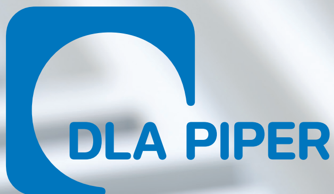

PENSIONS ROUND-UP

JULY/AUGUST 2017

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INTRODUCTION

Welcome to the latest edition of DLA Piper's Pensions Round-Up newsletter in which we provide an overview of developments in pension legislation, case law and regulatory guidance.

In this edition we look at key developments from the second half of July 2017 and August 2017 including the following.

- **The Pensions Regulator:** the publication of a monetary penalties policy and a professional trustee description policy and the response to the March 2017 consultation on these policies; and the publication of two regulatory intervention reports and a quarterly compliance and enforcement bulletin.
- **Automatic enrolment:** the Regulator's fifth annual automatic enrolment commentary and analysis; and a call for evidence from the DWP about the alternative DB quality requirements and legislation which extends automatic enrolment to offshore workers and seafarers. We also provide a reminder that the DB transitional provisions end on 30 September 2017.
- **Department for Work and Pensions:** the government response to the December 2016 consultation on measures to tackle pension scams; the publication of DWP guidance about the cap on early exit charges; and the report of the government's review of State Pension age.
- **Case law:** a Court of Appeal judgment about the capping of pensionable pay; and a Court of Appeal judgment about the employer's duty of good faith.
- **HMRC:** the publication of two pension schemes newsletters, and three countdown bulletins in relation to the end of contracting-out.
- **Other news:** the publication of blogs from the Information Commissioner's Office about the General Data Protection Regulation; and a consultation from the FCA relating to the Financial Advice Market Review.
- **On the Horizon:** a timeline of some of the key future developments in pensions to help employers and trustees plan ahead.

If you would like further information about any of the issues raised in this edition of Pensions Round-Up, please get in touch with Cathryn Everest or your usual DLA Piper pensions contact. Contact details are at the end of this newsletter.

THE PENSIONS REGULATOR

In August the Regulator published a response to its March consultation on a draft monetary penalties policy and revised description of a professional trustee and published the final versions of the policies.

MONETARY PENALTIES POLICY

The "*Monetary penalties policy*" sets out how the Regulator will use its powers to impose monetary penalties under pensions legislation, although it does not cover penalties in relation to the automatic enrolment duties.

The policy sets out factors that the Regulator will take into account when deciding whether to impose a discretionary monetary penalty. Broadly, the factors include the nature and impact (or potential impact) of the breach and the person concerned and their conduct. The policy provides some examples of the types of factors that it may take into account. The policy also sets out principles that will guide it in determining the amount of a penalty and a framework which it will usually use to calculate penalties. The amount of the penalty will generally depend on the person concerned, which of three band levels it is regarded as falling within depending on the nature and impact of the breach, and any aggravating or mitigating factors. Appendices to the policy set out the Regulator's approach in relation to failures to submit the scheme return on time and to prepare the chair's annual statement.

PROFESSIONAL TRUSTEE DESCRIPTION POLICY

The Regulator expects higher standards from professional trustees and will generally apply higher penalties where those who meet its description of a professional trustee have failed to meet their duties.

The "*Professional trustee description policy*" states that the Regulator considers a professional pension scheme trustee "*to include any person, whether or not incorporated, who acts as a trustee of the scheme in the course of the business of being a trustee*". It also provides that:

- the Regulator would not normally consider a remunerated trustee to be acting as a trustee of the scheme in the course of the business of being a trustee if: (i) they are or have been a member of the scheme or a related scheme or employed by, or a director of, a participating employer in the scheme; and (ii) they do not act, or offer to act, as a trustee in relation to any unrelated scheme;
- where an individual represents or promotes themselves to the trustees or sponsors of one or more unrelated schemes as having expertise in trustee matters generally (rather than just in certain areas), whether for remuneration or otherwise, the Regulator would normally consider them to be acting in the course of the business of being a trustee.

The Regulator expects the person appointing a trustee to a pension scheme to understand whether the trustee meets its description of a professional trustee and is therefore subject to higher standards and potentially higher penalties if breaches occur. The policy includes examples to illustrate when the Regulator may consider someone to be (or not to be) a professional trustee, with the examples covering issues such as independent trustees and pro bono appointments, long serving remunerated trustees, trustees with particular expertise and former executives appointed as independent trustees.

The accompanying press release from the Regulator states that the new description paves the way to build standards and accreditation for professional trustees through the Professional Trustee Standards Working Group established by the industry's professional trustee bodies.

THE PENSIONS REGULATOR

REGULATORY INTERVENTION REPORTS

In July the Regulator published two regulatory intervention reports about the use of its powers.

- In April the Regulator issued press releases reporting on the first criminal prosecutions in relation to failures to provide it with requested information. The documents in one case had not been provided despite the Regulator pursuing them for almost nine months and in the other case the Regulator had been pursuing them for over 18 months. Fines were imposed in both cases (totalling £6,700 in one case and £2,500 in the other) and orders were also made to pay costs and a victim surcharge. A regulatory intervention report published on 18 July provides information about these cases and the Regulator states that the report alerts others to the potential for it to bring criminal charges for neglecting or refusing to provide information or documents required under section 72 of the Pensions Act 2004.
- A regulatory intervention report published on 27 July relates to the first time the Regulator has fined a scheme manager of a public service scheme. The fine related to a failure to submit the scheme return and the report explains that the Determinations Panel decided to impose a fine of £1,000 taking into account the Regulator's statutory objectives, which include promoting and improving the understanding of the good administration of work-based pension schemes, and that there are almost 23,000 members in the fund in question.

QUARTERLY COMPLIANCE BULLETIN

On 10 August the Regulator published its quarterly compliance and enforcement bulletin which covers the period from April to June 2017. As well as reporting on compliance and enforcement activity in relation to automatic enrolment (which is covered in the next section of this newsletter), this edition of the bulletin also reports on the use of some of the Regulator's other powers. For the first time, the bulletin also includes a link to the names of pension schemes whose trustees have been fined for failing to complete the scheme return or the annual chair's statement. This list includes the name of the scheme, the type of breach and the amount of the fine.

Powers used in the period April to June 2017 included: 88 uses of the power to appoint trustees; 28 mandatory penalty notices where there has been a failure to prepare a chair's annual statement; 44 penalties in relation to the failure to complete the scheme return; 26 uses of the Regulator's formal information gathering powers; and the publication of five regulatory intervention reports. The report also provides figures for the period April 2014 to June 2017.

AUTOMATIC ENROLMENT

PUBLICATIONS FROM THE REGULATOR

- On 31 July the Regulator published its fifth annual automatic enrolment commentary and analysis report which looks at the period from April 2016 to March 2017. Points of note in the report include that: (i) DC continues to be the main type of scheme used for automatic enrolment and the percentage of DC schemes being used rose from 93% last year to 97%; (ii) at this point in time, the Regulator is seeing a higher number of people being enrolled into occupational DC schemes; (iii) the majority of occupational DC schemes used for automatic enrolment are master trusts; and (iv) between April 2016 and March 2017 the Regulator used its formal powers on 50,068 occasions including 33,716 compliance notices, 1,193 unpaid contributions notices, 12,181 fixed penalty notices and 2,527 escalating penalty notices.
- As reported in the previous section of this newsletter, on 10 August the Regulator published its latest quarterly compliance and enforcement bulletin which covers the period April to June 2017. The section of the report relating to automatic enrolment includes that, in this period, the Regulator used its power to demand information and documents 64 times and its power to inspect premises 276 times, and issued 9,265 compliance notices, 653 unpaid contributions notices, 4,794 fixed penalty notices and 1,384 escalating penalty notices.
- In August the Regulator issued further press releases announcing spot checks (in Glasgow and in South Wales) to ensure that employers are complying with their automatic enrolment duties.

DWP CALL FOR EVIDENCE

On 19 July the DWP published a call for evidence seeking views and information on the following two aspects of the automatic enrolment legislation.

- The provisions introduced in April 2015 setting out the alternative quality requirements for DB pension schemes that are used for automatic enrolment. The alternative quality requirements are: (i) a cost of accruals test which relates to the cost to the scheme of the future accrual of active members' benefits; and (ii) a test enabling certain hybrid schemes to use the money purchase quality requirements. The operation of these provisions is being reviewed as part of the review of automatic enrolment that the DWP is currently carrying out. The call for evidence aims to ascertain whether or not the government's policy intentions in this area are being achieved, in particular how the simplifications and flexibilities under the alternative tests work in practice, and whether there are any unintended consequences.
- Provisions were introduced in 2012 to include seafarers and offshore workers within automatic enrolment. The call for evidence aims to test whether these provisions are working as intended in enabling these workers to be automatically enrolled.

END OF THE DB TRANSITIONAL PERIOD – REMINDER

The automatic enrolment legislation contains transitional provisions for DB schemes which allow employers to delay automatic enrolment until after 30 September 2017 in respect of workers who meet certain conditions. The transitional period ends on 30 September 2017. Employers who used this transitional period will need to take appropriate steps at the end of the transitional period to ensure compliance with their duties.

DEPARTMENT FOR WORK AND PENSIONS

PENSION SCAMS – RESPONSE TO CONSULTATION

In August the DWP and HM Treasury published the response to their December 2016 consultation on pension scams, confirming that new measures will be introduced in three areas.

Cold calling

The response confirms that the government intends to proceed with its proposal to legislate for a ban on cold calling in relation to pensions and that it intends to extend this to all electronic communications about pensions. The government intends to work on "*the final and complex details of the ban*" during the course of this year and will bring forward legislation to deliver the ban "*when Parliamentary time allows*".

Limiting the statutory right to transfer

The government will proceed with its proposal to limit the statutory right to transfer so that a statutory right will only exist where:

- the receiving scheme is a personal pension scheme operated by an FCA authorised firm;
- the receiving scheme is an authorised master trust scheme; or
- a genuine employment link to the receiving occupational pension scheme can be evidenced.

However, the response highlights a number of issues for further consideration including that the government will: (i) consider how best to extend the criteria to include legitimate transfers to Qualifying Recognised Overseas Pension Schemes and will engage with industry and other stakeholders on this issue; (ii) continue to engage with industry and other stakeholders on how best to implement the requirement for a genuine employment link to a receiving occupational pension scheme; (iii) consider whether to provide for the need to undertake due diligence in legislation; and (iv) consider whether trustees or managers should have the power to amend their scheme rules in order to accommodate non-statutory transfers where there is no such power already.

Given that the limited statutory right will allow transfers only to authorised master trusts, the government will coordinate the changes to the statutory right with the roll out of the master trust authorisation regime. The response notes that the government intends to implement the master trust authorisation regime in late 2018, with the regime fully rolled out in 2019.

Given that it will be some time until these changes are made and some of the detail, including exactly how the employment link will work in practice, is not yet known the question arises of how trustees should deal with transfer requests where a statutory transfer right exists under the current law but it is thought that it would not, or may not, exist under the proposed changes. The strict legal position is that the current law must continue to be applied but trustees may want to consider adapting the risk warnings they issue to members to refer to the planned changes. We would recommend that trustees seek advice about dealing with such transfers.

Making it harder to open fraudulent schemes

The response confirms that the government intends to introduce legislation in a Finance Bill later in 2017 aimed at ensuring that only active companies can register a pension scheme, except in legitimate circumstances, where HMRC will be given discretion to register schemes with a dormant sponsoring employer.

DEPARTMENT FOR WORK AND PENSIONS

EARLY EXIT CHARGES – GUIDANCE

In the June/July edition of Pensions Round-Up we reported on the publication of the government's response to a consultation on draft regulations in relation to early exit charges and the final version of the regulations. The regulations will come into force on 1 October 2017 and, subject to limited exceptions, the provisions on early exit charges apply to occupational pension schemes that provide money purchase benefits. They impose: (i) a ban on early exit charges for members who join the scheme on or after 1 October 2017; and (ii) a cap on early exit charges for members who joined the scheme before 1 October 2017 of the lower of 1% of the value of the benefits being taken, converted or transferred or such amount as was provided for under the scheme rules or a relevant contract as at 1 October 2017. On 21 July the DWP published guidance which applies to the calculation of the 1% limit in relation to members who joined the scheme before 1 October 2017. The guidance provides information on how to calculate the level of early exit charges and in particular looks at how market value adjustments and terminal bonuses are to be treated.

Trustees of DC schemes should check whether their schemes are caught by these new provisions and, if so, whether any charges are currently in place which will need to be changed before the regulations come into force.

STATE PENSION AGE REVIEW

The Pensions Act 2014 requires periodic reviews of State Pension age, and on 19 July the DWP published a report in relation to the government's first State Pension age review. This follows the publication of the report of an independent review and a report by the Government Actuary in March 2017.

The Pensions Act 2014 provides that the State Pension age review must have regard to "*life expectancy and other factors that the Secretary of State considers relevant*". The report explains that, for this review, the "*other factors*" considered were fairness between the generations and how the pace and notice of change can best provide a firm foundation for planning and saving in light of the uncertainty of future life expectancy. The government has concluded that the review can best balance these factors by following the recommendation of the independent review and increasing State Pension age from 67 to 68 between 2037 and 2039, rather than between 2044 and 2046 as currently provided by the legislation. This would affect those born between 6 April 1970 and 5 April 1978. However, the government will not yet be legislating for this change. Rather, it plans to carry out a further review before legislating to bring forward the rise to age 68 to enable consideration of the latest life expectancy projections and to allow it to evaluate the current rises in State Pension age.

In the long run, the government is minded to commit to 'up to 32%' as the right proportion of adult life to spend in receipt of State Pension (although noting that the next rise will not bring the position to this proportion). However, given that life expectancy projections are uncertain and the fact that there will be at least three further State Pension age reviews before the transition to age 68 begins, the Government does not intend to formalise policy beyond 2037 to 2039 at this stage.

The rules of occupational pension schemes may link the date for payment of certain benefits to State Pension age, for example, rules on bridging pensions are sometimes drafted so that the bridging pension will cease at State Pension age. At this stage, occupational pension schemes should be aware of the government's proposed changes to State Pension age and how this may interact with their rules but also note that the government will be reviewing the position again before legislating for this change.

CASE LAW

CAPPING PENSIONABLE PAY

In July the Court of Appeal issued a judgment concerning the capping of pensionable pay in the final salary sections of the BBC Pension Scheme. In order to mitigate its pension liabilities, the BBC informed members in late 2010 that they could either remain in a final salary section but with only 1% of any future pay increases being pensionable from April 2011 or join a new career average section or a newly created DC pension plan. In 2011 the Appellant in this case was offered a 2% pay rise subject to the cap. This meant that, in effect, he had a choice as to whether to: (i) remain in the final salary section and accept the 2% pay rise subject to the cap so that only 1% of it would be pensionable; (ii) remain in the final salary section but receive no pay rise at all; or (iii) accept the 2% pay rise but move to a career average section of the scheme or a new DC plan. The Appellant's claims challenging the cap were dismissed by the Pensions Ombudsman and the High Court dismissed his appeals against those decisions. The Court of Appeal dismissed the Appellant's appeal.

The rules of the scheme

The scheme rules define Basic Salary as the "*amount determined by the BBC as being an Employee's basic salary or wages payable under the terms of his or her Continuing or Fixed Term Contract* …". The amount of Basic Salary is relevant to the definition of Pensionable Salary and therefore to the calculation of benefits in the final salary section. The Court of Appeal concluded that, as a matter of construction of the definition, the BBC could decide whether an increase in pay, or how much of an increase in pay, counted as Basic Salary. It stated that, given that the Appellant has no contractual right to any pay rise, there was no reason why it should not be open to the BBC to determine how much of that pay rise would be pensionable. This meant that the cap did not breach the scheme rules.

Section 91 of the Pensions Act 1995

Section 91 of the Pensions Act 1995 provides that where a person is "*entitled to a pension under an occupational pension scheme or has a right to a future pension under such a scheme*" the entitlement or right cannot be surrendered and an agreement to do so will be unenforceable.

The Appellant argued that he had an existing right to a future pension based on his final pay and therefore the cap would infringe the protection provided by section 91. The Court of Appeal disagreed. It noted that the Appellant had no right to any future increase in salary or pensionable salary and that section 91 does not apply where a person *may* acquire a future right to a pension as a result of a future increase in Basic Salary. It concluded that section 91 did not apply to the agreement to the cap as it only prevents the surrender of rights under the pension agreement, not a change to the content of the Appellant's employment contract.

The employer's duty of trust and confidence

The Court of Appeal also rejected the Appellant's argument that, even if there was no breach of the scheme rules or section 91, the BBC had breached its implied duty of trust and confidence by the process through which it had decided to propose the cap. The Court of Appeal thought that the High Court's analysis of the facts and its conclusion that there was no breach "*cannot be faulted*". It noted that the BBC's conduct had to be assessed against "*the reality of the background that the respondent [the BBC] was faced with a multi-billion pound deficit in the Scheme and where the trustees, the unions and the respondent all agreed that something had to be done*". The Court of Appeal also rejected the Appellant's arguments in relation to discrimination, as it noted that all employees were given the same choice, and improper motive, in relation to which it agreed with the High Court's conclusions including that what the BBC did was primarily a response to the deficit.

The conclusions in this case are likely to be of comfort to employers who wish to cap pensionable pay for their schemes. However, it should be noted that some of the conclusions related to the specific drafting of the scheme's rules and the circumstances of this case, and it is therefore important that employers seek legal advice if they are considering imposing a cap on pensionable pay.

CASE LAW

EMPLOYER'S DUTY OF GOOD FAITH

There is a duty of good faith on employers implied into contracts of employment and in relation to the exercise by employers of non-fiduciary discretionary powers under a pension scheme (this latter duty is often referred to as the *Imperial* duty after the case in which it was formulated). An April 2014 High Court judgment considered whether or not IBM had breached these duties in relation to its proposals for pension reform known as Project Waltz. The proposals included excluding employees from membership of the DB parts of the relevant schemes, ending a policy of allowing early retirement on beneficial terms from age 50, and ensuring that future salary increases would not count towards final pensionable salary by asking employees to sign non-pensionability agreements. The High Court concluded that the proposals were not lawful by reason of: (i) breaches of the *Imperial* duty by the scheme's principal employer including in relation to the exercise of a power in the scheme rules to direct that any class of person shall not be eligible for membership and its position in relation to early retirement; and (ii) breach of the contractual duty of trust and confidence by the employer of the relevant members in respect of its part in the proposals, particularly the non-pensionability agreements. In August 2017 the Court of Appeal issued a judgment allowing IBM's appeal against these decisions. Many of the conclusions are specific to the facts of the case but some of the Court of Appeal's more general comments are likely to be of wider interest to employers and trustees, and we set out below an overview of these points.

- In relation to both the implied contractual duty of trust and confidence and the *Imperial* duty, the correct approach to considering whether there has been a breach is to apply a "rationality" test equivalent to that in *Wednesbury* (a case concerning public law duties). This rationality test has two limbs: (i) have the relevant matters, and no irrelevant matters, been taken into account; and (ii) is the result such that no reasonable decision-maker could have reached it?
- The High Court concluded that the duties had been breached because communications in relation to previous pension changes had led to employees having "Reasonable Expectations" as to DB accrual and the early retirement policy and, given this, the Project Waltz changes could not be justified unless there was no way of achieving IBM's legitimate business aims which was compatible with giving effect to the Reasonable Expectations. The High Court stated that a Reasonable Expectation is an expectation as to what will happen in future that has been engendered by the employer's actions (as opposed to a mere expectation based on the employee's own assumptions or expectations) which gives employees a positive reason to believe that things will take a certain course. The Court of Appeal concluded that the High Court had incorrectly accorded an "*overriding substantive significance to the Reasonable Expectations such that they could only lawfully be disappointed in a case of necessity*". The Court of Appeal stated that members' expectations "*do not constitute more than a relevant factor which the decision-maker can, and where appropriate should, take into account in the course of its decision-making process*".
- In relation to non-pensionability agreements, failure or refusal to offer a pay rise to which the employee is not contractually entitled may in some circumstances be a breach of the implied duty of trust and confidence but the circumstances have to be extreme – the rationality test should be applied.

IBM did not appeal the High Court's decision that it had breached pensions legislation and the contractual duty of trust and confidence in the way that it carried out a consultation about the proposals in 2009. The Court of Appeal concluded that an injunction should *not* be granted to prevent IBM from implementing Project Waltz until a fresh consultation had been carried out, with its reasoning including that this would require IBM to formulate new proposals a long time after the relevant events and would not result in restoring members to the position they would have been in if a proper consultation had been carried out in 2009. However, members will be entitled to claim damages for breach of the contractual duty.

This judgment is significant in confirming the correct test for determining whether the duty of good faith has been breached. Whilst in this case it was concluded that the High Court had accorded too much significance to members' expectations, it is also notable that the Court of Appeal stated that they are a relevant factor. It therefore remains important for employers to be careful about assurances made in member communications.

HMRC

PENSION SCHEMES NEWSLETTERS

HMRC published pension schemes newsletter 89 on 27 July and newsletter 90 on 31 August. Points of note in the newsletters include the following.

- HMRC aims to release an updated version of the annual allowance calculator in the autumn.
- A reminder of the requirement to issue pension savings statements for the 2016/17 tax year to members who contributed more than the annual allowance to the scheme.
- A reminder that HMRC will reject any old APSS262 forms used to report transfers to QROPS made from 9 March 2017 because, following changes to the legislation, the old form does not contain additional information that administrators are now required to provide, and that penalties may apply if the old form is used.
- A reminder that administrators will need to report taxable overseas transfers made between 9 March and 30 June 2017 and pay the tax on the Accounting for Tax Return for the quarter ending 30 September 2017.
- Information about HMRC's plans to move pension scheme registration and administration on to a new digital platform – Pensions Online Digital Service. The new service will be rolled out in two phases. HMRC will move pension scheme registration and registering as a scheme administrator onto the new service from April 2018. To allow existing administrators to register new schemes on the new service, HMRC will also transfer existing scheme administrator data onto the new service by April 2018. The second phase will apply from April 2019 and will involve moving schemes that were registered with HMRC before April 2018 onto the new service. HMRC asks that pension scheme administrators log onto Pension Schemes Online as soon as possible to check that their details are complete and up to date. HMRC also asks that scheme administrators check all of their administrator records and all of their registered pension scheme records and inform it if there are any that do not need moving across to the new service.

COUNTDOWN BULLETINS

HMRC published Countdown Bulletins in relation to the end of contracting-out on 24 July, 10 August and 30 August providing further information about scheme reconciliation including information about automated solutions, standardising HMRC responses where a clerical response is provided and how to complete the Scheme Reconciliation Service (SRS) query template. HMRC also reports that it previously stated that it would no longer accept late expressions of interest to register for SRS but, since then, it has monitored the position and in exceptional circumstances will now accept late expressions of interest. A reminder is also provided that HMRC will only accept SRS queries up to October 2018 so that they can be resolved by the December 2018 service end date.

HMRC STATISTICS

On 26 July HMRC published updated statistics about flexible payments which show that in the second quarter of 2017 393,000 payments were made to 200,000 individuals and the total value of payments was £1,860 million.

Also on 26 July HMRC published updated statistics about the number and total value of transfers made to Qualifying Recognised Overseas Pension Schemes to include statistics for the 2016/17 tax year. The statistics for 2016/17 show that there were 9,700 transfers and the total value was £1,220 million.

OTHER NEWS

DATA PROTECTION

The background briefing notes to the Queen's Speech delivered on 21 June contained details of a Data Protection Bill which will fulfil a manifesto commitment to ensure that the UK has a data protection regime that is fit for the 21st century and will implement the General Data Protection Regulation (GDPR). On 7 August the Department for Digital, Culture, Media & Sport published the government's Statement of Intent for implementation of the Bill which includes that the Bill will apply the new data protection standards to all general data, not just areas of EU competence and will repeal the Data Protection Act 1998.

In August the Information Commissioner's Office (ICO) added a number of blogs to its website about the GDPR. One of these blogs included information about when certain guidance can be expected. One of the lawful bases for processing data relates to legitimate interests and the blog states that there is already guidance about legitimate interests under the current law on the ICO website and that it is working to publish guidance on this in relation to the GDPR next year. However, the ICO also states that there is no need to wait for that guidance and that organisations should be able to identify their purposes for processing personal information. In relation to the lawful basis of consent, the ICO states that waiting until Europe-wide guidelines have been agreed before it publishes its final guidance is key to ensuring consistency and that the current timetable is December. However, the ICO also states that it is not correct that organisations cannot start planning for the new consent rules until the new guidance is published, noting that its draft guidance is a good place to start now and it is unlikely that the guidance will change significantly in its final form.

FCA CONSULTATION

On 1 August the Financial Conduct Authority (FCA) published a consultation on proposals to support the advice sector in the UK, some of which implement recommendations of the Financial Advice Market Review. Issues covered by the proposals include the following.

- Earlier this year, regulations were made which will come into force on 3 January 2018 and will change the definition of financial advice so that most authorised firms will be exempt from the regulated activity of 'advising on investments' unless the firm is providing a personal recommendation. The consultation explains how the FCA proposes to amend its Handbook for firms affected by this change to the legislation.
- Amendments are proposed to the FCA's guidance to give firms more clarity on what amounts to a personal recommendation.
- The FCA also proposes new Handbook guidance for firms on the treatment of insistent clients. The FCA notes that firms have told it that they need more support in this area, particularly in light of the statutory advice requirement for certain DB transfers.

ON THE HORIZON

DATE	DEVELOPMENT
Unknown	The reforms in relation to **Defined Ambition, Collective Benefits** and **automatic transfers of small DC pots** will be revisited once the market has had time and space to adjust to other reforms.
	In March 2017 the Government published a response to its consultation on **equalisation for the effect of GMPs** noting that a number of issues will be considered with the industry working group. The date that any final form documents will be published is not known.
Autumn 2017	A new **Finance Bill**, which will include the new tax exemption for **employer-arranged pensions advice** and the reduction in the **money purchase annual allowance** to £4,000, is expected to be introduced as soon as possible after the summer recess.
	A **factsheet** is expected to be published by the FCA and the Pensions Regulator in September 2017 about what help employers and trustees can provide on financial matters without being subject to regulation.
	In the Autumn the PPF is expected to publish a consultation setting out its conclusions in relation to the **levy for the third triennium** alongside a draft set of rules for 2018/19.
	Regulations in relation to the **cap on early exit charges** for occupational pension schemes and the extension of the **ban on member-borne commission** will come into force on 1 October 2017.
	Following a consultation issued in April 2017, amendments to the **employer debt legislation** are expected to come into force on 1 October 2017.
2017	Following a consultation published in October 2016, the FCA is expected to publish rules aimed at standardising the disclosure of **transaction costs** incurred by pension investments.
	Following the **DB Green Paper** published in February 2017, a White Paper setting out options for reform is expected to be published later in 2017.
	A review of **automatic enrolment** is taking place in 2017. A report setting out policy recommendations is expected towards the end of 2017.
	Following a December 2016 call for evidence, a consultation is expected on **bulk transfers of DC pensions without member consent**.
	The transitional period in which employers and schemes may continue to use the **VAT** treatment in VAT Notice 700/17 ends on 31 December 2017.
	The DWP is expected to consider further measures in relation to **transfers of contracted-out rights** to schemes that have never been contracted-out.
6 April 2018	The **lifetime allowance** is due to be indexed annually in line with CPI.
	Changes to the legislation on valuing safeguarded benefits for the purpose of the advice requirement and to require risk warnings to be given to members with **safeguarded-flexible benefits** are due to come into force on 6 April 2018.
25 May 2018	The new EU General **Data Protection** Regulation will apply.
2018/19	The government intends to implement the **master trust authorisation regime** in late 2018, with the regime fully rolled out in 2019. Changes to **limit the statutory right to transfer in order to tackle pension scams** are expected to be coordinated with the roll out of the master trust authorisation regime.
2019	Member States must transpose the **IORP II Directive** into national law by 13 January 2019.
	The Government will ensure the industry designs, funds and launches a **pensions dashboard** by 2019.

CONTACT DETAILS

Cathryn Everest
Professional Support Lawyer, London
T +44 (0)20 7153 7116
cathryn.everest@dlapiper.com

Ben Miller
Partner, Liverpool
T +44 (0)151 237 4749
ben.miller@dlapiper.com

Claire Bell
Partner, Manchester
T +44 (0)161 235 4551
claire.bell@dlapiper.com

Tamara Calvert
Partner, London
T +44 (0)20 7796 6702
tamara.calvert@dlapiper.com

Jeremy Harris
Partner, Manchester
T +44 (0)161 235 4222
jeremy.harris@dlapiper.com

Andrew McIlhinney
Partner, Leeds
T +44 (0)113 369 2141
andrew.mcilhinney@dlapiper.com

Matthew Swynnerton
Partner, London
T +44 (0)20 7796 6143
matthew.swynnerton@dlapiper.com

David Wright
Consultant, Liverpool
T +44 (0)151 237 4731
david.wright@dlapiper.com

www.dlapiper.com

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