Bulletin – Pensions Round Up

The Pensions Regulator

2019-20 Corporate Plan

The Regulator has published its Corporate Plan, with improving participation, accountability, protection and confidence in occupational pension schemes as its core objectives.

As part of a more proactive and targeted approach, hundreds more schemes are due to be contacted by the Regulator over the coming year, with one-to-one relationships already being developed with larger schemes. Communications are due to be sent to over 1000 schemes to monitor member treatment and the Regulator has announced its intention to take action where standards are not met.

Consultation on future of trusteeship and governance

The Regulator has issued a consultation outlining proposals to ensure that all occupational pension schemes have excellent standards of governance. The Regulator anticipates that, over time, this will result in fewer but better governed schemes, with smaller schemes consolidating to benefit from improved governance and cost efficiencies.

The focus is on the trustee model and the changes that can be made to ensure that it is fit to serve its purpose in the demanding pensions climate. Questions posed by the consultation include how to improve TKU and diversity on trustee boards, and whether every trustee board should include a professional trustee.

Recent cases

Financial Support Directions

ITV PLC v The Pensions Regulator and Box Clever Trustees Limited

The Court of Appeal has dismissed an appeal in this case, finding that when the Regulator is deciding whether to impose a financial support direction (FSD), it can have regard to events that took place before the relevant legislation came into effect.

In this case, the relevant pension scheme was sponsored by Box Clever, a joint venture company between ITV and Carmelite that went into administration in 2003. ITV argued that the Regulator should not be able to take account of events that happened before the FSD legislation came into force (on 6 April 2005), as it could not have taken that legislation into account when making its decisions. But the CA found that the legislation contained no express time limits and events before 6 April 2005 can be taken into account when the Regulator is deciding whether it is reasonable to impose an FSD.

Valid exercise of power

Burges v BIC

The Court of Appeal has allowed an employer's appeal against a finding that trustees had validly introduced non-statutory pension increases.

The High Court judge, Mr Justice Arnold, had held that increases purportedly introduced in April 1992 had been retrospectively validated by a 1993 deed. However, the CA held that the increases had not been validly introduced at the time and had not been validated by any of the subsequent documents. Whilst specific to the facts, the judgement highlights the importance of complying with any formal requirements necessary for the exercise of a power under a pension scheme.

The CA did not comment on a controversial aspect of Mr Justice Arnold's judgement in relation to whether the Pensions Ombudsman is a competent court for the purposes of off-setting past overpayments against a member's future pension.

Discrimination

McCloud* and *Sargeant

The Government has been refused leave to appeal against the Court of Appeal decision that it discriminated on the grounds of age, race and equal pay when making amendments to the firefighters' and judges' pension schemes in 2015.

The two cases (heard together by the CA) concern public sector pension reforms. Transitional provisions were enacted that allowed older members of the original more generous scheme to remain, whilst younger members received either tapered or no protection and membership of a less generous scheme. Cases were originally brought in the Employment Tribunal, claiming that the changes were discriminatory on the grounds of age (and in the case of the judges' pension scheme, also on the grounds of race and sex, due to the demographics of the affected groups). The cases will now be returned to the Employment Tribunal for a detailed decision on remedy, unless the parties agree an approach.

The cases are likely to also have an impact on other public sector pension schemes changed in a similar way.

Other

Survivor benefits

Last year's Supreme Court decision in *Walker v Innospec* considered whether a surviving spouse of a same sex marriage or a surviving civil partner should receive the same benefits as they would have done if they were a surviving opposite sex spouse. The Court concluded that they should.

The Equality Act 2010 allows pension schemes to limit benefits payable in such circumstances to benefits based on accruals from December 2005 onwards. So following the Court's decision, the Government has reviewed whether the legislation should be changed. Guy Opperman (Minister for Pensions and Financial Inclusion) has now confirmed that the Government does not intend to make any further retrospective changes to the legislation on survivor's benefits and private sector schemes should take their own advice to ensure that they are legally compliant with the judgement going forward.

Statement of investment principles

In addition to the new disclosure obligations that will apply to trustees from October 2019, further legislation has recently been published to expand trustees' obligations.

The requirement to publish the statement of investment principles on a website (which will apply to trustees of a DC scheme from October 2019) has been extended to trustees of DB schemes effective October 2020

Also with effect from October 2020, the SIP must also include information in relation to arrangements with assets managers, and the required information in relation to the trustees' stewardship policy has been extended.

Looking ahead

GMP Working Group initial guidance

The GMP Working Group has announced that it expects to produce its initial guidance over the summer, with full best practice guidance to follow by the end of September. The initial guidance is aimed at helping schemes to decide whether to undertake GMP rectification now, or wait and include the full guidance in their equalisation project.

Consultation on DB funding

The Regulator has announced that it will launch two funding consultations over the next year. The first is expected over the summer and will focus in options for a clearer framework for DB funding. The second consultation will be on the draft code, and is due to take place in 2020.

Fiduciary management tender guidance

It is expected that the Regulator will soon issue its trustee guidance on the tender process to appoint a fiduciary manager. The Regulator intends to publish final guidance before the end of the year, to coincide with new Competition and Markets Authority requirements for pension scheme trustees to run a competitive tender before choosing a fiduciary manager for more than 20% of the scheme's assets.