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An update on legislative and other issues affecting occupational pension schemes.

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Pensions in the News

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New – Virgin Media case – the appeal

As previously reported, the verdict in Virgin Media v NTL Pension Trustees II Ltd was handed down by the High Court in June 2023.. The judge found that an amendment made to a scheme in 1999 was void as it didn't have an actuary's certificate (a so-called section 37 certificate) attached. The judgement has the potential to apply widely and make amendments void for many other schemes too. It's s still not clear whether new legislation will be enacted to rectify the situation. That remains a possibility.

In the meantime, the judgement will be appealed. A date for the appeal has been set for 25 June 2024, leaving the issue in somewhat of a limbo for several months to come.

New – Pensions Ombudsman complaints up

The Ombudsman's annual report summarises the Ombudsman's work over the previous year. Complaints are up by 17% year on year, with 7,784 complaints received in 2022/23.

The report also summarises the causes of the complaints. Around 20% of complaints were about contributions, 15% about administration and around 10% on each of transfers and retirements benefits. People also complained about misquotes, pensions liberation and auto-enrolment, among other things. And the claims are largely justified, with 51.2% of them upheld, at least in part.

New – PPF publishes 2024/25 levy rules

The Pension Protection Fund (PPF) has published its 2024/25 levy rules. They are unchanged from those consulted upon. The total levy to be collected is estimated to be £100m, that's down from around £200m in 2023/24 and is the lowest levy amount the PPF has ever collected. Most schemes are expected to see a lower levy in 2024/25 compared to 2023/24. The PPF is also consulting with Government to try to get a legislative change to make it easier for them to reduce levies to nil in future.

There may be some situations where individual scheme levies can be reduced further, though these are less common than in previous years. Isio can estimate your 2024/25 levy amount for you and also discuss whether a levy reduction is possible.

New – IFS report on the State Pension

The Institute for Fiscal Studies (IFS) has published a report on the future of the State Pension. IFS research suggests there is a good deal of pessimism in the general public about the future of the State Pension, finding that a third of people surveyed do not think the State Pensions will exist in 30 years' time.

The IFS proposes::

- Government to determine a target level of State Pension as a percentage of median earnings
- The pension should increase at least in line with inflation each year
- There should be no means-testing
- State Pension Age should only rise to reflect longevity changes and State Pension Age should be guaranteed 10 years before each person reaches it

New – FCA consultation on the regulatory boundary

The Government and the Financial Conduct Authority (FCA) are exploring the regulatory boundary between financial advice and other forms of support via a consultation. They want to try to define where it makes sense for people to get regulated financial advice and where it doesn't, and where other forms of support might be more appropriate. The review will cover all types of investment decisions made by individuals and will, of course, include decisions made in respect of pensions.

The review will only cover investments and pensions regulated by FCA. FCA has rule-making powers so can pursue reform in a nimbler way than the Pensions Regulator (TPR). However, TPR can issue guidance and may well borrow from the results of the FCA review.

New - TPR guidance on cyber security

The Pensions Regulator (TPR) has updated its guidance on cyber security for trustees and scheme managers. It says that those responsible for cyber security should make sure they understand the risks, ensure controls are in place to reduce the risks and also to deal with the consequences of any incidents that might occur.

For the first time, TPR is asking schemes to report incidents to them. They have provided a dedicated email address for the purpose. TPR will use the information to try to determine how widespread such incidents might be.

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New – 'Pot for life' call for evidence

Following November's Autumn Statement, the Government published a call for evidence on the concept of 'pot for life'. This would allow employees to require their employer to make pensions contributions to an existing pension scheme, rather than the employer's usual scheme. This should make it easier for employees to keep all their pensions savings in one place. It would also have the potential to change the pensions market radically – changing the emphasis from an employer-driven market to a consumer-driven market.

The call for evidence runs to 24 January 2024. Isio will be putting in a response.

New – Lancet paper on excess mortality rates

A recent article in the Lancet summarises excess mortality data over 2022. The data suggests that the level of mortality in the working-age population remains elevated. In fact, the research finds that rates of excess mortality are now highest among the working age population. This is in stark contrast with the pandemic period, where excess mortality was highest in the older age groups. (Of course, absolute numbers of deaths remain highest in the older age groups as underlying mortality rates are so much higher in this group than in the working age population).

The data shows that rates of mortality as a result of cardiovascular disease were 33% higher than expected for 50 to 64 year-olds. Rates of mortality due to diabetes were 35% higher and those due to acute respiratory disease were 43% higher than expected. The data may suffer from distortions due to greater delays to death registrations than normal in the latter part of 2022. Nonetheless, the findings are a cause for concern.

New – PPF publishes the Purple Book

The Pension Protection Fund (PPF) has published the 2023 edition of the Purple Book. This annual publication contains comprehensive data (as at 31 March 2023) on the pension schemes covered by the PPF, including demographics, investments and scheme funding levels as well as PPF levies, claims and compensation paid. In keeping with recent years, the data is presented in a series of interactive charts as well as in the more traditional tabular form.

Schemes can use Purple Book data to compare their own position against the whole DB market.

TPR blog on Capital Backed Journey Plans (CBJPs)

CBJPs involve a third party providing capital to back the funding of a DB pension scheme. They can have features similar to a superfund, although with a CBJB the sponsoring employer link is not broken. In a new blog, TPR encourages trustees considering using CBJPs to present them to TPR for assessment.

In the new year, TPR intend to issue guidance on CBJPs and other, similar arrangements.

TPR blog on future DC guidance/ FCA consultation

A recent TPR blog and speech by Louise Davey, director at TPR, aim to take forward the DC elements of the Mansion House initiatives. This continued in the Autumn Statement – see below.

TPR will write guidance on these matters next year and will be holding industry roundtables in the new year to support this. This guidance is expected to include value for money in DC schemes, innovation in decumulation solutions and encouragement to consolidate towards a smaller number of large DC schemes.

The Financial Conduct Authority (FCA) also announced it will be consulting on the value for money framework for those contract-based DC pension schemes it regulates.

Chancellor's Autumn Statement

The Autumn Statement is a set-piece opportunity for the Government to set the policy agenda ahead of next year's General Election. In stark contrast to the King's speech, where pensions weren't mentioned at all, the Autumn Statement and accompanying policy documents covered many pensions issues.

Alongside a cut to National Insurance contributions and the retention of the triple lock on State Pension increases, a whole slew of pensions announcements were made. This included a reduction to the tax rate on surplus refunds and a call for evidence on a so-called 'pot for life' proposal for DC pensions, as well as a continuation of the Mansion House initiatives on promotion of investment in UK growth and consolidation in the pensions market.

Cabinet reshuffle – new pensions minister

On 13 November, the Prime Minister, Rishi Sunak began a substantial reshuffle which, among other things, saw the surprise return to front line politics of former Prime Minister, David Cameron. He was appointed Foreign Secretary and will sit in the House of Lords.

On the pensions front, pensions minister, Laura Trott, was promoted to the role of chief secretary to the Treasury, number 2 to Chancellor, Jeremy Hunt. Paul Maynard, MP for Blackpool North and Cleveleys, was appointed as the new pensions minister.

FRC review of TM1 assumptions

The Financial Reporting Council (FRC) have published its regular annual review of assumptions. These assumptions are used in DC benefit statements. FRC proposes to increase future investment return assumptions. The three lowest volatility asset categories will be assumed to return 1%pa more than currently (moving from 1%pa, 3%pa and

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5%pa to 2%pa, 4%pa and 6%pa). The other, highest, volatility asset category return assumption will be unchanged at 7%pa. All other assumptions are unchanged. The changes have been made to reflect the increase in interest rates and gilt yields over the period since the assumptions were last reviewed. This is expected to drive future investment returns higher.

FRC are consulting on these changes and the deadline for submissions is 4 December.

Clara Pensions announces first transaction

Clara Pensions, a superfund, has announced its first transaction, with Sears Retail Pension Scheme. This is the first superfund transaction and Clara is the currently the only superfund that has been signed-off by the Pensions Regulator (TPR).

Superfunds operate under extensive guidance issued by TPR. TPR recently reviewed the guidance. As part of this update, it announced it is due to consult on the rules for superfund profit extraction – to date superfunds have not been allowed to extract any regular profits.

Obudsman decision on delayed transfer

As interest rates have risen over the last year or two, DB transfer values have fallen. Hence, over this period, any delay in making a transfer might well have meant that the transfer value actually paid was significantly lower than the value originally quoted. One such case provoked the member to complain to the Pensions Ombudsman. This case has been with the Ombudsman for many months but has now reached its conclusion. Here's the determination.

Helpfully for pension scheme trustees and administrators, the Ombudsman has not upheld the complaint. The scheme followed the regulations and the fact that the member's transfer value fell over the period was, essentially, bad luck, according to the Ombudsman. DWP are currently considering whether to make changes to the transfer regulations to try to strike a better balance between avoiding scams and avoiding unnecessary delays to transfers.

Frequently asked questions and TPR checklist on Pensions Dashboards

We are still awaiting further guidance on revised staging dates for schemes to connect to the Pensions Dashboards system. However, the pensions Dashboards Program (PDP) has provided answers to some frequently asked questions on what we might expect from the guidance when it arrives.

TPR has also published a checklist to help trustees understand all the tasks they need to do to prepare to connect to the Dashboard system.

Updated guidance on Regulated Apportionment Arrangements

The Pensions Regulator has updated its guidance on Regulated Apportionment Arrangements. These are the arrangements that allow an ailing company to separate itself from its DB pension scheme with the expectation that it will then be able to carry on trading. The scheme would enter PPF assessment. Such arrangements need to be signed by TPR, PPF and the scheme trustees with the aim to ensure that the arrangement provides the best way forward for company investor, pension scheme members and the PPF.

The new guidance is more detailed than the guidance it replaces. Among other things, it makes clear that an arrangement would only be agreed to if the sponsoring company's insolvency with the next 12 months is inevitable and a better outcome for the scheme cannot be achieved by other means.

Latest intelligence on the new DB scheme Funding Code

The Department for Work and Pensions (DWP) has been sharing its expectations of the new DB scheme funding regulations and Code of Practice. In this meeting with the Society of Pension Professionals (SPP), DWP said that it expected the new regulations to be laid before Parliament in November and the new Code and funding regime to come into force in summer 2024.

The DWP also suggested what changes we may see to the draft regulations and Code consulted on earlier this year. Among other things, DWP suggested changes to the way significant maturity is determined, more flexibility on investment strategies and for open schemes plus the design of deficit recovery plans will need to take account of the sustainable growth of the sponsor.

Proposed changes to the General levy

DWP has issued its most recent consultation on the future of the General levy. It covers the three years 2024/25, 2025/26 and 2026/27. The General levy is the levy paid by all occupational pension schemes and personal pension providers and is based broadly on the size of the scheme membership. It is used to fund the Pensions Regulator (excluding atuo-enrolment activities), the Pensions Ombudsman and part of the Money and Pensions Service.

The consultation proposes that this levy should increase – potentially substantially for smaller schemes. Isio has responded to the consultation.

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TPR levies first climate change fine

The Pensions Regualtor has levied the first fine for failing to meet regulations related to climate change disclosures.

All large pensions schemes (broadly those with over £1bn under management and the authorized master trusts) have to make annual disclosures on their approach to climate risks and opportunities. This includes a description of steps taken to identify, assess and manage these risk and opportunities. Reports have to be published on a publicly available website.

The Exxon MobilPension Plan failed to publish its 2022 report on time (a faulty url was the problem, apparently). TPR levied a £5,000 mandatory fine as a result.

CMI finds mortality rates remain higher than pre-pandemic

The Continuous Mortality Investigation (CMI) published its latest quarterly update in October. The CMI is the branch of the Institute and Faculty of Actuaries that focuses on analysis of UK mortality data. The headline from the report was that the cumulative mortality rate in the first three quarters of 2023 was 0.5% above the 2013-2022 average and 5.4% above 2019 levels and at a similar level to 2018 rates. (Note that, as well as being the last complete year before the Covid pandemic, 2019 represents the lowest mortality in any year in the CMI's record.) These mortality rates are adjusted to reflect

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