STEPHENSON HARWOOD
pensions law group

Snapshot

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Overview

- The Spring Budget 2023 – impact on pension scheme members
  The main changes affecting pension scheme members are:
  - the standard annual allowance will rise from £40,000 to £60,000;
  - the minimum tapered Annual Allowance (which applies to earners with taxable income over £240,000 (rising to £260,000)) and the Money Purchase Annual Allowance (which restricts the tax relief available once a person has accessed his or her pension savings) will both increase from £4,000 to £10,000; and
  - the tax charge for exceeding the standard lifetime allowance will be removed.
- Increased regulation of LDI?
  A speech from the Bank of England suggests there may be further regulation in this area later this year to improve resilience of pension funds and reduce reliance on public finances in the future.
- Pension dashboard delays
  The DWP has announced that the connection deadline for pension dashboards (the first of which was 31 August 2023) will be postponed. At this time it has not confirmed the revised timetable.
- A practitioner's guide to combating pension scams
  The Pension Scams Industry Group has published a guide for practitioners on combating pension scams. The guide provides useful steps that trustees and administrators should take to ensure they comply with the statutory transfer out requirements. The guide also highlights some practical difficulties that may emerge due to the conflict between the current transfer out regulations and the policy intent behind the regime.
- Trustees urged to engage promptly with the Pensions Regulator where sponsor is in difficulty
  The Pensions Regulator (**TPR**) has set out its expectations for steps that trustees should take if their sponsor is in difficulty. They key message is to involve TPR as soon as possible.
- Guidance on getting buy-in/buy out ready
  PASA has issued some guidance setting out steps that trustees should take ahead of any buy-in/buy-out activity to try and ensure that the process runs as smoothly as possible and that unexpected costs are avoided.
- Extension of automatic enrolment
  The Pensions (Extension of Automatic Enrolment) (No.2) Bill 2022-23 has been laid before Parliament which would pave the way to extend automatic enrolment by:
  - reducing the lower age threshold for auto enrolment from 22 to 18; and
  - reducing or repealing the lower limit of qualifying earnings band so that contributions apply from the first pound earned (rather than the current position where contributions are only payable in respect of earnings over £6,240).

In more detail

The Spring Budget 2023 – impact on pension scheme members

It was expected that the government would use changes to the pensions tax regime to try to encourage early retirees back into the workforce. With respect to the lifetime allowance in particular, the budget in fact went further than many thought. The key changes are:

- the standard annual allowance (which is the maximum amount of tax-relieved contributions that can be made to a registered pension scheme in a year), will rise from £40,000 to £60,000;
- the minimum tapered Annual Allowance (which applies to earners with taxable income over £240,000 (rising to £260,000)) and the Money Purchase Annual Allowance (which restricts the tax relief available once a person has accessed his or her pension savings) will both increase from £4,000 to £10,000; and
- the tax charge for exceeding the standard lifetime allowance (which is the maximum amount of pension savings a person can build up across all of his or her registered pension schemes before a tax charge becomes due, and is currently £1,073,100) will be removed.

Whilst the lifetime allowance tax charge is being removed, members should, however, be aware that the maximum tax-free cash lump sum (which is currently calculated by reference to the Lifetime Allowance) will remain at £268,275 and that it is currently intended to be frozen at that amount for future tax years.

Whilst these will be a welcome change for many, the changes aren't wholly straightforward. Advice may be needed for anyone who, for example, currently has personalised Lifetime Allowance protection, or who is considering taking advantage of the Annual Allowance carry-forward provisions with a view to maximising their pension saving. Please contact your local Stephenson Harwood pensions law group contact for any assistance you may need.

For more detail, please see our briefing on this topic.

Increased regulation of LDI?

A speech by Andrew Hauser, Executive Director for Markets at the Bank of England, made earlier this month looked at the LDI crisis and lessons to be learned from it.

There is clear concern from the bank that we are in an era of liquidity risk that originated outside of the banking system which has the ability to undermine financial stability and amplify shocks in the market. Whilst the central bank was able to step in during the crisis to prevent financial instability, Hauser notes that "…*events revealed material weaknesses in pension fund and LDI risk management. Given the costs involved…public backstops…[must] not end up substituting for a failure to achieve the appropriate level of private insurance against liquidity risk….in the non-bank sector*."

Key concerns regarding pension schemes' and the LDI crisis were identified as:

- the growing use of LDI;
- large leveraged holdings of longer-duration gilts or derivates;
- liquidity buffers that had not been rigorously stress tested for more severe shocks; and

- cumbersome recapitalisation processes that inhibited defined benefit schemes from being able to inject resources quickly enough into their LDI funds.

There is a clear message from the Bank of England that public resources are not there to prop up private sector players who have failed to mitigate the risks they are subject to.

Further developments in this area are expected sometime this year to improve the resilience and reduce reliance on public finances in the future. It is likely, therefore, that trustees of defined benefit pension schemes will have another set of regulations to consider in due course.

Pension dashboard delays

The DWP has confirmed that there will be a delay to the connection deadlines for pension dashboards (the first deadline, which applies to master trust schemes that provide money purchase benefits with 20,000 or more relevant members, is currently 31 August 2023). A revised timetable has not yet been announced but revised legislation will be made at the 'earliest opportunity'.

Whilst some schemes will breathe a sigh of relief, trustees should not take their foot off the peddle. Ensuring a scheme is 'dashboard ready' is no small task and trustees should take full advantage of the additional time given. TPR has been clear that it will take action as a result of any intentional or reckless non-compliance with dashboard obligations. TPR is likely to have even less sympathy with a missed connection deadline as a result of the extension.

A practitioner's guide to combating pension scams

The Pension Scams Industry Group has published a guide for practitioners on combating pension scams. The aim of the guide is to set out the steps for trustees and administrators to take when undertaking a transfer out. The three main principles of the guide are:

- trustees, administrators and providers should raise awareness of pension scams to their members;
- schemes should have processes in place for assessing whether a receiving scheme may present a scam risk and for responding to that risk; and
- schemes should be aware of current strategies of perpetrators of pension schemes and use this to inform their due diligence.

Whilst the guide focuses on statutory transfers out, it is noted that the due diligence route for a non-statutory transfer should be similar.

The guide provides a useful overview of the transfer process and the 'red' or 'amber' flags for trustees to be aware of. There is a useful checklist for information and documents that should be requested from members when determining if the statutory transfer requirements are satisfied. The guide also explains the member communication requirements at the different stages of the statutory transfer process.

Part of the practical advice provided in the guide covers how trustees and administrators may go about using 'clean lists' for certain personal pension arrangements. This is a list of certain personal pension schemes which, following due diligence, it has been concluded pose a low scam risk and do not have any red or amber flags. For transfers where the receiving scheme is on the clean list, the intention is that the transfer process can proceed with minimal further due diligence. However, the transfer regulations as they currently stand provide that receiving schemes that have overseas investments will raise an amber flag. Given most schemes have overseas investments of some kind, if trustees and administrators are to follow the letter of the law, it may be difficult in practice to include many schemes on this list. The guide discusses this position and the clear conflict between the regulations and the policy intent (which TPR has confirmed is to deal with schemes with investments in jurisdictions where there is lax or non-existent regulatory regimes, rather than those with global equity fund investments). We wait and see if the DWP will address this issue by amending the transfer regulations. In the meantime, the guide cautions that the use of clean lists for statutory transfers does carry a risk. Equally, not using clean lists could also cause problems for schemes, not least of all as a result of unnecessary delays to transfers which clearly pose a low scam risk, and even a risk of breaching the statutory time limits for transfer.

This guide is a useful starting point for administrators and trustees when considering transfers out. However, it also highlights a number of known problems with the current drafting of the transfer regulations which presents a conflict between the strict wording of the law and the clear policy intention. Trustees therefore need to understand the risks involved when balancing their legal obligations with a practical approach.

Trustees urged to engage promptly with TPR where sponsor is in difficulty

Against the background of the recent buy-ins agreed by the Arcadia Group pension schemes, TPR has highlighted what can be achieved when the trustees of schemes with a struggling sponsoring employer engage with TPR and the PPF at an early stage.

As a reminder, in 2018 Arcadia Group Limited was facing difficulty and proposed CVAs as well as a request for the trustees to accept a 50% reduction in deficit repair contributions. TPR and the PPF were involved and agreed the CVAs were the best option for the scheme. The trustees, TPR and PPF were able to protect the position of the scheme as far as possible by obtaining security over group assets as well as a cash injection.

TPR's message is a clear one: "*the sooner we are involved the more benefit we can bring…*".

Where trustees are faced with a struggling sponsor, they should ensure the following:

- that they have a comprehensive information sharing package in place. This should include detailed forward-looking forecasts and how these could vary. This should be assessed ideally quarterly by a covenant adviser;
- they involve TPR at an early stage if it becomes clear that trading for a sponsor is challenged, if the viability of the sponsor is uncertain or if there are issues or defaults with key creditors; and
- trustees must ensure they have the right skills to deal with distressed situations and have access to expert advisers.

Guidance on getting buy-in/buy out ready

With increased demand for buy-ins/buy-outs, PASA has issued guidance on the importance of schemes ensuring their data is ready before approaching the insurance market. The benefits of this are not only saved time during the process but also more certainty on cost. Initial scheme data will be provided to an insurance company before the buy-in/buy-out process. This data will then be cleansed during the verification process and a final price will be provided. The more accurate the data at the outset, the less likely it is the trustees will be faced with unexpected costs following the verification process.

In addition to ensuring all data is up to date and correct, it is also important that this data is held electronically.

The guidance sets out some 'quick win' areas for trustees to deal with:

- Common data – for example addresses and postcodes that have been periodically reviewed and checked and which are formatted;
- Complete and consistent data – holding full forenames of members and not just initials;
- Marital screening – obtaining the marital status of members can be achieved through a member communication exercise or tracing agencies; and
- Mortality screening – it is useful to understand any deaths that may have occurred in particular for deferred members.

The insurance market is increasingly competitive for pension schemes; good quality data will be an added plus when insurers are deciding who to do business with. Even for schemes which are not currently considering insurance solutions, having good data is good practice in any event and necessary for ensuring that members are receiving the correct benefits. This should not, therefore, be considered as an exercise only for those schemes which are approaching the insurance market.

Extension of automatic enrolment

The Pensions (Extension of Automatic Enrolment) (No.2) Bill 2022-23 is currently working its way through Parliament and was approved during its second reading in the House of Commons without debate. If passed, this bill will allow regulations to be introduced to extend the auto enrolment regime by:

- reducing the lower age threshold for auto enrolment from 22 to 18; and
- reducing or repealing the lower limit of the qualifying earnings band so that contributions apply from the first pound earned (rather than the current position where contributions are only payable in respect of earnings over £6,240).

Even if/when the legislation comes into force, any such change will not be immediate as it will require additional regulations to be made to make the proposed changes. Nevertheless, employers with a younger workforce or who pay the auto enrolment minimum should consider what additional costs may be involved if these amendments are made.

Our wider team – a closer look

A spotlight on….Data Protection

Our data protection team has significant experience advising a wide range of pensions sector clients on their data protection law obligations. We advise pension providers, administrators and trustees on all aspects of data protection law, including drafting and reviewing contracts and policies for compliance, responding to data subject rights requests, completing impact assessments, maintaining adequate data protection records, complex data sharing and overseas transfer arrangements and data retention, storage and accuracy requirements. We also advise on data breach response and cyber security requirements, as well as innovative uses of personal data such as biometrics. We are currently advising clients on upcoming changes to UK data protection laws and on the raft of new data-related legislation in the pipeline, covering issues including Artificial Intelligence and governance of non-personal data.

Working closely with the Pensions team, our lawyers have an in-depth knowledge of the pensions sector and understand the complexities it raises for data protection law compliance. One of our associates has recently completed a secondment with the data protection team of a leading pensions administrator, running their European privacy function. We regularly advise pension providers and schemes on data protection remediation programmes and we provide regular training sessions to trustees on the principles of the UK GDPR. We have experience working on digital transformation projects, including the development and implementation of cutting-edge technologies, such as pensions and benefits platforms. More recently, we have provided advice and support to Mercer in relation to its role in the UK Pensions Dashboards Programme.

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