

Bulletin – Pensions Round Up

The Pensions Regulator

Employer related investment

Recent action by the Regulator against directors of a professional trustee company has highlighted the essential role that the administrators of an occupational pension scheme play in helping to ensure that schemes are operated in accordance with the law. In this case, the scheme administrator contacted the Regulator after becoming suspicious that an employer related investment was being made without sufficient legal and investment advice. The Regulator intervened to stop the investment, and its investigations concluded that the administrator's suspicions had been correct.

The three directors of the professional trustee involved in the scheme (one of 23 managed by the professional trustee company) have undertaken not to act as professional trustees again; a compromise which the Regulator is satisfied will safeguard schemes whilst being more efficient than the lengthy and costly process to obtain prohibition orders against the directors. The trustee company has undertaken to wind down or transfer all other occupational pension scheme appointments by the end of the year and cease to offer this trustee service.

Trustees ordered to review data

The Regulator has announced that it will be contacting the trustees of 400 pension schemes, to require them to conduct a data review within the next six months. The schemes in question are those that have not carried out a data review within the last three years.

Trustees will need to report back to the Regulator in relation to the proportion of membership for whom they hold common and scheme-specific data. Trustees who discover poor quality data will be expected to draw up plans to improve the position.

Failure to report may lead to action from the Regulator, including an improvement notice and fines if the trustees do not comply with the notice.

Other schemes will be contacted to remind them to carry out data reviews every year.

Fine successfully appealed

In our February 2019 update we reported that the Regulator had successfully prosecuted Workchain for criminal offences connected with falsely opting temporary workers out of an auto enrolment scheme. A fine of £200,000 was

imposed, the largest ever as a result of a Regulator prosecution.

Workchain appealed the fine, and the Court of Appeal has now substituted it for a fine of £100,000, finding that the original fine had been manifestly excessive in the circumstances.

Recent cases

Equalisation

Safeway v Newton

The European Court of Justice has held that a pension scheme cannot be retrospectively amended to level down benefits that otherwise discriminate on the basis of sex.

The Safeway pension scheme had normal retirement ages of 60 for women and 65 for men. Following the *Barber* judgement in May 1990, benefits under the scheme automatically levelled up, so that both women and men had a NRA of 60.

The scheme's amendment power allowed amendments made by deed to be retrospective to the date of a prior member announcement. Two announcements were issued in 1991 stating that from 1 December 1991 the NRA for all members would be 65. The deed containing the amendment retrospective to that date was not executed until May 1996.

The UK courts found that the scheme had been validly amended under UK law and in accordance with the terms of the scheme's trust deed, but the ECJ was asked to rule on whether amendment in such a manner was acceptable under EU law. Following the direction of the recent Advocate General's opinion, the ECJ held that EU law precluded retrospective levelling down, even if it was acceptable under domestic law, unless it could be objectively justified.

GMP equalisation

Lloyds Bank –

A hearing date has been scheduled for the end of April/beginning of May 2020, for the court to consider the extent of the trustees' obligations in relation to GMP equalisation issues on past-transfers out. The decision will be relevant to other schemes that made transfers without equalising for the effect of GMPs.

Pensions Ombudsman

Incorrect bank transfer details

The Pensions Ombudsman has partly upheld a complaint against Aviva and required it to pay £800 in respect of distress and inconvenience (in addition to £200 already paid), together with £4,549.88 in recognition of costs incurred by the member.

Mr H decided to transfer two personal pensions into a SSAS administered by Aviva, with the intention of using the funds to purchase a business property. The Ombudsman found that Aviva provided incorrect bank transfer details in respect of one of the transfers, leading to the member's wife spending several days trying to track down a significant sum of money. The member was unable

to purchase the property in line with his original timetable, thereby incurring additional rent.

In making his directions, the Ombudsman recognised the “serious distress and inconvenience suffered by Mr H” and also ensured that he was not left out of pocket due in relation to the additional rent (including interest at Bank of England base rate).

Other

Pensions Bill

The Pensions Bill has been published, following the Queen’s Speech on 14 October. In line with expectations, the Bill introduces new powers for the Pensions Regulator, allows for collective defined contribution (CDC) schemes to be established and sets out the legislative framework for pensions dashboards.

Cost Transparency Initiative

The Pensions and Lifetime Savings Association has launched a Cost Transparency Initiative aimed at helping investors, including pension scheme trustees, to decide whether investments represent value for money. Templates, guides and other tools have been published with the intention that investors will liaise with asset managers to receive cost and charges information in a standardised and comparable format.

GMP equalisation methodology guidance note

The Pensions Administration Standards Association GMP equalisation working group has published guidance that outlines different methods for equalising GMPs and shows a number of worked examples. It also includes good practice suggestions in relation to common issues such as reviewing past transfers in and out, and paying interest on past underpayments.

The guidance states that separate guidance notes will be published in relation to data issues, impacted transactions, tax issues and the reconciliation and rectification of GMPs.

RPI review

A consultation is expected in January 2020 on technical matters relating to changing the RPI to align it with the CPIH at some point between 2025 and 2030, with a response to the consultation due before next year’s spring statement.

Looking ahead

Setting investment objectives

With effect on and from 10 December, there will be a change to way in which pension scheme trustees deal with their investment advisers. They will be expected to run competitive tenders for management and investment consultancy services, set written strategic objectives for their investment consultants and monitor performance against those objectives.

These changes come about as a result of an Order issued by the Competition and Markets Authority, following an investigation into market practice. Even if not strictly required to do so under the Order, the Regulator has issued guidance encouraging trustees to follow this approach as a matter of good governance. It is also anticipated that the Department for Work and Pensions will legislate to bring the requirements of the CMA Order into pensions legislation.

Dual path to scheme funding

The Regulator has announced that it is planning to publish two consultations on a dual path approach to funding defined benefit pension schemes. The first of the two routes will be a “fast track” option, in which a scheme follows an approach prescribed by the Regulator, setting out what is expected by the time the scheme reaches maturity.

The second option, referred to as “bespoke”, allows trustees and employers more flexibility to vary their recovery plan and take investment risks, but schemes following this approach will be subject to increased scrutiny from the Regulator.

The first consultation will consider the principles of the proposed new approach, with the second to deal with the detail. Both consultations are expected in January 2020, although timetable this may be impacted by Brexit.

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