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The Pensions Brief

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Issues affecting all schemes

Coronavirus (COVID-19) – contribution payment failure period reverts to 90 days

The Pensions Regulator has updated its guidance on reporting duties and enforcement activity during COVID-19 to say that from 1 January 2021 pension scheme providers and trustees should revert to reporting payment failures that are 90 days outstanding, rather than 150 days.

Action

Trustees and administrators need to take note of this and ensure that, where any processes were amended to reflect the reporting flexibility granted, those processes revert to their previous state from 1 January 2021.

PLSA publishes vote reporting templates

The Pensions and Lifetime Savings Association (PLSA) has published vote reporting templates to help pension schemes meet their stewardship duties. These templates accompany guidance issued by the PLSA in July 2020.

From 1 October 2020, implementation statements are required to be included in schemes' annual reports and accounts. The implementation statement must, amongst other things, describe the voting behaviour by, or on behalf of, the trustees during the scheme year, and must state where any proxy voter services have been used.

The PLSA has published two sets of templates and guidance – one for use by pension schemes, and one for use by their underlying investment managers. This is with the aim of achieving consistent and uniform reporting of the required information.

Action

Trustees may want to use the PLSA guidance and templates when producing implementation statements.

Investment loss caused by transfer delay

The Pensions Ombudsman has awarded a member substantial compensation for investment losses in connection with a delayed transfer, following a successful appeal by the member to the High Court.

The member had applied for a transfer-out in March 2016. He had made it clear that that the transfer needed to be made before 23 June 2016, the date of the Brexit referendum. However, the transfer was not made until well after that date.

The member complained that there has been undue delay by the administrator, and that as a result he had lost the opportunity to invest in the stock markets immediately following the referendum.

The Ombudsman originally considered the case in June 2018. He found that there had been maladministration by the administrator. However, he held that the investment loss claimed by the member was not measurable and had not been reasonably foreseeable by the parties at the time. Accordingly the Ombudsman awarded compensation only for distress and inconvenience (£2,000).

The member appealed to the High Court. The High Court held that:

- Where a member applies to transfer, it is obvious that the transferred moneys are to be invested, and that a delay may result in loss (including a loss attributable to any spikes in the stockmarket). Accordingly the test of reasonable foreseeability had been met.

- Whilst there might be difficulties in precisely measuring loss (and care should be taken not to do so with the benefit of hindsight), this did not mean that the loss was irrecoverable.

The Court referred the matter back to the Ombudsman so that the member's loss could be determined. Applying principles laid down by the Court, the Ombudsman concluded that the member would have invested £250,000 in the FTSE 100 Index immediately after the leave vote, and would thereby have made a gain of about £43,700. The Ombudsman therefore directed the administrator to pay the member £43,700 plus interest at the rate of 8% from the date when the compensation should have been paid.

Mr T (CAS-38354-V5L8)

Action

Trustees should note this significant decision and review their transfer processes as necessary. Particular care will need to be taken where a member says he/she wishes a transfer to be completed by a specific date.

Pension Schemes Bill progress

The second reading of the Pension Schemes Bill in the House of Commons will take place on 7 October 2020. Its progress can be tracked on the parliament.uk website.

Guy Opperman, the Pensions Minister, has stated that he is confident the Bill will "be in law by the end of the year".

Action

For noting.

Normal minimum pension age increase

The Government has confirmed, in a response to a written question, that normal minimum pension age (NMPA) will increase from 55 to 57 in 2028. NMPA is the minimum age at which members can ordinarily take benefits under registered pension schemes.

The change to NMPA will come alongside the increase in State Pension age to 67. The change was originally proposed in 2014 in consultation about "freedom and choice in pensions". Legislation will be needed in order to make the change.

Action

For noting.

ICO penalty for pensions cold calls

The Information Commissioner's Office (ICO) has announced that it has issued a penalty of £130,000 for unauthorised pensions cold calls.

Regulations came into force in January 2019 which provide that companies can only make live calls to people about their occupational or personal pensions if:

- the caller is authorised by the Financial Conduct Authority, or is the trustee or manager of an occupational or personal pension scheme, and
- the recipient of the call consents to calls, or has an existing relationship with the caller.

The ICO issued the penalty to a company which, from January to April 2019, made more than 100,000 cold calls without lawful authority.

Action

For noting, though trustees and administrators should continue to ensure robust transfer processes are in place to check that members were not on the receiving end of unauthorised cold calls.

Court of Appeal rejects State Pension age challenge

The Court of Appeal has dismissed an appeal from "Backto60" campaigners against the dismissal of their challenge to legislation increasing State Pension ages (SPAs).

The legislation raised SPA for women born on or after 6 April 1950 from 60 to 65 via a gradual increase between 2010 and 2018. SPA was then increased from 65 to 66 for both men and women.

Rejecting the arguments raised by the campaigners, the Court held that (i) the SPA changes did not discriminate, directly or indirectly, against women and (ii) there had been no duty to notify those affected by the changes, and in any case there had been adequate notification via the Government's publicity campaigns.

Action

For noting.

Issues affecting DB schemes

2021/22 PPF levy determination consultation

The Pension Protection Fund (PPF) has published its draft levy determination for the 2021/22 levy year. It has said that despite the increased risk posed by COVID-19, it has avoided increasing the levy.

The PPF has highlighted in particular two proposed changes:

- The levy for schemes with less than £20 million in liabilities will be halved, to better reflect their risk to the PPF. The reduction will be tapered so only schemes with £50 million or more in liabilities will be charged in full.
- The cap on the amount of levy paid by any individual scheme will be cut from 0.5% of that scheme's liabilities to 0.25%.

The deadline for submissions is 5pm on 24 November 2020.

Action

Trustees and employers may wish to consider responding to the consultation.

Mayer Brown news

Upcoming events

- **Trustee Foundation Course**
  8 December 2020
- **Trustee Building Blocks Classes**
  17 November 2020 – DB funding and investment
- **Annual Pensions Conference – Webinar Series**
  15 October 2020 – Investment structures and related tax considerations
  22 October 2020 – Changes in pension scheme investment compliance and disclosure requirements – the legal and fund management perspective
  29 October 2020 – A practical guide to pensions litigation
  5 November 2020 – GMP equalisation – how soon is now?
  12 November 2020 – Covenant and funding – in the new paradigm
  19 November 2020 – How effective is your trustee board?
  26 November 2020 – What you need to know about the Pension Schemes Act 2020

You should have received an invitation to the series of webinars listed above, including additional information and a registration link. If you have not received this or would like it to be sent again, please ask your usual contact in the Pensions Group to send it to you.

Due to the COVID-19 restrictions, our events will be hosted via telephone/video conference until further notice. We will provide further details nearer the time of each event.

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Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

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Dates to note over the next 12 months

1 October 2020

Further requirements on the content of the SIP and the annual report and on website disclosure come into force.

6 October 2020

Annual allowance deadline for schemes to provide members with pension savings statements for the 2019/20 tax year.

31 December 2020

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2018/19 tax year).

31 January 2021

Send annual event report to HMRC.

Early 2021

Expected consultation on tPR's code of practice on trustee knowledge and understanding.

31 March 2021

Submit scheme returns.

6 July 2021

Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2020/2021 tax year.

31 July 2021

Annual allowance deadline for member requests for "scheme pays" (2020/2021 tax year).

Key:

- Important dates to note
- For information