WRIGLEYS
— SOLICITORS —

Pensions Team Update

JANUARY 2020

Please find below a summary of recent pensions news and developments which may feature on your meeting agendas this year.

PPF Levy

The Pension Protection Fund (PPF) issued its final determination and accompanying appendices and guidance for the 2020/21 levy year in December 2019. The PPF levy for 2020/21 is expected to be around 8% higher than the levy collected in 2019/2020. Employers and guarantors should check for any changes to their insolvency scores and consider taking action to reduce their levies and/or to mitigate any potential increase.

Important deadlines:

Trustees should certify or re-certify (as appropriate) their PPF compliant contingent assets by midnight on 31 March 2020, with supporting hard copy documents (including any Guarantor Strength Reports) reaching the PPF no later than 5pm on 1 April 2020.

Deficit reduction contribution certificates should be certified on TPR's Exchange by 5:00pm on 30 April 2020.

Action:

Schemes looking to certify or recertify contingent assets should start engaging with their advisers now, particularly if a Guarantor Strength Report, a valuation of property and/or legal opinions will be required.

Same-sex Marriages, Civil Partnerships and Survivor Benefits

There have been a number of developments in this area over the past few years, with the latest legislation (allowing two people of the opposite sex to become civil partners) coming into force in December 2019.

Following the 2017 decision of the Supreme Court in Walker v Innospec Ltd, pension schemes are now required to provide civil partners and same-sex spouses with the same death benefits as those awarded to opposite-sex spouses. Many schemes have amended their rules to bring them into compliance with the requirement.

In December 2019, the Civil Partnership (Opposite-sex Couples) Regulations 2019 came into force. These amend the definition of civil partnership in the Civil Partnership Act 2004, enabling opposite-sex couples to enter into a civil partnership and enjoy the same death benefits as same-sex civil partners.

Action:

Trustees should review their rules to determine whether any amendments are required to confer on opposite sex-civil partners the same death benefits as same-sex civil partners. The terms of any relevant buy-in contracts may also need to be reviewed. For trustees who have not considered their scheme's policy on survivors' benefits recently, now would be an opportune time to do so.

Pension Schemes Bill

The first reading of the Pension Schemes Bill took place on 7 January 2020, signalling the start of the Bill's journey through the House of Lords.

Many of the Bill's provisions are aimed at strengthening the powers of The Pension Regulator's (TPR) powers, including:

- requirements for advance notification of (and provision of information relating to) corporate activity;
- expansion of TPR's powers to issue contribution notices to connected third parties;
- new powers to require any person to attend an interview and to impose financial penalties where misleading information is provided to pension scheme trustees; and
- new criminal offences where a person has failed to comply with a contribution notice, has provided misleading information to TPR, or has refused to attend an interview / answer questions from TPR.

The Bill introduces two new criminal offences ('risking accrued scheme benefits' and 'avoidance of employer debt') which carry an unlimited fine and/or a maximum prison sentence of seven years. There is some concern from commentators over the broad scope of these offences as they appear in the Bill. The earlier White Paper stated that the purpose of the new offences was to target unscrupulous employers (and those connected/associated with them) but the wording in the Bill is drafted to cover 'any person', which could include a wide range of parties, such as pension scheme trustees, professional advisers and lenders/investors.

Therefore, as it stands, these two new offences may have a significant impact on corporate activity and restructurings involving companies with UK defined benefit pension schemes.

The Bill also includes provisions on facilitating pension scheme dashboards, the establishment and operation/authorisation of collective defined contribution schemes, scheme funding (see below) and protection from pension scams.

Action:

It is not clear how quickly the Bill will progress through Parliament given the ambitious legislative programme of the new government; employers and trustees should keep a watching brief for future developments.

Scheme Funding – new Code of Practice and new legislation

TPR will launch a consultation on the funding of defined benefit (DB) pension schemes in early 2020. The consultation is expected to introduce a twin track approach to demonstrating compliance with legislative requirements: the fast track route and the bespoke route. Fast track will comprise a number of compliance tests. Schemes opting for this route will be considered compliant with the statutory regime subject to a few checks by TPR.

The bespoke route offers more flexibility to take account of unique or unusual scheme or covenant features but there will be more onus on trustees to explain their decisions and more regulatory scrutiny. This new framework will sit alongside the funding provisions in the Pensions Schemes Bill to put in place long term funding objectives and investment plans. A second consultation is expected on a draft code of practice later in 2020.

Action:

Trustees should keep a watching brief on the consultations and consider with their advisers how these will affect their scheme.

TPR Codes of Practice

TPR announced in July 2019 that it will be reviewing its codes of practice in order to reflect the requirements of the regulations that implement the EU pensions directive IORP II (in particular those which relate to governance). TPR expects this will involve combining the current 15 codes into a single, shorter code which is intended to make the codes easier to use, find and update and will enable trustees to be more responsive to changes in regulation. A first draft of the revised code is expected in the first half of 2020.

Action:

When the revised code is published, trustees should review their own governance arrangements to check that they have an effective system of governance in place (that is proportionate to the size, nature, scale and complexity of their scheme). TPR have stated that trustees will need to be able to demonstrate that they have effective governance systems in place within 12 months of the updated code being published.

GMP Equalisation

In September 2019 the PASA GMP Equalisation Working Group published a guidance note on the methods available to equalise for the effects of GMPs. The prime aim of the GMP Equalisation Working Party is "to help schemes achieve GMP Equality in a cost efficient and pragmatic way, in compliance with known legal requirements". The guidance note covers: correcting past underpayments, approaches for equalising future benefit payments, and common unanswered issues. Further developments in relation to GMP Equalisation are expected throughout 2020.

HMRC is due to publish its guidance on GMP Equalisation in the first quarter of 2020. Adjusting benefits to remove the unequal effect of GMPs could give rise to unauthorised payments and it is hoped that HMRC's guidance will address this risk. Many schemes are waiting for HMRC to issue its guidance before embarking on a GMP equalisation exercise.

A follow up court hearing (in respect of the Lloyds Banking Group case) is expected to take place in April 2020. The trustees are seeking guidance on the extent of their obligations to revisit past transfers out. The outcome of this hearing is expected to have implications for all benefit correction exercises (and not just those focused on achieving GMP equality).

Many of our schemes are now paying 'GMP equalised' transfers values (calculated in accordance with one of the methods identified and permitted by the High Court).

Action:

Many schemes are choosing to wait until the publication of HMRC's guidance and the outcome of the court hearing before tackling GMP equalisation. During this interim period trustees should consider taking steps to ensure all relevant data is complete and accurate (perhaps as part of any on-going GMP reconciliation exercise). 'Cleansing' data now will help avoid issues later and ensure efficient implementation of the GMP equalisation exercise.

Future of Trusteeship and Governance

TPR published a consultation on the future of trusteeship and governance which closed in September 2019. This stated that effective trusteeship and good governance is the bedrock of any well run scheme. Proposals included requirements in relation to diversity on trustee boards, the requirement for every board to have a professional trustee (which TPR has stated would drive up the standards of administration and governance) and changes to the trustee knowledge and understanding framework (including a revised Code of Practice). Further developments are expected in relation to this throughout 2020.

The Professional Trustee Standards Working Group is expected to roll out its voluntary accreditation process for professional trustees in early 2020 which aims to create greater consistency of standards across the pensions market.

Action:

Trustees should ask their advisers to keep them up to date with any further developments in this area and will need to engage with any new Code of Practice in relation to Trustee Knowledge and Understanding.

Future of RPI

In September 2019, the UK Statistics Authority proposed to align the Retail Prices Index (RPI) with CPIH (which is a variant of the Consumer Prices Index that includes an estimate of owner occupiers' housing costs). Such a change can only be made before 2030 with the Chancellor's consent.

The Chancellor said that he was not prepared to consent to this before 2025 and would consult publicly on the proposed alignment of RPI with CPIH from a date other than 2030 (i.e. so between 2025 and 2030). The consultation is expected to take place in January 2020 with the government expected to publish a response before the end of the financial year.

Action:

Trustees should consult their legal and actuarial advisers to understand what impact this change could have on scheme benefits (including revaluation and increases to pensions in payment), funding and investment strategies.

Pensions Ombudsman

New legislation is expected to come into force before April 2020 to complete the transfer of TPAS' Early Disputes Resolution Function to the Pensions Ombudsman (PO). The PO now operates both an early resolution service in relation to pension disputes (which TPAS would previously have dealt with) whilst retaining its adjudication service.

Action:

Schemes should update their written Internal Disputes Resolution Procedures to include the correct signposting information.

'Wrigleys Solicitors LLP's pensions advice is second to none. It has a team of highly competent technically able individuals who are approachable and personable.'

The Legal 500 (2020)

'They are a very clear and practical firm.'

Chambers and Partners (2020)

If you would like to contact us please email
kate.buckham@wrigleys.co.uk

www.wrigleys.co.uk