Current Issues
February 2019

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

premier

See change.

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UPDATED

GMP Equalisation

Readers will no doubt be aware of the recent High Court ruling in respect of the Lloyds Bank case and GMP equalisation.

GMPs accrue at a different rate for men and women to reflect the previous different State Pension ages of 65 and 60 respectively. By the age of 60 a female would have built up her full GMP, but a male would have to wait until age 65 before achieving this. If a female delayed taking her GMP until say age 65, it would be subject to increases. So, for two members of the opposite sex, equal in every other respect, e.g. same date of birth, same salary etc, the GMP element of their total pension at age 65 would therefore be different, with the female's GMP at age 65 being greater than the male's.

The Court confirmed that GMPs accrued between 17 May 1990 (the date of the Barber judgement) and 5 April 1997 (the date GMPs ceased to accrue) should be equalised. It considered and commented on four different methods of equalisation, ruling out the more expensive options on the grounds of "minimum interference", i.e. it would result in an unacceptable increase in the employer's funding obligations.

The issue of backdating was considered, and the Court ruled that any arrears of underpaid pension must be paid as far back as 17 May 1990, unless scheme specific provisions state that members may only claim for a six year period. The interest on back payments should be at a rate of 1% over the base rate, calculated on a simple rather than compound basis.

It is understood that the DWP will now be considering the ruling and potentially offering further comment/guidance on the equalisation methodology. Trustees/employers would therefore be best advised to defer any decision until this happens.

In the meantime, what steps should be taken? The key short-term issue surrounds the payment/quotation of transfer values and whether these should be suspended. The industry consensus would appear to be that transfers should continue to be paid, as trustees are subject to statutory obligations in this regard. However, member communications should contain warnings that GMPs have not yet been equalised and that the overall transfer may be lower as a result.

From a scheme funding perspective, trustees who are undertaking actuarial valuations prior to GMP equalisation may require their Scheme Actuaries to set aside a provision for potential increases in scheme liabilities. Equally, and possibly sooner, company accounts may also require a similar provision.

From an administration perspective, schemes should finish reconciling their GMPs with HMRC but, once this has been done, potentially delay any rectification until such time as agreement has been reached on the equalisation methodology.

Since the initial judgement, there has been a further hearing regarding possible methods of equalisation and, in particular, the conversion method. Whilst further clarification is awaited, the judge suggested that, where GMPs are already in payment, they could be converted based on an actuarial analysis of pre and post conversion benefits, without having to equalise GMPs first. However, in respect of GMPs that have yet to be paid, GMPs would need to be equalised first, prior to conversion.

This may prove to be an attractive, less time consuming and less expensive equalisation methodology, so watch this space. A further hearing is required to address other issues, including the position regarding past transfer payments and the extent to which they should be revisited.

Separately, TPR has announced that a new industry group has been formed to help pension schemes comply with equalisation. The group is being curated by the Pensions Administration and Standards Association, who will seek representatives across the pensions industry. Its focus will be to develop and provide best practice on issues arising from the ruling, from how to address missing data through to dealing with transfer requests and rectifying underpayments.

NEW

New DC Scheme Investment Disclosures

With effect from 6 April 2019, new disclosure requirements apply to DC schemes that invest in pooled funds. From this date, members are entitled to request information about the funds that they invest in. The information required is as follows:

- The name of the fund(s) that the member is invested in.
- The international securities identification number (ISIN) for each pooled fund in which assets are directly invested, or indirectly invested if via a unit-linked contract.

The new requirements are designed to help members access information about their investments. For example, by entering an ISIN into a search engine, fund fact sheets can be obtained.

If a member makes a request then the information must be provided within two months. Members also must also be informed of the availability of this information via their annual benefit statements. Our understanding is that this applies to the first statement that members actually receive after 6 April 2019 but affected clients may wish to take legal advice on this point.

NEW

Brexit Issues

With Brexit day looming (or possibly not) TPR has issued a statement setting out the steps that it considers trustees and sponsors should be taking. The statement references earlier guidance provided in 2016 and 2018 which, amongst other things, points out that trustees should consider any implications for scheme investments and whether the strength of the employer covenant is affected.

It also points to the need for contingency planning in the event of a 'no-deal' Brexit, and confirms that further guidance on how it expects trustees to manage potential risks will be included in its 2019 Annual Funding Statement (due to be published in March).

The statement also references DWP guidance in respect of the payment of pensions in a 'no deal' scenario. This guidance states that UK nationals living in the EU will still get their State Pension but casts an element of doubt on whether these pensions will be uprated. The government is committed to providing increases in 2019 and 2020, but beyond that, increases are dependent on the agreement of reciprocal arrangements with other EU countries, under which they increase British pensions and the UK increases the pensions of EU pensioners living in the UK.

In respect of occupational pension schemes, the DWP does not foresee any problems with pension payments continuing to be paid to British pensioners living in the EU.

Similarly HMRC has published a Partnership Pack: Preparing for Changes at the UK Border After a 'No Deal' EU Exit. The document advises firms on how to prepare for a no-deal scenario and re-emphasises the importance of being prepared for all eventualities. As with the DWP guidance, there does not appear to be any specific impact on pension payments to the EU. However, we are in unchartered waters, and therefore Premier and its pension payment partner have explored the possible issues and any steps that may need to be taken.

The critical issue is that double taxation agreements are between countries, rather than between the UK and the EU or the EU and third countries. As a result, these double taxation agreements should hold under most Brexit scenario's and pensioners should continue to receive their pension payments as normal. We will continue to follow the situation closely and provide an update if this is unlikely to be the case.

Premier's payment partner does not foresee any noticeable differences in the way they service client's. They have "passported" their license to the UK and across the EU, where they operate as an 'EEA Branch' of their UK business. In anticipation of Brexit they have applied to the FMA and the UK Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) for their UK business to be licensed as a "Third Country Branch". This should enable them to operate under all eventualities (a) No Deal (b) Transition Deal Approved (c) No Brexit. If this changes a further update will be provided.

CMA Investigation - Final Report

During the course of 2018, we provided regular updates on the Competition and Markets Authority's (CMA) investigation in to whether there is sufficient competition in the investment consultancy market; particularly in the area of fiduciary management services which is dominated by Aon Hewitt, Mercer and Willis Towers Watson.

The CMA has now published its final report, concluding that there is an adverse effect on competition which could result in substantial customer detriment.

In the investment consultancy market, customers find it difficult to access and assess the information needed to evaluate the quality of their investment consultant, and to identify whether they would be better off using an alternative provider.

In the fiduciary management market, those firms who provide both investment consulting and fiduciary management have an incumbent advantage and, given the low level of customer engagement, investment consultants are able to steer clients to their own firm's fiduciary management offering. This is despite the fact that a better fiduciary management offering may be available elsewhere.

To remedy this the CMA has proposed the following:

- The introduction of mandatory tendering when pension trustees first purchase fiduciary management services and a requirement to run a competitive tender within five years if a fiduciary management mandate was awarded without one.
- A requirement on investment consultants to separate the marketing of their fiduciary management service from their investment advice and to inform customers of their duty to tender, in most cases, before buying fiduciary management.
- The Pensions Regulator is to give greater support for pension trustees when running tenders for investment consultancy and fiduciary management services and guidance for pension trustees to support other remedies.
- Requirements on fiduciary management firms to provide better and more comparable information on fees and performance for prospective customers, and on fees for existing customers.
- A requirement for pension trustees to set objectives for their investment consultant, in order to assess the quality of investment advice they receive.
- A requirement on investment consultancy and fiduciary management providers to report performance of any recommended asset management products or funds using basic minimum standards.

It will now consult on the implementation of the above remedies, with implementation scheduled for later this year.

2019/20 PPF Levies

In December 2018, the Pension Protection Fund (PPF) published its final levy rules for the 2019/20 levy year. These remain largely unchanged from the previous year, for example, the levy scaling factor is still 0.48.

The PPF deadline requirements were also published and include the following:

31 March 2019	Submit scheme returns on Exchange
31 March 2019	Contingent asset certificates to be submitted on Exchange
April 2019	Contingent asset hard copy documents to be delivered to the PPF*
31 March 2019	ABC certificates to be emailed to the PPF
30 April 2019	Deficit reduction contribution certificates to be submitted on Exchange**

* As reported in July 2018, if a contingent asset agreement was in place before 18 January 2018 and is subject to a fixed cap, then the agreement will need to be re-executed on the PPF's current standard form. If this is not done then the contingent asset will not be taken into account for levy reduction purposes.

** The rules confirm that the calculation of deficit reduction contributions no longer need to make an allowance for investment expenses.

The PPF has also prepared a Q&A paper to help actuaries understand the impact of recent court cases and how these should be reflected in the calculation of S179 valuations. This includes the Hampshire case (see article on the PPF Compensation Cap below) and the Lloyds case in respect of GMP equalisation.

The Q&A paper states that where a valuation is underway, the potential impact of these cases can be ignored. However, for new valuations the impact of the Lloyds case should be considered including which of the permissible equalisation methods might be adopted.

Single Financial Guidance Body

On 1 January 2019, the Money Advice Service, the Pensions Advisory Service and Pension Wise were merged to form the Single Financial Guidance Body. It therefore brings together, for the first time, the provision of debt advice, money guidance and pensions guidance

The body is funded by levies on both the financial services industry and pension schemes.

All staff from the previous organisations have transferred to the body which will, over 2019, seek a new name.

One of the first tasks of the body will be to provide the first non-commercial pension dashboard (see article alongside).

Pensions Dashboard

The Government has been deliberating on the introduction of a pensions dashboard, which would allow individuals to access their pension benefits, including state pensions, via a single platform. It believes that this will enable individuals to make the best choices for their investments and retirements. It will facilitate the development of the dashboard, but expects the pensions industry to develop the necessary technology and pay for the costs.

Whilst in the fullness of time the Government envisages that there may be a number of 'commercial' dashboards, it wants a non-commercial dashboard built which offers an impartial service to those who prefer it.

The Government has proposed that the new Single Financial Guidance Body (SFGB) convenes and oversees an industry delivery group to enable successful implementation. The non-commercial dashboard would be hosted by the SFGB.

With regard to timescales, the Government expects that the non-commercial dashboard will be introduced at some stage in 2019. However, the date at which schemes will be required to supply data, could be a number of years after this. The Government wishes to legislate in a way that supports a phased approach to on-boarding over a reasonable timeframe agreed by the pensions industry.

Previous Topics in 2019

We detail below topics covered in our previous 2019 Current Issues

ISSUE	DATE
Court of Appeal Ruling regarding RPI or CPI – The BT Case	January 2019
The PPF Compensation Cap	January 2019
Institution for Occupational Retirement Provision (IORP) II Directive	January 2019

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