April 2019

Bulletin – Pensions Round Up

The Pensions Regulator

Annual funding statement

In its 2019 annual funding statement, the Regulator has confirmed that it expects schemes to set a long term funding target that must be consistent with shorter term investment and funding strategies.

The Regulator sets out its expectations in relation to investment, funding and employer covenant risk, categorising them by ten different possible combinations. Trustees will be expected to justify any divergence from these expectations, in line with the Regulator's "comply or explain" approach.

Trustees and employers with "unacceptably long" recovery plans can expect engagement from the Regulator ahead of their 2019 valuation. The Regulator will also engage with schemes where it is concerned about other characteristics of their covenant and scheme profile.

The statement also confirms the Regulator's approach to late valuations. Whilst every effort should be made to submit valuations in accordance with the statutory timescales, trustees should not agree to an inappropriate valuation or funding plan merely because the deadline is imminent or has passed.

End of Johnstone Press anti-avoidance investigation

The Regulator has closed its investigation relating to the sale of the Johnston Press Group, concluding that it will not seek to exercise its anti-avoidance powers.

On 17 November 2018, the group went into administration and was sold to a company owned by the group's bondholders, using a pre-pack arrangement. Although the Regulator had been involved earlier in the process, it examined the circumstances of the pre-pack essentially to determine whether there could have been a better outcome in relation to the pension scheme. It concluded that there was no evidence suggesting that the insolvency was avoidable nor that the administration was planned to avoid payment of a deficit repair contribution due on 19 November 2018.

Although the report acknowledges that pre-pack arrangements may legitimately be the best outcome for a business, it confirms that the Regulator intends to investigate where a sponsor is separated from a pension scheme.

Regulator to consult on fiduciary manager tendering process

It is expected that the Regulator will consult in June on its trustee guidance on the tender process to appoint a fiduciary manager. The Regulator intends to publish final guidance before the end of the year, to coincide with new Competition and Markets Authority requirements for pension scheme trustees to run a competitive tender before choosing a fiduciary manager for more than 20% of the scheme's assets.

Pensions Protection Fund

Court challenge to benefit increase approach

The PPF has previously issued a statement setting out its approach following the CJEU judgement that each member of a scheme in the PPF must receive at least 50% of his benefits (covered in our February 2019 update).

The PPF has now confirmed that court proceedings have been issued to challenge its approach. The PPF intends to continue with the implementation of its approach for the time being, but will limit the size of any arrears payments made, to minimise the risk of having to recover overpayments should the court decide that a different calculation approach must be adopted.

Consultations and Inquiries

Response to consultation on CDC schemes

The Government has published its response to the consultation on collective defined contribution schemes, confirming that it intends to legislate to provide the necessary framework "as soon as parliamentary time allows".

The response confirms that the existing legislation does not provide a sufficient framework for single and associated employer CDC schemes. Initial legislation will facilitate the Royal Mail model of CDC scheme, with other models to be considered after the establishment of the Royal Mail scheme.

Recent cases

Equalisation and scheme amendments

Safeway Ltd v Andrew Richard Newton, Safeway Pension Trustees Ltd

The Advocate General has published his opinion in relation to questions referred to the CJEU by the English Court of Appeal in relation to equalisation. The case concerns changes that were made to a pension scheme following the 1990 *Barber* judgement.

The Normal Retirement Dates in the scheme were age 60 for women and 65 for men. In 1991 it was announced to members that the scheme would equalise NRDs to age 65 for all members and the scheme was subsequently administered on this basis. A new definitive deed and rules was executed in 1996, which incorporated the NRD of 65 for all members, with retrospective effect back to 1991. The power of amendment under the scheme did not allow changes to be made by announcement, but did allow changes made by deed to have retrospective effect to the date of an earlier announcement to members regarding the change.

The High Court considered the question of the date on which the scheme closed the *Barber* window by equalising benefits. It found that this had not taken place until the definitive deed and rules was executed in 1996. On appeal by the employer, the Court of Appeal asked the CJEU to confirm whether the EU law principle of equal treatment can be overridden during the *Barber* window by English law that allows members' pension rights to be retrospectively reduced. The Advocate General's opinion, which will be taken into account by the CJEU, is that English law cannot confer this right.

Pensions Ombudsman

Discrimination complaint dismissed

Mr Y (PO-25756)

The Ombudsman has dismissed a complaint brought by Mr Y who was refused a survivor's pension from the scheme of which his deceased civil partner had been a member. The scheme rules provided that a survivor's pension was only payable in respect of a member who left service before 1 April 1999, if the member was married or in a civil partnership at the date of retirement. Mr Y's partner retired in 1995 and they entered into a civil partnership in 2006, so the condition for payment of a survivor's pension was not met. Mr Y claimed that, because civil partnerships were not legal until 2005, the condition was discriminatory as he was unable to comply with it.

The Ombudsman concluded that the trustees could not pay a survivor's pension if the conditions under the rules were not met, unless there is an overriding requirement in legislation or case law, which he found there was not.

Other news

New standards for professional trustees

The Professional Trustee Standards Working Group has published new Standards that all professional trustees will be expected to meet. An accompanying accreditation framework is expected to be launched later this year.

Amongst other matters, the standards cover the role of a professional trustee on a trustee board, expected behaviours and skills, delegation of trustee duties to a professional trustee, and conflicts of interest. There are additional standards that apply when a professional trustee is a sole trustee or the chair of a board of trustees.

Although the standards do not have any legal force, they are referred to on the Regulator's website and it seems likely that the Regulator will take them into account if it has cause to consider the actions of a professional trustee.

DWP launch mid-life MOT

The DWP has launched a new website offering mid-life financial MOTs, designed to ensure that people are on-track for the retirement they want. The site contains information and links to other services such as the state pension calculator and Pensions Wise.

Looking ahead

Automatic enrolment

On 6 April 2019, the statutory minimum employer contribution for an auto-enrolment DC scheme will rise to 3%, and the minimum total contribution (for employer and employee, including tax relief) will increase to 8%. A worker will need to earn £10,000 to qualify for automatic enrolment, and pensionable earnings will be between £6,136 and £50,000.

In an answer to a written question, Pensions Minister Guy Opperman has also confirmed the Government's intention to reduce the automatic enrolment age from 22 to 18, although he did not indicate the timescale for this change.

Industry group to advise on GMP equalisation

A new industry group has been formed, to develop and promote best practice in relation to GMP equalisation. The Pensions Administration Standards Association (PASA) is due to be made up of representatives from across the pensions industry, including trustees, lawyers, actuaries, administrators and advisors. The initiative has been welcomed by the Regulator.

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