

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.

New PASA guidance on DB transfers | Cybersecurity, admin issues highlighted by TPR | New Stewardship Code delayed | IORP II: new guidance from EIOPA | Consultation on draft Finance Bill

New PASA guidance on DB transfers

The Pensions Administration Standards Association (PASA) has published good practice [guidance](#) on DB transfers – the guidance was developed by an industry working group which included the Pensions Regulator (TPR). The guidance aims to increase the speed of transfers, increase efficiency for administrators, and improve communications and transparency in the processing of transfers. The working group also expects that the Pensions Ombudsman will have regard to the guidance as representing 'good industry practice' when considering complaints.

This guidance deals with standard cases (that is, where the request is for a statutory guaranteed cash equivalent transfer value and is a business-as-usual request; the administrator can use some or full automation to calculate the transfer value; and the transfer value basis and/or scheme discharge paperwork are not currently being reviewed). Cases excluded from the guidance include: a suspected pension scam (following due diligence checks); cases requiring significant manual intervention; overseas transfer requests; and non-statutory requests. Further guidance on complex cases is expected towards the end of 2019.

The guidance suggests that the maximum time to issue a quote to a member should be 7-8 working days, and that (provided all paperwork has been completed correctly and there is no evidence of a pension scam), it should take no longer than nine working days to make payment after receiving an application. Cases should be processed more quickly where possible. The working group recommends that, where a third party is causing a delay to the process, the administrator should inform the third party and the member, and seek to influence the process.

The guidance also includes a standard transfer template – the working group recommends that administrators adopt this template and ensure the scheme and member-level information is fully completed and sent to advisers on request. Use of the template is intended to increase the quality of advice that members receive (as their advisers will better understand the scheme benefits) and to potentially reduce the cost of advice (if information is being provided by schemes in a consistent format). Other standard documents include a letter of acknowledgement for the quote request, an example declaration from a financial adviser, and a transfer forms checklist.

The guidance is focused on DB transfers, but the working group encourages the application of best practice principles more widely, including on DC to DC transfers.

Cybersecurity, admin issues highlighted by TPR

TPR has published [commentary](#) on the results of its [recent survey](#) of governance and administration in public service pension schemes, highlighting cyber security as a key risk that schemes may not be taking seriously enough. Among public service schemes, almost one-in-five schemes did not report having controls restricting access to systems and data; around half had experienced a cyber breach or attack in the last year, including attacks aimed at disabling websites or online services. In many cases this had no negative impact, but in 9% of cases it resulted in the website or online services being taken down (or made slower) and in 7% of cases there was temporary loss of access to files or networks.

TPR also draws attention to the need for trustees to be aware of the security processes that scheme sponsors, administrators and advisers have in place; to have an incident response plan in place; and to receive regular updates on cyber risks, incidents and controls. Almost two-thirds of scheme managers of public service schemes were not receiving regular updates on cyber risks, incidents and controls (and almost three-quarters of pension boards were not receiving regular updates).

TPR also underlines the importance it places on administration as a fundamental duty of those running pension schemes, saying that administration should be a feature of every meeting to identify persistent and emerging issues.

While there are some differences in the legal and regulatory framework for public service pension schemes, these themes are applicable to all schemes, and TPR can be expected to highlight similar risks elsewhere.

New Stewardship Code delayed

The Financial Reporting Council (FRC) has [announced](#) that publication of the new UK Stewardship Code has been delayed until October. The FRC consulted on a draft version of the new Code earlier this year (see [WNTW](#), 4 February 2019). The FRC has said that it is currently ‘undertaking targeted outreach to test changes to our proposals on activities and outcomes reporting’.

The Pensions Regulator (TPR) is encouraging trustees to sign up to the Stewardship Code (see [WNTW](#), 1 July 2019). The new Stewardship Code is part of wider reforms on shareholder engagement, including new obligations for trustees preparing statements of investment principles (SIPs). From 1 October 2019, there will be new requirements for stewardship matters to be included in SIPs – to read more, see [‘Updating your SIP: new content requirements and disclosure deadlines for pension schemes’](#).

IORP II: new guidance from EIOPA

The European Insurance and Occupational Pensions Authority has [published](#) four opinions (plus related materials) to assist national regulators with the implementation of the IORP II Directive. These cover various issues including governance, risk assessments, and operational risks.

The extent to which TPR will have regard to these documents in its regulatory approach is currently unclear, given the UK’s expected withdrawal from the EU.

Consultation on draft Finance Bill

The government is running a [technical consultation](#) on the draft Finance Bill, before the Bill is introduced to Parliament. Two areas of interest are set out below.

Priority of debts in insolvency: the government intends to make HMRC a secondary preferential creditor in respect of certain tax debts on insolvency. It is intended to apply in respect of debts including VAT, PAYE income tax and employee national insurance contributions (NICs) but not corporation tax and employer NICs. One effect of this would be that the funds available to be distributed to unsecured creditors may be reduced – this would include where pension liabilities rank as unsecured debts.

Rules on off-payroll working: the government intends to make changes to ‘off-payroll’ working rules (also known as IR35) for the private sector from April 2020 – this is where an individual provides services to a client via an intermediary (such as a personal service company (PSC)). Broadly, the intention behind the changes is to shift responsibility for operating these rules to the organisation to which the individual is providing services. The draft legislation contains the detail of HMRC’s proposed exemption for small corporates (and other entities or persons).

HMRC consulted on changes to these rules earlier this year, including asking for feedback in relation to pension arrangements (see [WNTW](#), 11 March 2019). The consultation response states that the government has decided not to pursue its proposal regarding contributions to private pension arrangements at the moment. However, it will monitor any responses to the consultation on the draft Bill on this issue.

The consultation closes on 5 September 2019.

Contact information

Helen Powell
PSL Counsel, London

0203 088 4827
helen.powell@allenoverly.com

Ruth Emsden
PSL (Australian lawyer), London

0203 088 4507
ruth.emsden@allenoverly.com

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