is reasonable to delay taking decisions about technical provisions until more clarity emerges.

DB funding consultation The Regulator has launched the first stage of its consultation on a revised defined benefit (DB) funding code of practice (expected to come into force towards the end of 2021 at the earliest). The revised code will implement the measures to be introduced by the Pension Schemes Bill 2019-21 and provide greater clarity on the standards that the Regulator expects trustees and employers to apply. In light of the COVID-19 crisis, the Regulator has extended the closing date for this first stage to September 2020.

Framework document A new framework document has been drawn up by the DWP in consultation with the Regulator. This document sets out the broad framework within which the Regulator will operate, its functions, purpose and interaction with the DWP.

Recent cases

Approval of settlement agreement

Airways Pension Scheme Trustee Ltd v Fielder

The High Court has approved a settlement agreement between British Airways and the trustee of the Airways Pension Scheme, in relation to their dispute regarding pension increases. The essence of the dispute was that the trustee used the scheme's amendment power to grant unilateral discretionary pension increases (see our update of September 2018). This was found to be an inappropriate use of the trustee's power. Deciding the dispute in favour of the employer, the Court of Appeal granted the trustee permission to appeal to the Supreme Court and an indemnity from the scheme funds for the costs of doing so.

In the most recent application to the High Court for approval of the settlement agreement, the representative beneficiary argued that the court should reach its own decision as to whether not pursuing the appeal and instead agreeing a settlement was in the best interests of the scheme. The High Court did not agree and determined that the appropriate test was whether the trustee's decision to enter into the settlement agreement was one that a reasonable body of trustees could reach.

VAT on pension fund management services

United Biscuits Pension Trustees Limited v HMRC

Under UK law, pension fund management services were subject to VAT if they were provided by a non-insurer, but exempt if provided by an insurer. The anomaly was addressed by HMRC in 2019, so that generally the supply of all pension fund management services to DB schemes is now standard rated.

In this case, trustees sought to reclaim from HMRC over 35 years of VAT paid on pension fund management services, on the basis that the UK had not correctly applied an exception under the EU Directive in relation to VAT.

The Court of Appeal referred questions of EU law to the CJEU and the Attorney General has now given his opinion. He concluded that services provided by non-insurers could not be classified as an insurance transaction within the meaning of the exception. As such, the UK legislation was not incompatible with the Directive.

Pensions Ombudsman

RPI/CPI

Mr R (PO-16892)

Mr R's complaint concerned the trustee's position that the basis of pension increases under the scheme rules automatically changed from RPI to CPI with effect from January 2011, in line with the change to statutory minimum increases at that date. Although the trustee agreed to "write off" the consequent overpayments since 2011, it froze future increases until Mr R's pension was in line with the amount it would have been if the correct level of increases had been applied since 2011. The Ombudsman upheld the complaint, finding that a natural interpretation of the scheme rules was that RPI capped at 5% was "hard-coded" in.

The determination is one of several recent examples in relation to pension increases, where decisions have turned on the precise wording of scheme rules.

Other

GMP rectification

The GMP Equalisation Working Group has published guidance on when pension schemes should rectify GMPs. Essentially, the timing of GMP rectification will be a scheme specific decision, but the guidance suggests that any decision to delay rectification in order to combine it with GMP equalisation should be properly documented, together with the evaluation of the impact of doing so and the rationale for deferral.

The guidance sets out four steps that trustees will need to take now, in order to be able to make a decision about when to rectify GMPs.

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 third hearing in the *Lloyds* case took place at the beginning of May. The hearing is anticipated to settle the issue of how trustees' GMP equalisation duties apply in respect of past transfers out of a pension scheme. The judgment is expected over the next few months.

Consultation on dormant assets scheme

The Government is consulting in relation to the dormant assets scheme. Under the scheme, when certain assets e.g. bank accounts, have been dormant for a prolonged period they are transferred to a fund dedicated to addressing some of the UK's most pressing social and environmental challenges. It had been suggested that pension accounts would be included within the scope of the scheme, but this latest consultation suggests that they will be excluded to help boost trust in pension savings.

Increase to general levy

Following a consultation last year, the Government made regulations that were due to increase the pension scheme General Levy with effect from 1 April 2020. Due to the COVID-19 disruption, these regulations have been revoked, so the increase did not take effect. The Government has stated that it will engage with industry over the coming months to review the structure of the levy.

Spring budget

The key pension points announced by the Chancellor in his Spring 2020 budget were:

- Changing the tapering of the annual allowance, raising the level of adjusted income from £150,000 to £240,000. The minimum tapered annual allowance has been reduced from £10,000 to £4,000.
- The lifetime allowance has increased in line with the CPI, rising to £1,073,100.
- The Government will legislate to ensure that collective money purchase schemes, to be introduced by the Pension Schemes Bill 2019-21, can

operate as registered pension schemes for tax purposes. The change will have effect after Royal Assent of the Bill.

RPI consultation

The Government has announced a consultation on the future of the RPI. The consultation had been scheduled for January 2020, but the launch was delayed to coincide with the Spring Budget. The consultation was due to run for six weeks until 22 April 2020 but has now been extended until August.

PLSA Made Simple guide

The PLSA has published a “Made Simple” guide to diversity and inclusion.

Climate change consultation

The Pensions Climate Risk Industry Group has published a consultation in relation to the risks arising from climate change.

Pensions dashboard

The Pensions Dashboard Programme has published its first update on the progress of the project, which aims to enable all individuals to access their pensions information online, securely and in one place. The update confirms that stage one of the project will focus on the information people receive about their pension annually, such as in an annual benefits statement. To aid the development of data standards ready for stage two, two documents have been published: the Data Scope: Working Paper, and the Data Definitions: Working Paper. There is no call currently for formal feedback on these documents due to the COVID-19 disruption.

Looking ahead**Pension Schemes Bill 2019-21**

A new version of the Bill has been published, which includes the Government’s new provisions in relation to trustees’ climate change risk governance duties. As yet, no change has been made to the scope of new criminal offences, which are causing concern within the pensions industry.

Corporate Insolvency and Governance Bill

The Bill has been introduced in response to the economic circumstances caused by COVID-19. The Bill includes temporary easements of regulatory requirements and introduces provisions such as creditor moratoriums and restrictions on suppliers withholding goods, intended to give companies the breathing space and tools required to maximise their chance of survival. Whilst a stable strong employer is good for a pension scheme in the long run, trustees of a scheme whose employer is in crisis may find their position worsened if they are unable to enforce a debt (i.e. non-payment of contributions). One of the amendments that has been proposed as the Bill makes its way through Parliament would provide for regulations to treat pension contributions as a preferential debt.

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