ALLEN & OVERY

30 March 2020

Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Covid-19 update | CJRS: pension contributions for furloughed employees | Latest HMRC newsletter | Discrimination: *McCloud* update | PPF update on Hampshire implementation

Covid-19 update

The Pensions Regulator (TPR) has announced further flexibility and easements for schemes and sponsors in the light of pressure on scheme administration and services due to the current pandemic and the risk of sponsor distress: for more information about the latest TPR guidance issued on 27 March, please see our briefing 'TPR provides easements on transfers and DRCs, plus further guidance'.

Other recent developments include:

- Further details have been published about the Coronavirus Job Retention Scheme (see next item).
- The Coronavirus Act 2020 has received Royal Assent. The Act provides for workers to take emergency volunteering leave (EVL) in certain circumstances, and includes statutory protection for pension rights during leave and on return to work as well as an implied emergency volunteering rule in 'employment-related benefit schemes' (including occupational pension schemes). Essentially relevant members are treated as though they were not on EVL in relation to membership, accrual of rights and the calculation of benefits payable. Processes may need to be updated to cover individuals on EVL, including to ensure that the correct pension contributions are paid during EVL.
- Pensions Ombudsman (TPO): TPO has announced changes to its services, including that it is not accepting new complaints at this time. TPO has said that where possible, it will extend the time limit for claims where new complaints are affected by this. Existing complaints will be progressed as normal.
- Data protection and cybersecurity: the Information Commissioner's Office (ICO) and the National Cyber Security Centre have both published new guidance on home working and data protection practices. Many trustees have been considering these issues recently, in the context of increased home working by trustees as well as service providers (in particular, administrators). The ICO has set out a pragmatic approach (for example, to delays in responding to subject access requests) but expects organisations to consider the same kinds of security measures for home working that would be used in normal circumstances.
- HMRC's latest Pension Schemes Newsletter (see below) sets out some temporary changes to HMRC's processes and requirements.

Trustees should familiarise themselves with TPR's most recent guidance, and continue to address core issues including:

- reviewing and updating contingency plans; confirming administrator resourcing and standards; and confirming the priority order of scheme activities;
- reviewing trustee board rules for holding meetings and decision-making (and seeking legal advice as appropriate);
- seeking investment advice (including, for DB schemes, on scheme liquidity issues), and seeking legal advice if appropriate;
- considering member communications (if appropriate); and
- for DB pension schemes, liaising with the sponsor about funding and covenant strength. If trustees receive a request to reduce or suspend deficit repair contributions, they should seek advice.

CJRS: pension contributions for furloughed employees

Further details have been published about the Coronavirus Job Retention Scheme (CJRS). This is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020 (though it is not yet operational). The CJRS provides help with employer pension costs as well as wage costs, but only to a limited extent. The basic premise is that employers can claim for 80% of usual monthly wage costs for furloughed employees (that is, employees who have been put on a leave of absence for a minimum period of three weeks), up to £2,500 a month. In relation to pensions:

- Employers will also be able to reclaim the cost of minimum auto-enrolment contributions on a monthly wage of up to £2,500.
- For a defined contribution scheme, that means 3% of qualifying earnings between £520 (2020/21 rates) and £2,500 – that is, a maximum of £59.40 per month.
- Any excess compared to minimum auto-enrolment contributions (for example, because contributions are based on the whole of basic pay rather than being limited to the qualifying earnings band, or because employer contribution rates are higher than the minimum) will remain an employer cost.

While employers can choose whether or not to pay any top-up salary over the £2,500 cap, they will be bound by the rules of the pension scheme in terms of the contributions payable and should check the precise wording of the rules to determine how this applies to their specific situation. It's not clear whether or how the scheme applies where the qualifying scheme is a defined benefit arrangement, nor what arrangements should apply to salary sacrifice contributions (these will not be covered by the CJRS beyond the cap); further guidance is to follow which may cover this.

Latest HMRC newsletter

HMRC's latest Pension Schemes Newsletter (no. 118) covers pensions announcements from the recent Budget (see WNTW, 16 March 2020), including messaging that schemes may wish to provide to members on changes to the tapered annual allowance. It notes the uprating of the standard lifetime allowance (separately, the regulations setting this as £1,073,100 for the tax year 2020-21 have also now been published).

The newsletter sets out some temporary changes to pension processes to assist scheme administration including: alternatives to 'wet signatures' on some documents and relief from certain interest charges/penalties. HMRC will publish further guidance for scheme administrators shortly. These changes will apply for the next three months; HMRC will then review the position and provide an update in June.

The newsletter also includes content on relief at source, the Pension Schemes Online and Managing Pension Schemes services, and some upcoming changes to guidance.

Discrimination: *McCloud* update

The government has provided an update on progress in implementing changes to public sector pensions following the finding of unlawful age discrimination in relation to the firefighters' and judicial pension schemes – the government has also committed to make changes for other schemes.

The government is considering allowing members to choose the scheme in which they accrued relevant service (that is, the legacy scheme or the new scheme) – it is planning to consult on changes later this year, including how to remove the discrimination for future service. It is also expected to provide an update on the cost control mechanism.

PPF update on Hampshire implementation

The Pension Protection Fund (PPF) has published a further update on its implementation of the *Hampshire* decision, regarding the level of compensation payable to eligible individuals whose benefits fell below 50% of the value of their accrued benefits (WNTW, 10 September 2018). The PPF hopes to increase payments for 90 per cent of persons entitled to an increase by the end of March 2021; however, it is adopting a limited approach to the payment of arrears for the moment, due to ongoing litigation.

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