BRIEFING

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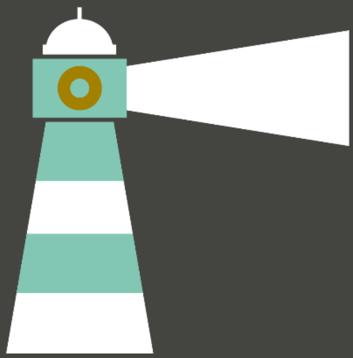
What's Happening in Pensions



Issue 114 – January 2025

Travers Smith Pensions Sector Group

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Pensions Ombudsman update: A blog post by the Pensions Ombudsman rounds up recent activities designed to tackle their high and increasing workload. This covers the use of expedited determinations in straightforward cases and 'lead cases' for disputes where there are multiple complaints due to an industry-wide or scheme-specific issue.

Pension Scams Industry Group: The Pension Scams Industry Group has published the outcome of the consultation on its future. It will continue on a voluntary basis to produce a final version the Code of Good Practice, once amendments to the transfer regulations are published.

Divorce/dissolution – Law Commission report: The Law Commission has published a scoping report on the laws governing finances on divorce and the ending of a civil partnership. It has concluded that the law needs to be reformed and presents Government with four possible models. Among the concerns is how pension rights are currently being taken into account.

PENSIONS RADAR: You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our Sustainable finance and Investment Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors.

Pension scams leaflet

The Pensions Regulator has updated links on its website to direct trustees and others to a new pension scam warning leaflet that it expects to be given to members with annual benefit statements and when responding to transfer requests.

The previous leaflet ('Don't let a scammer enjoy your retirement') has been replaced by a Pension Scams Action Group (PSAG) leaflet ('Steps to stay scam safe') with similar content. Schemes should now use the new PSAG leaflet rather than the old one.

DB surplus rules

A Government press release has indicated that there will be news in the spring about greater flexibility on accessing DB pension surpluses, with a view to helping economic growth through investment in the employer's business and in the wider economy.

There is not much information on the detail yet but the key points mentioned are:

- Restrictions will be lifted on how "well-funded" schemes that are "performing well" will be able to invest their surplus funds - "in the wider economy, fuelling economic growth".
- Making it easier to amend scheme rules to allow surplus extraction, with trustees and employers striking a deal on sharing surplus.

The details will be in the Government's response to the last government's consultation on options for DB schemes (see WHiP Issue 107). The most likely date is 26 March 2025, being the date set for the Chancellor's Spring Statement.

Automatic enrolment thresholds

The Government has announced that the automatic enrolment earnings trigger and qualifying earnings band figures will once again be frozen this year.

The earnings trigger is £10,000 pa and the qualifying earnings band is £6,240 to £50,270 pa. They will remain at these levels for 2025/26.

Derivatives – EMIR clearing exemption

HM Treasury has indefinitely extended the exemption from mandatory clearing for UK pension schemes using derivatives to manage investment risks that relate to the solvency of the scheme.

Pension scheme trustees using derivatives as part of their investment strategy will be aware that since the introduction of the European Markets Infrastructure Regulation (EMIR) in 2012, pension schemes have largely been exempt from a requirement to clear their derivatives transactions through a central counterparty, provided those derivatives transactions are used to hedge investment risks that relate to the solvency of the scheme.

The original exemption was time-limited and was extended several times by the EU Commission. Since Brexit it has also been extended for UK pension schemes by the Treasury. The EU exemption expired without further extension in June 2023 - the Commission taking the view at the time that EU pension schemes were largely operationally ready to clear their derivatives.

Meanwhile, the current exemption applying to UK schemes was due to expire on 18 June 2025. Many market participants and trade associations have repeatedly highlighted the difficulties posed to schemes in managing the cash collateral requirements applicable when clearing through a central counterparty - particularly during stressed market conditions such as those which prevailed in the gilt markets following the "mini-budget" in September 2022.

The Treasury has now confirmed that the Government has decided that the exemption should be maintained "for the longer term". It has accepted that removal of the exemption would reduce the ability of schemes to invest in growth assets, and that there are no existing means for pension schemes to access cash collateral without potential adverse impact on the benefits provided to members.

This decision also means that UK pension schemes will be able to trade on an uncleared basis with EU bank counterparties following the coming into force of EMIR 3.0 in the EU on 24 December 2024. EMIR 3.0 introduced a permanent exemption from clearing for EU counterparties where they enter transactions with third country pension schemes which are authorised and supervised under national law and benefit from a clearing exemption in their home jurisdiction. UK schemes previously unable to transact bilaterally with EU banks following the removal of the EU exemption may now consider doing so.

HMRC Pension Schemes Newsletter

HMRC's latest Pension Schemes Newsletter includes (among other things) announcements that:

- Tax codes for people new to receiving a private pension will be improved, by replacing emergency tax codes with cumulative ones. This will hopefully address the issue in relation to uncrystallised funds pension lump sums (UFPLSs) and drawdown payments, which for tax code purposes have been assumed to continue being paid monthly rather than being one-off payments. This has led to overpayment of tax and the need for repayment claims.
- There is a new way that schemes will have to submit their HMRC scheme returns this year and there is additional information that will have to be supplied.
- Top-up payments to those affected by the 'low earners anomaly' (relating to tax relief and net pay schemes) have been delayed. They will still be payable in respect of the 2024/25 tax year (and subsequent years) but will now not be paid until 2026. The Government will legislate to ensure that the annual payments (of around £70) will not affect a recipient's entitlement to state benefits or their national insurance. The top-up payments are designed to compensate earners who do not pay income tax and so do not receive effective tax relief for their pension contributions to 'net pay' schemes, in contrast with those earners who do pay income tax.

Virgin Media update on possible regulations

The ACA, APL and SPP have given an update on discussions with the Department for Work and Pensions about the possibility of regulations to address issues faced by schemes in relation to the *Virgin Media* case on missing written actuarial confirmations in relation to scheme benefit amendments (see WHiP Issue 110).

The case concerned the validity of a rule amendment affecting benefits in a DB contracted-out scheme, made without obtaining the actuary's written confirmation that contracting-out requirements would still be met, as required by section 37 of the Pension Schemes Act 1993. Such confirmations were required for amendments made between 6 April 1997 and 5 April 2016. The High Court ruled that, without such written confirmation, the amendment was invalid and void. The Court of Appeal confirmed that written confirmation was required for changes to future service benefits (as well as changes to past service benefits). The legislation, however, expressly allows the Secretary of State for Work and Pensions to make regulations "so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section".

There is no outcome of the discussions yet. The industry update said this:

> *"Since our update of 26 July 2024, the working group of representatives from our three organisations has continued to engage with the Department for Work and Pensions. There has been regular communication to discuss the issues arising from the Court of Appeal's ruling in Virgin Media Limited v NTL Pension Trustees II Limited. The working group has been providing information from our organisations to help the Department*

understand the adverse impact on industry of this ruling and has been examining what form any intervention could take.

The working group continues to believe that the Secretary for State should make regulations that would, subject to appropriate safeguards, enable the validation retrospectively of any amendment that is held to be void solely because either a written actuarial confirmation was not received before the amendment was made, or where such a confirmation cannot now be located. Quite what form such regulations could take, if a regulatory approach is agreed, is a matter that the working group is discussing with the Department, with the working group refining its thinking as a result.

We hope that an update can be provided in the New Year."

We are actively involved in this work and will provide updates as soon as we are able to do so.

Pensions dashboards – TPR update

The Pensions Regulator has updated its pensions dashboards initial guidance. A Regulator email to industry representatives lists the following changes:

- *"Registration codes: we have included a new section which outlines the actions trustees need to take in respect of registration codes.*
- *Legislative change: this update incorporates DWP's guidance on staged connection. We expect schemes to connect in line with this guidance, and to consider and mitigate the risk if they delay connection.*
- *Updates to MaPS' standards: the draft data standards, reporting standards and Code of Connection have been updated, following industry feedback and experience with the voluntary participants for testing.*
- *Industry feedback: the dedicated industry engagement team for Dashboards have consistently provided insight and feedback from providers and schemes, which we have reflected in clarifications and updated scenarios.*
- *Data expectations: we have set out clarifications on data for matching purposes and to return accurate and timely data to members.*
- *Ongoing developments: while testing is ongoing, and with further developments, we have highlighted where schemes need to be alert to these developments and to speak regularly to their providers to ensure they are up-to-date."*

The guidance now includes new text in section 5 (Information to provide to members) on schemes with multiple sections or benefit types. In many cases, however, it will not be easy or even possible for schemes to do what the Regulator expects as regards using a single illustration date. The text is:

"Schemes with multiple sections or benefit types

If you have multiple sections with different administrators, you need to work with each of them to understand and agree who will be providing value information, and how they will provide it. As a trustee, you need to ensure that the information being provided to the digital architecture, across different sections and administrators, is consistent and in line with legal requirements.

If your scheme has members with benefits across different sections or benefit types, for example, a DB element and an AVC value, you are legally required to present this to the member using the same illustration date.

In many situations, schemes may not yet be using the same illustration date across all their sections or benefit types. In some complex situations, schemes may take a considerable time and effort to align the illustration date. If your scheme is in this situation, and likely to be in breach when your scheme connects to dashboards, you should consider our guidance and assess whether to report a breach of law to us.

It is important that the value information presented to members is recent, clear, accurate and understandable, and the accrued and projected value for the same benefits have the same illustration date."

A separate 'hot topics' article from the Regulator (not published online) includes a section on the issues that can arise where a scheme has more than one administrator, bearing in mind that all sections (including AVC benefits) must be connected at the same time. It says:

*"**How do dashboards duties apply to schemes with multiple administrators?***

All parts of the scheme should be connected at the same time, even if administered by different providers. This includes schemes that have multiple sections or members with AVCs. This means that trustees must communicate with all those involved to understand how each part of their scheme will connect.

For example, an administrator may not know there are multiple sections within your scheme that are administered by a different provider. In this case it is important to be clear with those supporting you about the 'connect by' date you are working to.

Make sure you communicate early and regularly with those supporting you with your duties (including AVC providers). Trustees and scheme managers will need to decide how best to provide AVC information to the dashboards. Where some or all AVC data is held separately, you will need to work together with administrators and AVC providers to map the data and ensure that data requirements are met.

Where a scheme is having difficulties aligning all parts of the scheme to connect at the same time, you should keep a robust audit trail, keeping record of the scheme's communications with third parties and the decisions taken. Where you are unable to connect all sections at the same time, it is expected you report this breach to TPR, along with a plan to remediate the breach. Please refer to TPR's Breach of Law guidance for further details.

Pensions dashboards is a significant IT undertaking. It is important that schemes and those supporting them maintain effective communication. This will help providers get on board with preparations and enable challenges and issues to be raised so that relevant mitigations can be put in place."

Pensions Ombudsman update

A blog post by the Pensions Ombudsman rounds up recent activities designed to tackle their high, and increasing, workload.

New points of interest are as follows:

- An example of an expedited determination has been published. These are now being used in cases that are assessed by a Pensions Ombudsman adjudicator as having a clear outcome. They are not generally published but we will see summaries published of the types of case being resolved in this way.

  The example expedited determination involved a Local Government Pension Scheme member denied a pension because they were still in service. This was in line with the LGPS regulations, so the adjudicator rejected the complaint. The complainant did not accept that decision, so the case passed to the Ombudsman. His short determination confirms the adjudicator's decision. The adjudicator's only slightly longer decision letter is appended to the determination.

- More detail is given about the 'lead case' approach, which is being adopted where there are multiple complaints due to an industry-wide or scheme-specific issue.

  The Ombudsman outlines two ways in which this approach is taken forward:

  "1. The first is by taking on a single case while the others remain in the scheme's own IDRP. My determination then informs the trustee's own IDRP cases. This is the approach we are proposing to take with the current Boots Pension Scheme dispute.

  2. The second applies when the cases have already completed a scheme's formal complaints process and applications have been submitted to us. Where the material facts of a group of cases are very similar, in some circumstances my findings and directions in the lead case can be applied equally to all the linked cases. This was the approach we took in a recent transfer due diligence case concerning Rowanmoor Trustees Limited.

  However, it will not be possible to use the lead case approach in all circumstances – for example, where it is necessary to look at the specific and unique defences that each member might have in a scheme-wide series of overpayments."

The Boots Pension Scheme dispute reportedly concerns the ability to take a full pension from age 60 following a buy-in and whether there was a right or discretion that has been removed. The Rowanmoor determination concerned a failed Cape Verde hotel investment under a self-invested personal pension - it can be found here.

The Ombudsman asks schemes that have an issue affecting multiple members to let the Ombudsman know at an early stage.

Pension Scams Industry Group

The Pension Scams Industry Group has published the outcome of the consultation on its future.

Feedback was that the Group's code of good practice is widely used and highly valued. But Chair Margaret Snowdon expressed disappointment that industry is not willing to provide funding. (Currently the Group is made up entirely of volunteers.) The Group remains committed to publishing an updated version of its code. It says, however:

> *"PSIG will continue on a voluntary basis to produce a final version the Code of Good Practice once the amendments to the Statutory Transfer Regulations are published. Should the publication of the revised transfer regulations seem likely to be delayed beyond mid-2025, PSIG will take the opportunity to refresh our guidance reminding users of how to deal with transfers in the most efficient and risk-controlled way.*
>
> *Publication of another version of the Code or guidance will be conditional on the explicit support of DWP, TPR, FCA and TPO, so PSIG will work to secure that support. This will be essential to give the industry confidence that operating to good practice standards set out by PSIG in the absence of updated regulations will protect them in the event of a spurious complaint by a member or their representative in future."*

Divorce/dissolution – Law Commission report

The Law Commission has published a scoping report on the laws governing finances on divorce and the ending of a civil partnership.

The Commission has concluded that the law needs to be reformed and presents Government with four models that reform could take. These range from codifying the current case law to introducing default rules to determine the division of assets. It asks the Government whether it agrees that the law needs to be reformed, and to choose the model for reform that should be adopted.

The report looks at various questions, including whether sufficient account is taken of pensions when dividing assets.

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