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November 2020

The Pensions Brief

At a glance...

Issues affecting all schemes

CYBER RISKS AND HOW TO MANAGE THEM

The Institute and Faculty of Actuaries has published a paper on pension scheme cybercrime risks and how these risks can be managed.

CLIMATE CHANGE UPDATE

The Joint Government-Regulator Task Force on Climate-related Financial Disclosure (TCFD) has published its Interim Report and Roadmap.

PENSION SCHEMES BILL 2019-21 UPDATE

The Bill is expected to become law before the end of 2020.

Issues affecting DB schemes

GMP EQUALISATION AND HISTORIC TRANSFER VALUES

The High Court has ruled, in the Lloyds Bank case on GMP equalisation, that certain historic transfers values need to be revisited.

RETAIL PRICES INDEX REFORM

The UK Statistics Authority's planned reform of RPI, which involves aligning it with the Consumer Prices Index including owner occupiers' housing costs (CPIH), will go ahead from February 2030.

REGULATOR LAUNCHES NEW PENSION SCAMS CAMPAIGN

The Pensions Regulator has launched a new pension scams campaign asking trustees, providers and administrators to pledge to do what they can to protect members and follow industry guidance on pension scams.

▲ Action required

▲ Follow development and keep under review

Issues affecting all schemes

The Institute and Faculty of Actuaries (IFA) has published a paper on pension scheme cybercrime risk

The paper (click here) describes these risks in detail (e.g. ransomware attacks; data breaches; theft of assets and disruption to service) including the types of loss schemes and their sponsors may be exposed to. It also addresses how to manage these risks and who is responsible for managing these risks.

In order to manage cybercrime risks, the paper states that trustees should consider their own personal cyber hygiene, third party assessment, cyber insurance and incident management.

With cybercriminals becoming more and more sophisticated, it's important that trustees and employers understand the types of cyber risks their scheme could be vulnerable to as well as how to manage these risks.

Trustees are ultimately responsible for managing these risks and ensuring that adequate internal controls are in place to address and keep cybercrime under review.

In addition, the Pensions Administration Standards Association (PASA) have launched guidance (click here) which aims to help pension scheme administrators by outlining four key areas covering different elements of cybercrime:

- meeting legal and regulatory standards,
- understanding their organisation's vulnerability to cybercrime,
- ensuring resilience, and
- remaining able to fulfil critical functions in the case of an attack.

Action

Consider IFA paper and liaise with administrators about PASA guidance.

Climate Change update including the Joint Government-Regulator Task Force on Climate-related Financial Disclosures (TCFD) Interim Report and Roadmap

The UK has announced its intention to make TCFD-aligned disclosures mandatory across the economy by 2025, with a significant portion of mandatory requirements in place by 2023. The interim report (click here) and accompanying roadmap (click here) set out an indicative pathway to achieving that ambition.

The outcome of the DWP's consultation on mandatory governance and reporting requirements for UK pension schemes is awaited. The DWP is proposing that this reporting follow the 11 recommendations of the global TCFD which cover governance, strategy, risk management and accompanying metrics and targets. It hopes these mandatory TCFD-aligned disclosures will allow trustees to better demonstrate how consideration of climate-related risks and opportunities is integrated into their governance and decision-making processes. For more information see our August 2020 Pensions Brief (click here).

Timing under the roadmap for imposing reporting requirements on occupation pension schemes reflects those set out in the DWP's consultation. Under the roadmap, regulatory or legislative measures on mandatory TCFD-aligned disclosures are expected in 2021 for occupational pension schemes with assets under ownership of more than £5bn, as well as all master trusts and all authorised collective money purchase schemes. As of 2022, all occupational pension schemes with assets over £1bn will be bought into scope. All other UK-authorised asset managers, life insurers and FCA-regulated pension providers will be bought in in 2023, with regulation and legislation for all other occupational pension schemes expected in 2024-25, although this will be subject to further consultation.

In addition to having to report on their environmental, social and governance (ESG) policies, occupational pension schemes will also have to report on their carbon footprint.

Action

For noting.

Pension Schemes Bill 2019-21 update

The Bill had its third reading in the House of Commons on 16 November 2020 and was reported with amendments. It will now return to the House of Lords for consideration of the Commons amendments which should be the final stage. A date for the House of Lords to consider the Commons amendments is yet to be set.

The Bill is expected to become law before the end of 2020.

Action

For noting.

Issues affecting DB schemes

GMP equalisation: court ruling on past transfers

The High Court has ruled in the Lloyds Bank guaranteed minimum pension (GMP) equalisation case about the extent of the trustee's obligation to revisit past transfers out of the Lloyds Bank schemes.

This follows the decision of the High Court in October 2018 (Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc [2018] EWHC 2839 (Ch)) which held that benefits built up in the schemes between 17 May 1990 and 6 April 1997 have to be equalised to take account of the unequal effects of GMPs.

The judgment suggests that many transfer payments made since May 1990 will need to be topped up, to allow for GMP equalisation. It also establishes some important general principles for past statutory transfers where the trustee had not allowed for GMP equalisation:

- the trustee's statutory duty was not properly performed by transferring a sum that was less than the cash equivalent of the benefits to which the member was entitled;
- the trustee is required belatedly to perform its duty by making a top-up payment to the receiving scheme equal to the shortfall plus simple interest at 1% above base rate;
- the transferee could not instead require the trustee to provide a residual benefit, nor could the trustee require the transferee to accept such a benefit. However, the Court recognised that it might be possible to provide a residual benefit if both parties agreed;
- trustees are under an obligation to take proactive steps to identify and calculate any shortfalls in previous transfers-out and to equalise them;
- there are no time limits on claims, so cases may need to be reviewed back to 1990; and
- the obligation on a receiving defined benefit scheme to equalise a transfer-in makes no difference to any top-up duty of the transferring trustee. The respective duties are concurrent and both have to be performed.

Although the ruling states that trustees have an active duty to comply with the judgment, the Court did not say that this would necessarily involve identifying and topping up every relevant past transfer. Instead that "being proactive" meant considering the obligations, rights and remedies arising from the judgment and then deciding what to do.

In some schemes the data may no longer exist and in others the costs of complying will, in many cases, exceed the benefit to members. In addition, the concurrent duties of transferring and receiving schemes may mean that in practice it's easier for each scheme to just deal with the membership data it has. In other words, receiving schemes deal with GMP equalisation for transferred-in members – the so called "knock for knock" approach.

Overall, a number of difficult questions remain to which pragmatic solutions will need to be found including some form of industry-wide approach.

For more information about the ruling please see our client alert (click here).

Action

Consider the judgment's implications.

Retail Prices Index reform response published

The UK Statistics Authority (UKSA) and HM Treasury have published a response (click here) to their joint consultation on the reform of the Retail Prices Index (RPI) methodology. The response confirms that RPI will be reformed and aligned with the housing cost-based version of the Consumer Prices Index, known as CPIH, by 2030.

In practice, this means that from February 2030 onwards RPI index values will be calculated using the same methods and data sources that are used for CPIH. However, RPI and CPIH will still be calculated and published separately.

The change in the basis of the calculation of RPI will have a significant impact on the value of index-linked assets and on the amount and value of benefits where RPI is used for pension increases and revaluation. The scale of the impact will depend on the proportion of scheme assets that are held in index-linked gilts and other RPI-linked assets and whether scheme rules are linked to RPI revaluation and indexation. As RPI is typically higher than CPIH, many pension schemes will be adversely impacted by the change.

The precise timing of the change is important. Although the UKSA wanted the shortcomings of RPI addressed between 2025 and 2030, the Chancellor did not consent to the change taking place before 2030 due to the need to lessen the impact on the holders of index-linked gilts.

Calls for the Government to take steps to mitigate the negative consequences of the switch have not been heeded as the response confirms that the Government will not offer compensation to the holders of index-linked gilts.

Trustees and employers need to understand and assess the effect on their schemes so as to address the impact of the change on benefits, investment strategy, RPI based assumptions in funding and transfer values etc. Trustees will also need to consider how best to communicate the change to members. Given the confusion, and subsequent legal challenges, many schemes had to manage around the Government's previous decision to move from RPI to CPI, clear advance communication with members promptly seems sensible.

Action

Consider the impact of the response.

The Pensions Regulator launches new pension scams campaign

The Pensions Regulator invites trustees, providers and administrators to pledge (click here) to "do what they can to protect scheme members and follow the principles of the Pension Scams Industry Group (PSIG) Code of Good Practice".

In order to make the pledge, trustees, providers and administrators should commit to:

- regularly warning members about pension scams;
- encouraging members asking for cash drawdown to get impartial guidance from The Pensions Advisory Service;
- getting to know the warning signs of a scam and best practice for transfers by completing the scams module in the Trustee Toolkit and encouraging all trustees to do so; studying and using the resources of the Financial Conduct Authority (FCA) ScamSmart website, the Regulator's scams information and the PSIG code; and considering becoming a member of the Pension Scams Industry Forum by contacting PSIG;
- taking appropriate due diligence measures by carrying out checks on pension transfers and documenting pension transfer procedures;
- clearly warning members if they insist on high-risk transfers being paid; and
- reporting concerns about a scam to the authorities and communicating this to the scheme member.

When trustees are confident that these principles have been implemented, they can self-certify that they're following the pledge principles.

Communication of this achievement to members or the public should make clear that the trustee has self-certified and not that the Regulator has certified it.

Action

Consider whether to make the pledge.

Mayer Brown news

Upcoming events

We will provide 2021 dates for our Trustee Foundation and Building Blocks Courses in our next Pensions Brief.

Our Annual Pensions Conference webinar series run in October and November, which covered a range of topics including "GMP equalisation: how soon is now?" to "How effective is your trustee board?", is available on our Perspectives and Events page (click here).

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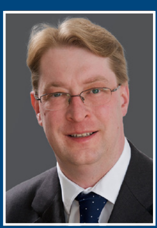
Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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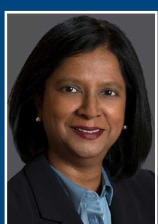

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Dates to note over the next 12 months

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).

7 January 2021

Submit first compliance statement to the Competition and Markets Authority (CMA)

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).

1 October 2021

Climate-related financial governance and disclosure requirements come into force for occupational pension schemes with £5 billion or more assets, authorised master trusts and collective money purchase schemes

5 October 2021

- Automatic enrolment charge cap changes come into force
- Requirement that default arrangements with a "promise" must produce a SIP comes into force
- Requirement for Chair's statement to cover costs and charges for historically selected funds that are no longer available for selection, comes into force

Key:

Important dates to note

For information