

Bulletin – Pensions Round Up

The Pensions Regulator

Single Code of Practice

The Regulator has issued a statement confirming its intention to produce a consolidated code of practice, combining its current fifteen codes into a single, shorter document. The existing codes will be reviewed in light of new governance legislation, with the first reviews carried out on the codes most affected by those changes.

The Regulator expects trustees to be able to demonstrate an effective system of governance within twelve months of publication of the updated code.

Recent cases

Discrimination

Langford v The Secretary of State for Defence

The Court of Appeal found that a rule under which death benefits were payable to the unmarried partner of a member, but not if that partner was still legally married to another person was unlawfully discriminatory. In the circumstances of the case, which concerned an armed forces compensation scheme, the court held that the discrimination was neither justified nor proportionate. Although the case did not involve a pension scheme, the principles are likely to be relevant, although different factual situations may lead to a different outcome.

Appeal rejected

Dominic Chappell

The Upper Tribunal has essentially dismissed an appeal by Dominic Chappell in relation to the £9.5 million contribution notices imposed in relation to the BHS pension schemes.

Pensions Ombudsman

Recovery of overpayments

Mr Y (PO-19206)

The Deputy Pensions Ombudsman has partly upheld a complaint against the Royal Mail Statutory Pension Scheme in relation to recovery of an overpayment. Mr Y had transferred his money out of the scheme, but was then allowed to draw benefits from that same scheme due to an internal error. When the error came to light the scheme attempted to recover the overpayments (recoupment against future pension payments not being an option because Mr Y had no entitlement under the scheme).

Mr Y had been receiving benefits from the scheme for several years and attempted to rely on the Limitation Act 1980 to limit the scheme's recovery. The

scheme accepted that the Act applied, but there was a dispute as to when the limitation period began and ended. The DPO determined that the start date was six years before the scheme formally responded to Mr Y's Ombudsman complaint.

Mr Y also claimed to have changed his position in reliance on receiving the benefits by spending them on every day expenses, as a defence against the recovery. This part of the complaint was not upheld as the DPO found that Mr Y did not meet the criteria for acting in good faith.

Response to consultation

The DWP has responded to its consultation on extending the Pension's Ombudsman's jurisdiction. The consultation proposed an expansion of the Ombudsman's remit, following the transfer of TPAS's functions to the Ombudsman in April 2018. Proposals centred on a new early resolution process, to allow the Ombudsman to resolve disputes before they proceed to a formal determination.

The consultation also proposed to allow employers who choose a GPPP arrangement for their employees, to bring a complaint or refer a dispute on their own behalf to the Ombudsman, against the provider or administrator.

The DWP reports that responses received to the consultation were generally supportive of the proposals and the DWP plans to proceed with their implementation, which will require primary and secondary legislation.

Other

GMP Equalisation Working Group guidelines

The Pensions Administration Standards Association has published the Group's "Call to Action" guide to GMP equalisation. The cross industry group was formed in January this year, with the intention of helping pension schemes to equalise GMPs following the *Lloyds Bank* case.

The guidelines focus on three initial areas: (i) A summary of considerations when trustees are deciding whether to combine the two processes of reconciling and rectifying GMPs, and equalising GMPs; (ii) Trustees are encouraged to review and cleanse their data, and ensure that they have or can access all relevant data including details of year by year contracted out earnings for each member over the equalisation period; and (iii) What to consider in relation to impacted transactions e.g. retirements, transfers, buy-ins and buy-outs.

The guidelines are the first in a series of planned documents. Later documents will suggest good practice approaches and address issues not covered in the *Lloyds Bank* judgment.

DB transfer good practice guide

The Pensions Administration Standards Authority has published a guide to good practice in relation to defined benefit transfers, including template documents and maximum acceptable timescales for processing transfers. The guide aims to achieve a balance between member protection and an individual's right to take his pension in a different shape or form, via a flexible arrangement. Trustees should ensure that they are familiar with the guide and ask their administrators to confirm compliance with its standards, as it is anticipated that the guidance will be taken into account in relation to any complaints to the Pensions Ombudsman.

Further guidance is expected towards the end of this year, dealing with complex or unusual transfers.

Looking ahead

New requirements for fiduciary manager appointments

New requirements will come into effect in December that will require trustees to run a competitive tender process to recruit fiduciary managers, if the scheme uses such arrangements for 20% or more of its funds. Trustees will also have to set measurable objectives to help them determine whether the manager's services provide good value for money.

The Regulator is consulting on its draft guidance to assist Trustees in complying with the new requirements.

Delay of professional trustee accreditation

In February, a set of professional trustee standards was published by the Professional Trustee Standards Working Group. Details of an accreditation process for professional trustees was due to follow on 1 July, but this has now been delayed until later this year.

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