ALLEN & OVERY

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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.

HMRC: GMP equalisation guidance | Government nudges TPR agenda on climate change… |…and explains proposed new trustee duties | TPR: regulatory intervention works| Auto-enrolment trigger and thresholds 2020/21 | TPR: report on House of Fraser pre-pack

HMRC: GMP equalisation guidance

HMRC has published guidance on some of the tax issues around GMP equalisation. Some of the more complex issues, including lump sum payments, death benefits and issues around conversion, will be addressed in future guidance – but there are some helpful points here for trustees and administrators.

Key points include:

- The general principle is that a GMP equalisation benefit adjustment should not, on its own, constitute new accrual for annual allowance (AA) or lifetime allowance (LTA) purposes. However, an adjustment may affect previous and future benefit crystallisation events.
- Adjustments should not cause issues for most deferred members (for example, because of the deferred member carve-out), and HMRC has confirmed that there is no need to revisit pension input amount calculations for past years for active members or for any deferred members who are not covered by the carve-out. In the year in which equalisation adjustments are implemented in the scheme (and future years), pension input amount calculations will need to take the revised amount into account.
- The guidance addresses the implications for different types of LTA protection. The key category to watch is individuals with enhanced protection who became deferred after 6 April 2006 – for these members, an adjustment could cause relevant benefit accrual if the appropriate limit has been exceeded.

The guidance also addresses the reworking of calculations for members with benefits in payment, and action points for administrators. For more details, please see our eAlert.

Government nudges TPR agenda on climate change…

The government has published a letter to TPR Chief Executive Charles Counsell, setting out its views on integrating climate change risks and opportunities into TPR's activities. It anticipates that TPR 'will wish to set out a strategy for dealing with the financial risks arising from climate change, including how this strategy will be resourced and implemented' (involving continuing engagement with the Taskforce on Climate-Related Financial Disclosures) in the coming months.

The Pensions Climate Risk Industry Group is developing guidance for pension funds on how pension trustees can address climate-related financial risks as part of their governance process; the government intends that this should form part of the forthcoming governance code and therefore have a 'statutory footing'.

The letter also contains suggestions for matters that should be included in TPR's report on climate change adaptation in the occupational pensions sector (which is due by the end of 2021).

…and explains proposed new trustee duties

We reported last week (see WNTW, 17 February 2020) on proposed amendments to the Pension Schemes Bill to introduce further climate change risk management and reporting requirements for trustees. The DWP has now published a supplementary memorandum explaining the thinking behind the new provisions and confirming that they are designed to confer powers to ensure that pension schemes act and report in line with the recommendations of the Taskforce on Climate-Related Financial Disclosures. However, the DWP is clear that the powers are not intended to direct pension schemes as to how they should invest.

The new requirements will apply to both DB and DC schemes and there will be further consultation on both the content of the regulations and the timing of the roll-out, which will begin with larger schemes only. The intention is to prescribe a detailed disclosure framework to provide consistent reporting, allowing comparison between schemes to facilitate public scrutiny and challenges to poor practice.

TPR: regulatory intervention works

The Pensions Regulator's latest blog post suggests that more trustees are negotiating higher employer pension contributions, prompted by increased communications about TPR's expectations.

As set out in its latest compliance and enforcement bulletin, TPR's four regulatory initiatives (on fair treatment – contributions vs. dividends; recovery plan length; investment governance, and record-keeping) have reportedly shown encouraging results. These initiatives take the form of written contact to clarify TPR expectations; trustees are given a reasonable time to take action, with TPR's guidance and support – but TPR may take enforcement action if it considers this necessary. TPR's message is that 'there's no excuse not to comply with our regulatory initiatives and make improvements where we indicate they are necessary'.

TPR has announced a future regulatory initiative to check levels of trustee knowledge and understanding once its updated code of practice is in place.

Auto-enrolment trigger and thresholds 2020/21

The auto-enrolment earnings trigger will remain at £10,000 for tax year 2020/21, the government has confirmed. The lower threshold of the qualifying earnings band (used to calculate statutory minimum contributions as set out in the legislation) will be increased slightly, remaining in line with the National Insurance contributions threshold at £6,240. The upper limit of the qualifying earnings band will remain at £50,000.

For employers who certify that contributions meet minimum quality standards by reference to equivalence with statutory minimum contributions, the marginal shrinking of the qualifying earnings band means that additional checks should not be required.

TPR: report on House of Fraser pre-pack

TPR has published a regulatory intervention report in relation to the House of Fraser pension scheme. The business and assets of House of Fraser were sold in a 'pre-pack' deal after it went into administration in August 2018. The Regulator had been involved with the company directors and trustees for some time prior to this; following the collapse of an attempted company voluntary arrangement, the business was sold and the scheme entered PPF assessment. TPR then investigated whether there was a case for the use of its moral hazard powers – for example, whether there had been viable alternatives to company administration and whether the timing of the administration had been premature, and whether there had been any preferential treatment of the eventual purchaser.

TPR now reports that there was no evidence of acts or transactions warranting further investigation or use of its powers, but notes that where pre-pack administrations result in the removal of sponsor support from a DB scheme, the parties should expect TPR to investigate these issues.

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