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Current issues

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Articles this month:

GMP equalization update: data issues & lump sum taxation
How the Regulator will police DB 'superfunds' (for now)
Default fund charge cap review
Tax relief administration: call for evidence
Public-sector pensions update
Pension Regulator's Corporate Plan
Viral news
HMRC newsletters—July 2020

GMP equalization update: data issues & lump sum taxation

The Guaranteed Minimum Pension Equalization Working Group (GMPEWG) has published guidance on how to prepare scheme data prior to equalizing pensions for the sex-based disparities generated by GMPs.[1] Hard on its heels, Her Majesty's Revenue and Customs (HMRC) published a Newsletter devoted to the implications of GMP equalization for various types of lump sum payment.[2]

Data guidance

The GMPEWG is a cross-industry partnership formed under the banner of the Pensions Administration Standards Association (PASA) to help trustees conduct GMP equalization exercises. This is the third guide that it has produced: previous instalments covered equalization methods and the timing of efforts to rectify member records.[3]

The goal of the guidance is to enable trustees to discuss with their administrators and advisers the actions that can be taken to prepare for equalization. It is agnostic as to the equalization method that will be used; however, that will determine the nature and extent of the data required (for example, if GMP conversion is to be used the exercise may take into account service periods beyond those strictly within scope of the legal obligation to equalize for GMP differences, which only applies to those with service from 17 May 1990 on).

The guidance provides a considerable amount of technically detailed information about the data that might be required, as well as potential problems that may arise and some possible workarounds that could be useful if they do. However, it also provides a summary of the main data-related tasks facing trustees that are undertaking GMP equalization exercises:

- identify the data that are needed and what are available (more data may be required for the equalization exercise than was needed for day-to-day benefit administration);
- decide whether it is most cost-effective to obtain all of the required data at once, or whether they can prioritize those groups that will be affected soonest or for which the impact of equalization will be most material;

[1] *Guidance on Data* (July 2020) <www.pasa-uk.com/wp-content/uploads/2020/07/GMPE-Data-Guidance-vFINAL.pdf>.
[2] *Guaranteed Minimum Pension (GMP) Equalization Newsletter—July 2020* <www.gov.uk/government/publications/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020>.
[3] *Guidance Note on Methods* (September 2019) <www.pasa-uk.com/wp-content/uploads/2019/10/Equalising-for-the-Effects-of-GMPS-September-2019-FINAL.pdf>; *When to Rectify* (March 2020) <www.pasa-uk.com/wp-content/uploads/2020/04/GMP-Rectification-March-2020-FINAL-formatted.pdf>.

- decide which advisers will be responsible for data-related work and ensure that if more than one is involved they are able to communicate effectively;
- consider the need for consistency between data-related decisions in connection with GMP equalization and those made with regards to similar projects such as *Barber* equalisation, and GMP reconciliation and rectification;
- based on the available data and characteristics of the scheme and its members, choose the appropriate method of calculating the pension elements for hypothetical opposite-sex comparators for affected members.

Different approaches are discussed for calculating pension elements. They include a method that makes pro rata adjustments to members' benefits, calculation from first principles using Contracting Out Earnings data, and use of HMRC's 'Dual Calculation Service' (AKA the 'GMP Checker'). A broad-brush approach is also considered for cases where significant data are unobtainable. The guidance highlights that approaches for constructing opposite-sex records should align with scheme practice for own-sex records.

With the release of this data guidance, and HMRC issuing final data cuts to schemes, many trustees will now wish to make progress in preparing their data for GMP equalization. In practice, obtaining all of the data needed from recent decades to create opposite-sex records may not be possible: the practical options in the guidance will be helpful for those who find themselves in this situation. Trustees will need to assess and balance carefully the cost and precision of the different approaches.

Tax aspects: lump sums

HMRC's *Newsletter* allays some fears about the potential adverse tax consequences of equalization when benefits have been paid out in the past in lump sum form. As well as trivial commutation and small lump sums, the update covers lump sums paid where a member has retired on the grounds of serious ill-health and those used to discharge liabilities as a part of a winding up.

It is a condition of many of the lump sums authorized by the tax legislation that they extinguish completely the member's entitlement to benefits. One concern that arose was that an equalization exercise could mean that, in retrospect, the 'extinguishment' condition had not been met, making the payment unauthorized and triggering penal tax charges. The *Newsletter* says that the identification of an additional entitlement because of GMP equalization will not by itself 'de-authorize' the earlier lump sum payment: the deciding factor is what was reasonably known at the time. Moreover, it seems to say that, in '*the exceptional circumstances associated with GMP*', reasonable knowledge about the additional entitlement is only assumed to have been gained '*once the scheme administrator adopts their chosen GMP equalization methodology*'. This suggests that some trustees who have put payments on hold pending clarification of the tax implications of equalization could resume making them.

The situation is more complicated for a trivial commutation lump sum. Retroactive de-authorization is a prospect if GMP equalization means that a member did not, with hindsight, meet the conditions for a trivial commutation lump sum because the value of his or her benefits exceeded the '*commutation limit*' that applied at the time. It might be possible to pay out additional amounts arising from GMP equalization without adverse tax consequences in some cases under the £10,000 'small lump sum' rules. Otherwise the risk is that a payment will be unauthorized.

As anticipated, the guidance does not cover GMP conversion, and says that '*more detailed work needs to be done on the wider issues associated with that methodology.*'

The industry will welcome the additional clarity brought by HMRC's guidance. Since the *Lloyds* judgment, many schemes have been wary of potential adverse tax consequences from continuing to offer lump sums to members where GMP equalization could alter their benefits. The guidance explains what could cause a tax charge and restricts it to a relatively narrow set of circumstances. This will allow those schemes that have put some lump sum payments on hold to consider reintroducing these options if they now wish to do so. However, some complexity remains, and trustees are likely to want to discuss this with their advisors before taking any immediate action.

How the Regulator will police DB 'superfunds' (for now)

The Pensions Regulator has updated its interim guidance on the supervision of commercial consolidation vehicles (‘superfunds’) for defined benefit (DB) pension schemes.[4] It describes the policies that the Regulator will follow and its expectations for how superfunds should operate prior to the introduction of tailored legislation. It is addressed primarily to superfunds themselves, to establish the governance, administrative and funding standards that they will be held to pending the passing of primary legislation.

The Regulator also published details of a consultation exercise that it conducted with interested parties whilst compiling the revised guidance.[5]

Background

The Department for Work and Pensions (DWP) published proposals for the authorization and supervision of superfunds in 2018. Its plan would make the Regulator responsible for ensuring that superfunds are run by fit and proper persons, are well-governed, administered effectively, and are financially sustainable. There would also be a ‘gateway’ that would block entry into a superfund by pension schemes that are likely to be capable, whether immediately or in ‘the foreseeable future’, of buying out member benefits with an insurer. There has as yet been no formal decision on the outcome of the consultation exercise.

Interim guidance

The guidance applies to arrangements that allow a scheme sponsor to hand over its responsibilities in connection with a DB scheme either to a new ‘employer’ constituted as a special purpose vehicle or to one backed by capital contributed by (typically) investors and ceding sponsors.

Superfunds will be expected to—

- provide evidence that the scheme is registered with Her Majesty’s Revenue and Customs (HMRC) and eligible for the Pension Protection Fund (PPF);
- identify the people with important responsibilities and provide assurance that they have the right level of knowledge, skills and experience for their roles and are fit and proper persons;
- demonstrate that their corporate boards and trustees have the necessary collective breadth of knowledge and experience, and are well-governed;
- have robust systems and processes;
- ensure that sufficient and appropriate assets are held in their pension schemes and in their capital buffers so as to be able to meet their liabilities to members—calculated using assumptions that meet minimum requirements set by the Regulator—with a high degree of certainty;
- incorporate legally enforceable requirements to take action based on funding-based triggers;
- invest in accordance with principles set out in the guidance; and
- develop a detailed and robust framework for integrated risk management.

For the required degree of benefit security, the Regulator has taken its lead from the DWP, adopting as its benchmark a 99 per cent probability of members’ benefits being paid in full. Superfunds will have to calculate member liabilities using (amongst other assumptions) a discount rate of gilts + 0.5 per cent per annum. They will have to hold sufficient capital to give a 99 per cent probability that their total assets—those held by the superfund’s pension scheme plus those in its capital buffer—will meet or exceed those liabilities over a five-year period (according to the Regulator this will imply capital buffers in the order of 18-to-28 per cent of member liabilities). So that the security of members’ benefits is not weakened when they are transferred into a superfund, it will only be

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[4] *DB superfunds: guidance* <www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/db-superfunds>. See too the Regulator’s press release, *TPR launches tough new interim regime for emerging superfund pension market* <www.thepensionsregulator.gov.uk/en/media-hub/press-releases/2020-press-releases/tpr-launches-tough-new-interim-regime-for-emerging-superfund-pension-market>.

[5] *DB superfunds consultation response* <www.thepensionsregulator.gov.uk/en/document-library/consultations/db-superfunds-consultation/db-superfunds-consultation-response>.

allowed to admit new schemes if it is already funded to at least this level. And each transaction needs to be considered in isolation and separately capitalized to this level at the outset, preventing superfunds from using any surplus that they have built up to fund new business.

There will be two mandatory funding-based triggers for action. If total assets fall to 100 per cent of member liabilities (calculated in accordance with the guidance) either additional capital must be injected or the funds in the capital buffer will pass into the hands of the scheme trustees. This is described as a '*low-risk funding trigger*'. If assets fall to 105 per cent of the value of the scheme's PPF-level liabilities, the scheme must be wound up and members transferred out. This is the '*wind-up trigger*'.

During the initial period of their operation, superfunds will not be allowed to extract any profits from pension scheme funds or the capital buffer unless members' benefits are fully bought out. The Regulator plans to review this restriction within three years of its publication of the guidance.

Ceding scheme trustees & sponsors

The interim guidance includes links to existing guidance pages addressed, respectively, to trustees and sponsors of schemes that are considering a transfer to a superfund.[6] They have not yet been updated, but the Regulator says that it plans to provide more details on the considerations that they should factor into their decisions. The interim guidance does, however, confirm that the Regulator still considers the severance of an employer's connection to its DB scheme to be a 'Type A event' for which an application for a clearance statement (providing some reassurance that the Regulator will not use its financial support or contribution notice powers) may be desirable.

The Regulator's interim guidance should help kickstart the superfund market ahead of a statutory authorization and supervision regime (it was reported that the Pensions SuperFund became a registered pension scheme for tax purposes shortly after that publication of the guidance[7]). It seems reasonable to assume that the Regulator has been in close contact with the Department for Work and Pensions (DWP), and that its interim measures are a good indication of how the eventual legislation will look. You can read more of our thoughts on the significance of this development on our blog pages.[8]

[6] For trustees, *Transfer to a DB superfund* <www.thepensionsregulator.gov.uk/en/trustees/managing-db-benefits/transfer-to-a-db-superfund>; for employers, *Transfer your DB scheme to a superfund* <www.thepensionsregulator.gov.uk/en/employers/managing-a-scheme/transfer-your-db-scheme-to-a-superfund>

[7] *The Pension Superfund announces HMRC registration in 'major step' towards first deal* <www.pensionsage.com/pa/The-Pension-Superfund-announces-HMRC-registration-in-major-step-towards-its-first-deal.php>.

[8] *Green light for DB commercial consolidators* <www.hymans.co.uk/insights/research-and-publications/publication/green-light-for-dbcommerical-consolidators>; *Could superfunds disrupt the bulk annuity market?* <www.hymans.co.uk/insights/research-and-publications/publication/could-superfunds-disrupt-the-bulk-annuity-market>.

Default fund charge cap review

The Department for Work and Pensions (DWP) has published a 'call for evidence' seeking views on the effectiveness of defined contribution (DC) default fund charges and transparency measures in protecting member outcomes.[9]

In April 2015, the Government introduced a charge cap on the default funds of DC schemes used for automatic enrolment. The cap was set at 0.75 per cent of the member's rights in the fund. Following a review in 2017, the charge cap was found to be working as intended and left unchanged, however, the DWP committed to a further review of the cap in 2020.

The DWP is seeking feedback on:

- the level and scope of the charge cap;
- whether the permitted charging structures remain appropriate; and
- options to assess take-up and widen the use of standardized cost templates.

Scope of cap

The charge cap currently covers all member-borne administration charges associated with scheme and investment administration, excluding transaction costs and certain other specified costs and charges.

The DWP intends to assess the effectiveness of any measures designed to improve the disclosure of transaction costs before deciding whether a cap on these costs would be appropriate, and if so, at what level to set it. The DWP recognizes the difficulties in accurately calculating transaction costs and that subjecting them to a cap could limit innovation in default investment strategies. It notes, however, that if these costs remain outwith the cap this could result in them being used to inflate overall costs for members (though the DWP has seen no evidence of this).

The paper states that '*charges borne by scheme members in default arrangements should be fair and only relate to services that add value to their pension saving*'. As such, the Government is also considering whether to brings costs associated with life insurance within the scope of the charge. This would apply where the members are defaulted into these products.

Level of cap

The DWP is undertaking a survey to determine the full range of charges that are applied to schemes used for automatic enrolment, including transaction costs, costs of any life insurance products and charges paid by employers. The survey will also include decumulation charges.

The 'call for evidence' indicates that many large schemes already have charges that are well below the cap and that those charging closer to the cap tend to be smaller and less able to access more competitive charges. The DWP mentions that it is planning to consult on regulations to encourage smaller schemes to consolidate if this would provide better outcomes for members.

The DWP recognizes that there are arguments for and against lowering the charge cap. For example, while a reduction in the cap might improve value for money for members it could also restrict schemes' ability to diversity their portfolios.

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[9] <www.gov.uk/government/consultations/review-of-the-default-fund-charge-cap-and-standardised-cost-disclosure/review-of-the-default-fund-charge-cap-and-standardised-cost-disclosure>.

Charging structures

There are currently three charging structures permitted for default arrangements of qualifying schemes:

- a single percentage charge, capped at 0.75 per cent, of funds under management annually;
- a combination of a percentage chare on each contribution, plus an annual percentage charge of funds under management; and
- a combination of an annual flat fee plus an annual percentage of funds under management charge.

Combination structures with flat fees provide greatest benefit to those with the largest funds and those who contribute over many years, but for members who save for a short period flat fees can result in higher charges than would have been incurred under a single charge structure. This is because a flat fee is charged on the fund each month regardless of whether contributions continue to be paid. Those with small pots could have their fund reduced to zero before they reach retirement.

The Government is seeking views on restricting the use of flat fees for smaller pension pots. It suggests that a sliding scale could be used to limit charges based on the size of fund. For example, a fee of up to £5 could only be charged if the pot is at least £100.

Standardized cost templates

Studies by the Financial Conduct Authority (FCA) have shown that institutional investors (such as trustees) find it difficult to obtain the necessary cost information from asset managers to allow them to accurately compare costs across the market in a consistent way. In light of this, the Cost Transparency Initiative (CTI) (an independent body supported by the Pensions and Lifetime Savings Association and the Investment Association) produced templates to help trustees assess and compare costs. The use of the template is currently voluntary.

The DWP is seeking feedback on the pros and cons of requiring asset managers to use standardized cost disclosure templates when reporting their costs to trustees. The Government is considering whether to require trustees to submit information about whether they have used the CTI template as part of the information submitted in their scheme returns.

Next steps

The call for evidence ends on 20 August 2020, and is to be followed by engagement with interested parties. The Government intends to divulge its findings by the end of 2020.

The charge cap already introduces some constraints in terms of the investments held within DC schemes and we believe that any further reduction could stifle future innovation. The focus should be on delivering good members outcomes, with the cost of delivering those outcomes being a key part of the overall decision. Adding transaction costs into the cap would further complicate matters.

Given that the majority of DC schemes have charges that are well below the current 0.75 per cent cap, we see little need to lower the cap further. At its worst, a reduction in the cap could require changes to certain parts of the glidepaths (which move a member's pension fund into more secure investments as they near retirement) within schemes where trustees and fiduciaries have made the decision to pay, for example, for downside protection.

Tax relief administration: Call for Evidence

Her Majesty's Treasury has published a Call for Evidence (CfE) in which it seeks to gather evidence on improvements that could be made to the administration of pensions tax relief.[10] Specifically, it is concerned with the anomaly that results in low earners (whose income is under the personal income tax allowance so that they pay no income tax) receiving less generous tax treatment if contributions to their schemes are made under net pay arrangements. The Treasury has explored four approaches to address the anomaly but acknowledges that, '*to date a proportionate and straightforward solution to address the difference in treatment has not been found*'.

There are two methods by which tax relief on member contributions can be provided: relief at source (RAS) and net pay arrangements (NPA). Under NPA members receive full and immediate tax relief when pension contributions are deducted from their pay, as this happens before tax is calculated. Where RAS is used, pension contributions are made from earnings after tax has been calculated, the pension scheme claims tax relief at the relevant basic rate from Her Majesty's Revenue and Customs (HMRC), and those who pay tax above the basic rate need to make aclaim for the additional tax relief that is due.

In the majority of cases, both methods will result in the same outcome for members, however, a difference in treatment arises where a member does not pay income tax. Such a member will receive a top-up equivalent to basic rate tax relief if RAS is used, but will not if their scheme operates NPA.

The CfE says that the Treasury has considered four approaches put forward by commentators as potential solutions to the issue:

- HMRC paying bonuses based on Real Time Information (RTI) data to put low earners in NPA schemes in the same position as lower earners who are members of RAS schemes;
- a standalone charge on RAS schemes to recover tax relief given where tax has not been paid;
- employers operating multiple schemes (requiring employers with NPA schemes to also provide schemes that use RAS for lower earners).
- requiring defined contribution (DC) schemes) to use RAS.

The Treasury notes that all of the solutions explored in the CfE have '*drawbacks and would introduce significant complexity*'. The first two approaches do not, it says, satisfy the Government's stated principles for change (simplicity, deliverability and proportionality). The Treasury is unconvinced that the third approach—having multiple schemes—should be mandatory or that it would eliminate inconsistencies, though employers could adopt it voluntarily. The fourth option (requiring schemes to operate RAS) is discussed in more-positive language, but the Treasury says that it too would present many challenges.

In the absence of a clearly workable solution, the CfE welcomes views on whether any of the suggested approaches could be adapted to meet the government's defined principles, as well as inviting respondents to submit alternative proposals. The deadline for submissions is 13 October 2020.

We welcome the Government's desire to address the disparity in treatment that arises from the use of NPAs for non-taxpayers; however, the significance of the CfE is unclear. It may be that the Treasury's only goal is to demonstrate that it has given due consideration to the options for reform that have been advanced so far—handily allowing the Government to chalk off a 2019 General Election Manifesto commitment—whilst opening up the floor to those with suggestions for alternative approaches. It is less obvious whether, in the absence of a simple solution, it is trying to gauge the industry's enthusiasm for implementing a difficult one (such as switching NPA schemes over to RAS).

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[10] <www.gov.uk/government/consultations/pensions-tax-relief-administration-call-for-evidence>.

Public-sector pensions update

There has been a flurry of significant announcements concerning the public-service pension schemes. In this article we give brief summaries of each development.

McCloud

The Treasury is consulting on proposed changes to public-service pension schemes to remove age-discriminatory transitional arrangements that accompanied reforms made in the middle of the last decade.[11] Other governmental departments are consulting on specific proposals for the schemes for which they are responsible.[12]

Background

New career-average revalued earnings (CARE) pension schemes came into operation in the public sector in 2015—2014 for the Local Government Pension Scheme in England and Wales—following the advice of the Independent Public Service Pensions Commission, led by Lord Hutton of Furness, which published its final report in March 2011. Transitional arrangements were put in place, against the recommendations of the Commission, for those closest to normal pension age (NPA). In most cases the transitional provisions worked by allowing older members to continue to accrue benefits in their existing final salary schemes. The LGPS did things differently, putting all active members into the new career-average scheme with effect from 1 April 2014, but underpinning the benefits for those closest to NPA by reference to the benefits under the old scheme.

In response to legal challenges made by judges and firefighters, the Court of Appeal, in its *McCloud* judgment of December 2018, confirmed that the transitional arrangements were examples of unlawful discrimination.[13] The Supreme Court refused to give its permission for an appeal, and the Government acknowledged that similarly discriminatory transitional arrangements applied to the other main public sector schemes.

Proposals

Broadly speaking, the Government's plan for removing the offending transitional provisions is for all accrual to take place within the reformed schemes from 1 April 2022, whilst those members with service in the period from 1 April 2015 to 31 March 2022 will have to choose between old- and new-scheme benefits for the relevant interval. One of the questions that the consultation process seeks to resolve is whether members should have to make their choices in one-off options exercises or whether the decision should be deferred until benefits are taken. (Those in receipt of benefits will be asked to make their choices shortly after the changes are implemented and will have any adjustments backdated to the date of the original benefits award.)

For the LGPS in England and Wales, the Ministry of Housing, Communities and Local Government (MHCLG) proposes removing the age-related criteria from the underpin calculation (so it is not restricted to those who were closest to NPA at the time of the original reforms) with retrospective effect from 1 April 2014, and for all active members to accrue CARE benefits from 1 April 2022 onward without any final-salary underpin. Separate consultation exercises are expected for Scotland and Northern Ireland.

The Treasury consultation exercise is open to responses until 11 October 2020. The consultation period for the MHCLG's draft LGPS amending legislation ends on 8 October.

The administrative and communications challenges entailed in resolving this issue can hardly be overestimated, and could be further complicated in some cases by the annual and lifetime allowance effects of making benefit

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[11] <www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>.

[12] See for example <https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud> in connection with the judicial pension schemes and <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc_-_amendments_to_LGPS_underpin_-_FOR_PUBLICATION.pdf> in relation to the Local Government Pension Scheme in England and Wales.

[13] *Lord Chancellor and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others* [2018] EWCA Civ 2844.

improvements. For more details of the proposed solution as it applies to the LGPS, and our thoughts on the implications, please read our *McCloud Consultations* Briefing Note [14]

Cost-control measures

The Government is also un-pausing the schemes' cost-control mechanisms, which had been put on hold because of the uncertainty over benefit entitlements following the *McCloud* ruling.[15] The mechanisms were part of the earlier reforms, intended to help ensure that the costs of the schemes remain sustainable whilst maintaining their value to members. The idea is whenever costs rise above an upper margin ('ceiling') or fall below a lower margin ('floor'), member benefits (or contributions) are adjusted to bring the costs back into line.

Now that a decision has been made about the response to *McCloud*, the cost-control processes associated with the 2016 round of public-service scheme valuations can resume. The plan is for them to be completed in 2021. The costs that are taken into account in the mechanisms will be higher as a consequence of the *McCloud* ruling.

A review of the workings of the cost-control measures by the Government Actuary will also proceed. A report is expected before the completion of the 2020 round of valuations.

Exit payments

The Treasury has confirmed that it will proceed with a long-standing intention to introduce a £95,000 cap on public-sector exit payments.[16] Draft Regulations have been laid before Parliament.[17]

The Government has abandoned its proposal for a staged approach to implementation, so that the cap will apply to the whole of the public sector immediately (although the Scottish Government introduced a similar cap in September 2019). Despite concerns expressed by consultation respondents, employer-funded 'strain' costs associated with unreduced early retirement benefits will be taken into account for the purposes of the cap.

Updated guidance, covering (amongst other things) the circumstances in which the cap can or must be relaxed, will be published when the Regulations come into force.

In the LGPS the strain costs will vary from fund to fund, even where benefits are identical, according to their actuarial assumptions.

Survivors' benefits

The Government announced on 20 July 2020 that, following an Employment Tribunal case brought by a member of the Teachers' Pension Scheme, it will address some remaining sex-based differences in the survivors' benefits paid by public-sector schemes.[18]

Background

Historically, male survivors (widowers) of female scheme members have received lower pensions than female survivors (widows) of male scheme members with similar periods of service. That is because widows' pensions generally took account of service from 1978, whereas widowers' pensions were only payable on the basis of service from 1988 onward. With the advent of civil partnerships and the extension of marriage to same-sex couples, and following judgment in the 2017 *Walker v Innospec* ruling, the Government decided that benefits for surviving same-sex spouses and civil partners of public service pension scheme members would be the same as those for widows in opposite sex marriages.

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[14] <www.hymans.co.uk/media/uploads/Briefing_Note_-_McCloud_Consultations.pdf>.

[15] *Update on the Cost Control Element of the 2016 Valuations* <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901141/Update_on_the_Cost_Control_Element_of_the_2016_Valuations.pdf>.

[16] <www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>.

[17] The (draft) *Restriction of Public Sector Exit Payments Regulations 2020* <www.legislation.gov.uk/ukdsi/2020/9780348210170>.

[18] <www.parliament.uk/business/publications/written-questions-answers-statements/written-,statement/Commons/2020-07-20/HCWS397>.

Announcement

The Government has concluded that changes are required across the public sector to address differences in treatment under which male survivors of female scheme members are entitled to lower benefits than comparable same-sex survivors. The responsible governmental departments are expected to consult on the necessary changes '*as soon as possible*'.

Pension Regulator's Corporate Plan

The Pensions Regulator has published its Corporate Plan for the year 2020/21.[19] The Regulator notes that the COVID-19 pandemic has required it to revise its plans for the coming year and adapt its priorities, however, protecting pension scheme members remains its focus.

The Plan sets out six priorities for the Regulator over the year:

- *Support workplace pensions schemes to deliver benefits through significant change driven by the global pandemic.* The Regulator will publish guidance (like its COVID-19 guidance) as needed to respond to changes affecting pension schemes.
- *Protect pension savers across all scheme types through proactive and targeted regulatory interventions*. The Regulator plans to continue its one-to-one supervision of the largest schemes and increase engagement with pension scheme administrators.
- *Provide clarity to, and promote the high standards of trusteeship, governance and administration the Regulator expects*. It intends to consult on the implementation of the single code of practice (bringing together all the existing codes) towards the end of 2020.
- *Intervene where appropriate so that DB schemes achieve their long-term funding strategy and deliver on pension promises*. The Regulator will fully consult on the proposed draft of the new defined benefit (DB) code of practice later this year and hopes the new code will come into force '*later in 2021*'.
- *Ensure jobholders have an opportunity to save into a qualifying workplace pension through automatic enrolment*. The Regulator is to focus on ensuring the '*integrity of the automatic enrolment regime continues*' whilst supporting employers deal with the effects of COVID-19 – possibly by way of appropriate easements.
- *Continue to build a regulator capable of meeting the future challenges it faces*. This will include building a new auto-enrolment delivery model and implementing new IT systems to support its regulatory functions.

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[19] <www.thepensionsregulator.gov.uk/en/document-library/corporate-information/corporate-plans/corporate-plan-2020-21>.

Viral news

On 30 June 2020 the Pensions Regulator updated the section in its *DC scheme management and investment: COVID-19 guidance for trustees* on the implications of diverting contributions away from '*gated*' (temporarily closed) funds.[20] The issue was originally whether by doing so trustees might inadvertently create '*default arrangements*', triggering charge-capping and the requirement for a default-specific statement of investment-principles, where the scheme is used for automatic enrolment.[21] The Regulator suggested that default arrangements would be the outcome unless members were made aware before they selected the original fund (the one that was gated) that contributions could be diverted in some circumstances, or they consented to the diversion. In the updated version the Regulator also raises the question of whether, once the gated funds re-open, the act of re-directing contributions back to the original investment choice could perhaps make *that* fund a default arrangement. Again, prior consent or advance warning are discussed as measures that might prevent the inadvertent establishment of a default arrangement.

The updated guidance is no doubt correct so far as the letter of the law is concerned, but trustees will understandably feel hard done by if they suffer repercussions from taking sensible actions under pressure in the midst of a crisis.

HMRC newsletters July 2020

During July 2020, Her Majesty's Revenue and Customs (HMRC) published new editions of its *Pension Schemes Newsletter*, *Managing Pension Schemes Newsletter*, and *Guaranteed Minimum Pensions (GMP) Equalization Newsletter* (the latter is discussed in our *GMP Equalization Update* article).

Managing Pension Schemes Service Newsletter—July 2020[22]

This Newsletter is devoted to HMRC's prosaically named new online service for the management pension schemes' tax affairs. The latest publication informs scheme administrators (e.g. trustees) that they can now use the MPSS to manage their schemes' Accounting for Tax (AFT) returns. It also provides details of the revised timeline for phase two of the development of the Service, which has been delayed because of SARS-CoV-2. The plan is for practitioners working on behalf of scheme administrators to be able to register and use the Service for AFT returns from mid-2021; event reporting and submission of pension scheme tax returns is to be introduced later. The Newsletter also warns that HMRC will soon begin to operate a policy of deleting the log-in credentials of inactive users: those who have not logged into one of the online tax services for three years.

Pension Schemes Newsletter 122[23]

This Newsletter contains some updates for providers of 'relief at source' schemes, advertises the recent Managing Pension Schemes Service and GMP Equalization newsletters (discussed elsewhere), links to the latest statistics on 'pension flexibility' payments and transfers to QROPS, reminds scheme administrators that annual allowance pension savings statements for 2019/20 must be issued by 6 October, and asks them to remind members who have incurred an AA charge in that tax year to declare it in their self-assessment tax returns.

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[20] <www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/dc-investment-and-transfer-values-covid-19-guidance-for-trustees>.

[21] See *Current Issues* June 2020.

[22] <www.gov.uk/government/publications/managing-pension-schemes-service-newsletter-july-2020/managing-pension-schemes-service-newsletter-july-2020>.

[23] <www.gov.uk/government/publications/pension-schemes-newsletter-122-july-2020/pension-schemes-newsletter-122-july-2020>.

And Finally…

AF recently found ourselves perusing the High Court's ruling in *Adams v Options SIPP UK LLP (formerly Carey Pensions UK LLP)*, about whether the provider of a self-invested personal pension had a legal obligation to protect its customers from themselves (no, in the circumstances of the case).[24]

We found the judgment impossible to follow. Lest we be accused of murmuring a judge (always one of our *Top 10 Most-weirdly Named Crimes*) we hasten to explain that this was no reflection on the reasoning or communication skills of His Honour Judge Marc Dight, CBE.

No, we were distracted upon learning that the case concerned the use of a SIPP to invest (unwisely, as it turned out) in a company based in Blackburn that offered leases on 'storage pods'.

Our thought was that storage pods are, essentially, empty spaces available for rental. In other words—at least until customers put something in them—they're effectively 'holes'. We were further driven to wonder whether the rental company might in fact have owned 4,000 such holes in Blackburn, Lancashire; and whether they were individually of relatively low capacity but in aggregate equivalent to the volume of a celebrated London concert venue.[25]

For completeness' sake we'll note that there is no mention of any incident in which a motorist having an intense psychedelic experience caused an obstruction in the carriageway, thereby attracting an audience who speculated on whether he had an entry in Debrett's *Peerage*…[26]

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[24] [2020] EWHC 1229 (Ch).

[25] In a spirit of compassion towards those who swim in different cultural waters from *AF*, we reproduce this excerpt from the lyrics to the Beatles song *A Day In The Life*:

I read the news today, oh boy
4,000 holes in Blackburn, Lancashire
And though the holes were rather small
They had to count them all
Now they know how many holes it takes to fill the Albert Hall.

[26] *He blew his mind out in a car*
He didn't notice that the lights had changed
A crowd of people stood and stared
They'd seen his face before
Nobody was really sure if he was from the House of Lords

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