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pensions law group

Snapshot

December 2022

Overview

- Pensions dashboards – occupational pension schemes
  - The Pensions Dashboard Regulations 2022 (**Dashboard Regulations**), which set out the dashboard obligations of trustees of in scope occupational pension schemes as well as setting out the requirements for pension dashboard services, came into force on 12 December 2022.
  - The Pensions Dashboards Programme has published its revised dashboard standards following its consultation.
  - The Pensions Regulator (**TPR**) is consulting on a compliance and enforcement policy setting out how it will enforce the pensions dashboard obligations.
  - The Pensions Dashboards (Prohibition of Indemnification) Bill is expected to proceed through Parliament unopposed. This will prohibit the assets of a pension scheme from being used to reimburse trustees in respect of any fine or penalty imposed on them for breach of their pensions dashboard obligations.
- FCA dashboards – personal and stakeholder pension schemes

  The FCA has published its proposed regulatory framework for pensions dashboard service firms and has launched a consultation, which will close on 16 February 2023. This follows the FCA's previous consultation on proposed new rules requiring FCA-regulated pension providers (i.e. personal and stakeholder providers) to connect to dashboards and supply certain information.
- Secretary of State v Beattie and others – Age discrimination time limit for post-Brexit cases

  The Employment Appeal Tribunal dismissed age discrimination complaints save for two claimants who had brought their claims before 31 December 2020 (the date of the UK's withdrawal from the European Union). It was held that the claimants could not rely on the general principle of EU law after 31 December 2020. This decision will have a wider impact given any similar cases must have begun before 31 December 2020.
- Work and Pensions Committee inquiry on LDIs and TPR guidance
  - The Work and Pensions Committee launched an inquiry into the regulation and governance of defined benefit pension schemes with liability driven investments (LDIs). The inquiry was intended to examine the impact of the recent volatility in gilt yields and intervention by the Bank of England. It was also to consider the role of TPR in regulating the use of LDIs and whether schemes have adequate governance arrangements in place.
  - TPR has now also issued its own guidance statement. The statement calls on scheme trustees who use LDIs to maintain an appropriate level of resilience in leveraged arrangements to better withstand a fast and significant rise in bond yields.

In more detail

Pensions dashboards – occupational pension schemes

Pensions Dashboards Regulations 2022

The Dashboard Regulations came into force on 12 December 2022. These set out the dashboard obligations of trustees of in scope occupational pension schemes as well as setting out the requirements for pension dashboard services. More detail can be found in our briefing on the topic and subsequent updates from our November snapshot.

It is less than 9 months until the first staging deadline for certain schemes to connect to the dashboards ecosystem. This represents an important step in the finalisation of the dashboards regime.

Dashboard standards

The Pensions Dashboards Programme has also published its revised dashboard standards following its consultation. They set out the technical and operational detail that underpins the dashboards legislation.

These standards will come into force following ministerial approval.

Compliance and enforcement policy

TPR is consulting on its dashboards compliance and enforcement policy. TPR is responsible for the compliance and enforcement of in scope occupational pension schemes in respect of their duties under the Dashboard Regulations.

Under the Dashboard Regulations, TPR has discretion over its approach to non-compliance. TPR states the more serious the matter the more likely it is that it will take action. Breaches that are "*persistent, intentional, wilful or indicate dishonesty*" will be a higher priority for enforcement action. It will target its resources according to the level of risk and will intervene only to the extent necessary to address harm or reduce risk. It recognises that delivering pensions dashboards is a huge challenge for the industry and TPR will provide tools and education to assist those in meeting their duties. Whilst TPR will take a pragmatic approach to compliance, it will take a robust enforcement approach where there is wilful or reckless non-compliance. The key focus for TPR will be in the quality of data held by a scheme as well as ensuring schemes have robust internal governance.

The key areas that TPR will focus on will be:

- Schemes not connecting by their connection deadline;
- Schemes only connecting part of their membership or entitlement to the system; and
- Schemes failing to remain connected in line with the Money and Pensions Service's **(MaPS)** standards.

Schemes will be expected to operate adequate internal controls in line with TPR's new draft single code of practice.

The policy sets out steps it expects schemes to be taking and notes that schemes should be keeping a clear audit trail of these to evidence how they are ensuring compliance.

To assist with its monitoring role, TPR will receive regular data from the dashboards system run by MaPS.

TPR has given some scenario examples to show how they will approach enforcement in practice.

Enforcement options include:

- Issuing a compliance notice requiring the trustees to take action specified in the notice to remedy any non-compliance;
- Issuing a penalty notice. This can be issued to trustees and can set out a penalty of up to £5,000 for an individual or £50,000 for a corporate. TPR could issue penalties for a number of breaches simultaneously.

This consultation runs until 24 February 2023. TPR aims to publish the final policy in Spring 2023.

Indemnification prohibition

The Pensions Dashboards (Prohibition of Indemnification) Bill is expected to proceed through Parliament unopposed. This will prohibit the assets of a pension scheme from being used to reimburse the trustees in respect of any fine or penalty imposed on them for breach of their pensions dashboard obligations.

If a trustee is so reimbursed and knew or had reasonable grounds to believe he had been so reimbursed, he will be guilty of a criminal offence unless he had taken all reasonable steps to ensure he was not so reimbursed. This is punishable by a fine and/or two years' imprisonment. There is also a civil fine for breach of this prohibition of up to £5,000 for an individual or £50,000 for a corporate trustee.

FCA Dashboards – personal and stakeholder pension schemes

The FCA has published its proposed regulatory framework for pensions dashboard service firms and has launched a consultation which will close on 16 February 2023. This follows the FCA's previous consultation on proposed new rules requiring FCA-regulated pension providers (i.e. personal and stakeholder pension providers) to connect to dashboards and supply certain information.

The FCA is responsible for regulating commercial bodies that operate pensions dashboard services under the Regulated Activities Order. This framework sets out the FCA's approach to supervision and enforcement for firms that will operate pensions dashboards, including on fees, regulatory reporting, record keeping, prudential requirements and conduct rules.

The draft framework sets out key requirements for systems and controls for firms which would provide dashboard services, as well as setting out expectations around systems to safeguard member data. The draft framework also sets out the FCA's proposed approach to, and procedures for, enforcing this regime.

Secretary of State v Beattie and others – Age discrimination time limit for post-Brexit cases

In this case, certain members claimed that having their pension capped as a result of the Pension Protection Fund compensation cap legislation amounted to age discrimination (as generally those who have not reached normal retirement age by the PPF assessment date will be subject to the cap).

The Equality Act (Age Exceptions for Pension Schemes) Order 2010 (**Order**) provides a partial exemption from discrimination rules in respect of periods of pensionable service before 1 December 2006. The claims in this case related to rights accrued before 1 December 2006 and therefore, if the exemption applied it would have prevented the claims succeeding.

Certain members made their discrimination claim on 1 November 2019 and the remaining claims were lodged on 9 August 2021.

The Employment Appeal Tribunal found that the 2006 limitation was inconsistent with EU law but that due to the European Union (Withdrawal) Act 2018 following Brexit, only those members who had brought their claim before 31 December 2020 could continue with it. Those members who had filed their claims after this date could no longer rely on general principles of EU law.

As a result, this decision will have a wider impact given any similar cases must have begun before 31 December 2020.

Work and Pensions Committee inquiry on LDIs and TPR guidance

The Work and Pensions Committee launched an inquiry into the regulation and governance of defined benefit pension schemes with LDIs on 24 October. The inquiry was intended to examine the impact of the recent volatility in gilt yields and intervention by the Bank of England. It was also to consider the role of TPR in regulating the use of LDIs and whether schemes have adequate governance arrangements in place. A point made in evidence was that regulators should introduce greater guidance around the amount of leverage allowed in liability-driven investment portfolios.

In response to statements made by the National Competent Authorities (**NCAs**) on the resilience of LDIs, TPR has now also issued its own guidance statement. The statement calls on scheme trustees who use LDIs to maintain an appropriate level of resilience in leveraged arrangements to better withstand a fast and significant rise in bond yields. The statement also calls on trustees investing in leveraged LDI to improve their scheme's operational governance. If trustees depart from the liquidity buffer set out by the NCAs, TPR expects trustees to:

- work with their advisers to demonstrate the buffer the scheme has in place;
- complete a risk assessment of how the scheme will respond to stressed market events to ensure scheme resilience in these events, including how it will raise liquidity;
- detail a step-by-step plan for bringing the scheme to higher levels of resilience in the event of volatility returning to the market, noting any assumptions in respect of market conditions, operational arrangements and timescales that the plan is based on; and
- document these arrangements and review them regularly.

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