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Current issues

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Articles this month:

Higher, more-targeted general levy proposed

The Department for Work and Pensions (DWP) has aired plans to raise the rates of the general levy on pension schemes, and redistribute the cost burden onto those that attract the most regulatory efforts.[1]

Background

The general levy recoups some of the DWP's funding of the Pensions Regulator, Pensions Ombudsman and the Money and Pensions Service. It is calculated by reference to membership numbers, and there are different charging structures for occupational and personal pension schemes.

The levy rates have not increased since 2008/9. In fact, they were reduced in 2012/13, and a new, lower rate for schemes with more than 500,000 members was introduced in 2017/18.

In October 2019, the DWP announced that, owing to a growing deficit in levy revenues versus expenditure, substantial increases to the levy rates would be required.[2] It put forward four options, eventually settling on a ten per cent holding increase to the levy rates, effective from 1 April 2020, to allow time for a wider review.[3] As it turned out, however, the Regulations that would have given effect to that increase were revoked, in March 2020, because of the COVID-19 crisis.[4]

New proposals

The current consultation paper is part of the promised wider review of the general levy. The goal is, broadly, to balance expenditure with levy income by the middle of the 2020s, and fully recover the deficit by the decade's end. Once again, multiple options have been put forward, with the DWP clearly indicating its preference.

[1] <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944326/occupational-and-personal-pension-schemes-general-levy-regulations-review-2020.pdf>.
[2] <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844687/occupational-and-personal-pension-schemes-general-levy-review-2019.pdf>.
[3] <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870341/government-response-occupational-and-personal-pension-schemes-general-levy-review-2019.pdf>,
[4] The *Occupational and Personal Pension Schemes (General Levy) (Revocation) Regulations 2020* (SI 2020 No. 355).

It favours the option that would result in different levy rates for different types of scheme, focusing costs where the regulatory bodies exert most of their energies. Ranked in order, with those attracting the highest levy rates first, they would be:

1. defined benefit (DB) schemes;
2. defined contribution (DC) schemes other than master trusts;
3. DC master trusts; and
4. personal pension schemes.

As a concession to the current state of economic uncertainty, the DWP proposes to make only moderate increases in the levy for 2021/22. Defined benefit and non-master-trust DC schemes would see their levy rates increase by ten per cent, whilst master trusts and personal pension schemes would experience five-per-cent increases. There would be incremental increases to the rates for 2022/23 and 2023/24. The DWP plans to set levy rates for three years at a time from now on, although it will conduct annual reviews so that adjustments can be made, if necessary, to account for policy decisions that affect expenditure, trends toward DC provision and market consolidation, and other changes to the organizations' spending plans.

The Government says that it is '*not attracted to*' the other two options, so we will not waste too much time describing them. One would, as with the favoured option, create new levy categories, but would not distinguish between DB and non-master-trust DC schemes; their levy rates would be higher than those for DC master trusts and personal pension schemes, which would be the same as under the favoured option. The final—and least-attractive, from the DWP's perspective—option is to retain the current levy structure and simply increase the rates.

Responses to the consultation paper should be submitted by 27 January 2021.

Regrettably, given that the current levy rates are (as the Government puts it) '*untenable*', increases seem inevitable. The amounts involved will, however, remain very modest by comparison with the Pension Protection Fund (PPF)'s levies, and the preferred option would at least apply the required increases on a rational basis.

Distressed sponsor' guidance for DB scheme trustees

The Pensions Regulator has published guidance for defined benefit (DB) scheme trustees, to help them to manage the risks arising from financial distress affecting their sponsoring employers.[5] The Regulator warns that anxious sponsors may act in ways detrimental to the interests of scheme members, and encourages trustees to think of themselves as '*the first line of defence*' against the adverse outcomes of corporate insolvency.

The guidance emphasizes the importance of trustees being well-prepared in advance of any signs of employer distress. The Regulator recommends an integrated risk management (IRM) approach, supported by, for example, information-sharing agreements, covenant monitoring, a strategy for managing the conflicts of interest that may arise, stress testing, and legally enforceable contingency plans.

Trustees should be alert to the signs of financial distress, and the guidance contains a list of things to look out for. When such indications arise, trustees should increase the frequency and depth of their covenant monitoring appropriately. They should review their investment strategy, seek an understanding of the positions of other stakeholders, and (particularly if the employer asks for the trustees' help) ensure fair treatment for the scheme relative to other creditors. The guidance also discusses the need to consider the implications of corporate transactions, how best to communicate with worried members, and whether unusual patterns of transfer activity are indicative of scams.

When insolvency becomes a prospect, the Regulator recommends that trustees seek advice from specialist restructuring professionals. They may also need to investigate their security-enforcement options, and to understand the practical steps necessary to prepare for assessment for entry into the Pension Protection Fund (PPF).

[5] <www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/protecting-schemes-from-sponsoring-employer-distress>.

Annexes to the guidance contain further information on the sorts of legal obligations that may be owed toward the scheme, the warning signs of corporate distress, a graphical summary of the recommended trustee actions, and case studies.

For a more-detailed discussion of the steps that trustees can take to protect their scheme's members, please see our briefing, *Navigating Sponsor Distress: An Action Plan for Trustees*.[6]

Data standards for pensions dashboards

The Pensions Dashboards Programme (PDP) has announced the publication of a *Data Standards Guide* for the initial dashboards.[7] The Guide contains detailed information on the components of data that pension providers will need to supply to members via the dashboards.[8]

The intention is to help those responsible prepare their scheme's data so that it is '*dashboard ready*'. By the advent of the dashboards they will need to hold data in a manner in accordance with the data standards: this will ensure that members can access accurate and consistent information about their pension rights in different schemes. (As a reminder, the dashboards will act as a conduit for pensions data: they will be provided to members *through* the dashboards, but will not be stored *within* them.) The guidance explains the process, gives an overview of the data elements with a technical description of each component, and provides examples of how they should work.

The PDP's October 2020 *Progress Update Report* included an indicative timeline, estimating that dashboards might be available from 2023.[9] The PDP is working with the DWP and the FCA on draft legislation and rules that will be released once the relevant section of the *Pension Schemes Act 2021*—assuming it receives Royal Assent as planned—is brought into force.

PPF confirms 2021/22 levy decisions

The Pension Protection Fund (PPF) has confirmed, in advance of its formal determination on the 2021/22 levy, that it is proceeding with the central proposals from the consultation documents published in September 2020.[10]

The key features are, in summary:

- a small-scheme adjustment, which halves levies for schemes with less than £20 million in liabilities and tapers levies for schemes with between £20 million and £50 million of liabilities;
- reduction in the risk-based levy cap from 0.5 per cent to 0.25 per cent of liabilities;
- continuing to measure insolvency risk on the basis in use since April, using credit ratings and the PPF specific insolvency risk model operated by Dun & Bradstreet (D&B); and
- a total levy estimate of £520 million, together with retention of the current levy scaling factor of 0.48.

The levy determination, which provides comprehensive details of the rules by which the levies will be calculated, is due to be published in January 2021.

[6] <www.hymans.co.uk/insights/research-and-publications/publication/navigating-sponsor-distress-an-action-plan-for-trustees>.
[7] <www.pensionsdashboardsprogramme.org.uk/2020/12/15/data-standards-published-underpin-pensions-dashboards>.
[8] <www.pensionsdashboardsprogramme.org.uk/2020/12/15/data-standards-guide>.
[9] <www.pensionsdashboardsprogramme.org.uk/wp-content/uploads/2020/10/pdp-progress-update-report-october-2020.pdf>.
[10] <www.ppf.co.uk/press-releases/ppf-confirms-supportive-measures-levy-payers-following-consultation>.

Working group recommends action on small DC pots

The Department for Work and Pensions (DWP) has published recommendations from a working group on the question of how to deal with the increasing number of small, deferred, money purchase pension pots arising from automatic enrolment.[11]

The working group's primary recommendations are that the pensions industry should continue to develop options to consolidate small pots at the request of members, but that those efforts ought to be complemented by a system of automatic, large-scale transfers and consolidation (subject to members opting out). The work is expected to start with an investigation into the administrative challenges, conducted by the industry. The DWP says that this initiative will complement plans for pensions dashboards.[12]

The *Pensions Act 2014* allows—actually, *requires*—the DWP to legislate for a system for automatic 'pot follows member' transfers, under which funds would by default move alongside employees as they change jobs. Work began toward this end, but was paused on the grounds that the pensions industry had enough on its plate.[13] At this point, jaded readers may find themselves muttering '*'Twas ever thus*'; but at the time, the UK pensions system was adapting to automatic enrolment, the 'Freedom and Choice' reforms, and a new State pension. There are potential synergies between this and the dashboards projects, so it makes sense to develop them in concert.

PASA cybercrime guidance

The Pensions Administration Standards Association (PASA) has published Cybercrime Guidance for pensions administrators.[14]

The guidance goes into detail on what cybercrime is and the techniques used by its perpetrators. It also highlights the distinction between cybercrime and fraud (cybercrime is specifically about illicit intrusion into or disruption of computer systems—although any data thereby obtained may be used to commit fraud). The PASA reminds administrators of the Pension Regulator's view that pensions cyber incidents are inevitable, and that those running schemes should take protective action.

The appendix to the guidance lists the various sources of regulatory guidance relating to cybercrime prevention and briefly sets out the principles to which administrators should adhere to keep their schemes safe.

TPR: Pledge to combat pension scams

The Pensions Regulator has launched a campaign asking pension trustees, providers and administrators to pledge to help protect pension savers from pension scams.[15]

The Regulator requires that those who make the pledge commit to:

- regularly warning members about pension scams;
- familiarising themselves with the signs of scams and the best practice for transfers by using Financial Conduct Authority (FCA), Pensions Regulator and Pension Scams Industry Group (PSIG) resources;
- carrying out proper due diligence and documenting pension transfer procedures;
- clearly warning members if they insist on making a high-risk transfer; and
- reporting concerns about a scam to the authorities and communicating this to the member.

Pension trustees, administrators and providers can and sign up to the pledge and subsequently self-certify their compliance on the Regulator's website.

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11 <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945319/small-pots-working-group-report.pdf>.
12 <www.gov.uk/government/news/new-advice-to-help-savers-make-the-most-of-their-pensions>.
13 <questions-statements.parliament.uk/written-statements/detail/2015-10-15/HLWS238>.
14 <www.pasa-uk.com/wp-content/uploads/2020/11/PASA-Cybercrime-Guidance-November-20-FINAL.pdf>.
15 <www.thepensionsregulator.gov.uk/en/pension-scams/pledge-to-combat-pension-scams>.

HMRC newsletters—December 2020

Her Majesty's Revenue and Customs (HMRC) published *Pension Schemes Newsletter 126* at the start of December 2020.[16] It contains articles on:

- managing pension schemes (discussing the issue of multiple scheme administrator IDs and the results of some user research);
- relief at source (notification of residency status & APSS106 updates);
- pension scheme returns for 2019 to 2020 (HMRC is not issuing notices to file returns, to help those administrators who are experiencing difficulties in obtaining the necessary valuations during the COVID-19 pandemic);
- signing in to online services (recovery of deleted log-in credentials);
- in-specie contributions (clarification of the guidance in the *Pensions Tax Manual* in light of critical comments from the judge in a recent Upper Tribunal case[17]); and
- annual allowance charges (a reminder about the need for members to declare the charges in their self- assessment tax returns, even if scheme administrators pay on the members' behalves).

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[16] <www.gov.uk/government/publications/pension-schemes-newsletter-126-december-2020/pension-schemes-newsletter-126-december-2020>.

[17] *HMRC v Sippchoice Limited* [2020] UKUT 0149 (TCC). For a brief summary of the decision see *Current Issues* September 2020 <www.hymans.co.uk/insights/research-and-publications/publication/pensions-investments-round-up-september-2020>.

And Finally…

AF starts 2021 (Happy New Year, everyone) as we mean to go on: with a complaint. The occasion for this dyspepsia is not, as one might imagine, a surfeit of prandial and post-prandial Yuletide commestibles, but a juicy judicial aside delivered during a recent court ruling. (We might ordinarily have described it as an '*obiter dictum*', but given that the judge's gripe was about gratuitous use of flowery language, that would seem… inapposite.)

The case in question involved the Secretary of State for Business, Energy and Industrial Strategy's application for disqualification orders against the directors of an insolvent pension trustee company.[18] The grouse comes in at the end of the ruling. The judge sets the scene by mentioning a predecessor's plea for legal professionals to '*abandon the old fashioned and obscure language of the law and to write in plain English*'. He goes on to say that he has identifed '*a countervailing trend in the world of administration and regulation to write in an increasingly obscure style, often using superfluous words or words of uncertain meaning.*' He gives as an example the Financial Conduct Authority (FCA)'s fondness for the phrase '*thematic review*', questioning whether the word 'thematic' brings anything useful to the table. The phrase *'executive summary*' is similarly disparaged.

The real object of the judge's ire is the FCA's use of the expression '*high level*'. It seems that there was '*a lively debate*' about its meaning during the hearing, with the judge initially thinking that it meant 'of a high standard' or 'thorough'; whereas the intended sense was of something surveyed from such a lofty altitude that fine details are not discernable.

The judge concludes by expressing the view that '*The more straightforward the language the better*', and the hope that '*If any regulators do in fact read this judgment*' they will '*use ordinary, plain English wherever possible.*'

[18] *The Secretary of State for Business Energy and Industrial Strategy v Paul Martin Evans, Nigel Arthur William Basset Evans* [2020] EWHC 3519 (Ch).