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Essential pensions news

Briefing

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Summary

Essential pensions news covers the latest pensions developments each month

TPR launches new governance improvement initiative in pursuit of '21st century trusteeship'

Of general interest to all schemes is the launch of TPR's initiative in pursuit of what it calls "21st century trusteeship". In our update for August 2016, we reported that TPR had published a consultation paper under this banner, seeking views on how the standards of trusteeship in occupational schemes could be raised.

TPR has now published a summary of responses to that consultation and it confirms that a new initiative will be launched in 2017, including the following three steps to achieve TPR's aim of improving scheme governance

- Using more targeted education and tools to raise the standards of poor trustees
- Setting out clearly what TPR means in practice by the higher standards expected of professional trustees and chairs
- Using tougher enforcement measures against failing trustees.

It also proposes to consolidate the current governance regime into key overarching pieces of guidance to cover the principles or issues common to all pension schemes.

TPR will encourage the trustees of small DC schemes struggling to meet the appropriate governance standards to consider whether possible consolidation with another scheme or schemes may be beneficial. Clarification will also be provided on the role of professional trustees and the responsibilities and accountabilities that TPR expects them to meet, as part of the consultation on its penalty policy, early in 2017.

The main points in the response paper are summarised below.

The importance of good governance

The response confirms a consensus among respondents that good governance is essential for good member outcomes, and there was strong support for an improvement in governance standards. At the same time, respondents stated that TPR's focus should be on supporting trustees who need it through education and on increased use of its enforcement powers by targeting poorly-run schemes.

Suggestions for raising standards included

- A robust selection process, focused on the competence of the candidates and how they meet the needs of the scheme.
- All schemes to have an effective chair of trustees, perhaps extending to DB schemes the requirement to have a chair.
- Regular trustee board evaluations, involving the assessment of skills and knowledge gaps and taking appropriate action.
- Greater transparency and accountability, perhaps including the alignment of compliance and governance reporting requirements across DB and DC schemes, but without imposing an additional burden on schemes.

Minimum qualifications for chairs and lay trustees

Most respondents were against some form of mandatory qualification or entry requirement for lay trustees or chairs, although there was agreement that some form of entry requirement for professional trustees was desirable. The idea of a probation period was also rejected.

The idea of minimum qualifications was rejected as not adequately reflecting the broad range of skills, knowledge and attitude required by trustees. Similarly, a good chair's strengths were seen as more "behavioural" than requiring specific qualifications.

The respondents' views were that diversity on boards was desirable and there was a concern that setting qualification requirements could be a barrier to this.

Ongoing trustee training and knowledge requirements

The idea of mandatory continuous professional development (CPD) was rejected by respondents as placing too onerous a burden on employers and trustees. However, many thought it would be more appropriate to promote voluntary take-up of existing CPD frameworks or to encourage trustees to focus on having the appropriate framework to facilitate regular training.

Similarly, there was not support for making the Regulator's "trustee toolkit" mandatory.

Professional trustees – formal qualifications seen as inappropriate

In its consultation document TPR stated that its research confirmed a trend in the "professionalisation" of trustees, with the proportion of schemes without a professional trustee decreasing in the last five years due to increased governance and the "greater complexity associated with running pension schemes".

Most respondents were in favour of barriers to entry for professional trustees and thought they should uphold higher standards and be able to demonstrate their expertise. However, despite this, there was no clear agreement on what such standards would be. It was recognised that, for example, formal qualifications were not necessarily a measure of the experience or skills required to be a competent professional trustee.

There was some support for the definition of what constitutes a "professional trustee", in particular that defining the role solely by the fact that compensation was paid was not a useful measure as many lay trustees also receive payment.

Scheme advisers and managing conflicts of interests

Respondents noted that there were many challenges for trustees in engaging effectively with their third party advisers, including lack of strategic oversight, unclear delegation structure, and lack of resources. Some suggestions for improving relationships, particularly on administration and guidance, included

- Regular meetings between advisers and trustees
- Better management of conflicts of interest
- Using sub-committees to manage advisers
- Using independent procurement advisers and reviewing advisers
- Putting in place (and reviewing regularly) appropriate processes and protocols to identify, monitor and manage conflicts.

Dealing with schemes failing to provide good governance and schemes consolidation

Respondents broadly agreed that TPR's principal focus should be on supporting trustees and providing education, in addition to the increased use of TPR's powers to target poorly run schemes.

There was qualified support for consolidation of schemes where this would improve member outcomes, also some risks and practical problems were noted. Although consolidation of poorly-run small DC schemes into master trusts was a possible option (and was already taking place) the costs of such consolidation should not fall on scheme members.

For DB schemes, the many different benefit structures were cited as a clear obstacle to consolidation.

Enforcement and scheme consolidation

TPR will take action where trustees or managers are unable or unwilling to meet the expected governance standards, and it does not rule out using its enforcement powers more widely, by means of an updated compliance and enforcement policy, if necessary.

TPR emphasises that it will look to increase engagement with schemes, particularly those who are currently failing in their governance duties, to see what can be done to address this failure. It will ask schemes, particularly small DC schemes falling short of the acceptable standard, to consider if they can improve. If not, and they find it difficult to achieve value for members, they will be asked to consider whether alternatives such as consolidating their scheme into another scheme may be more beneficial. TPR notes that this is "a complex issue" and that it will work with the DWP and pensions industry to identify how barriers to consolidation can be overcome, including use of shared service platforms, consolidated trustee boards and potentially full scheme consolidation within, for example, authorised master trusts.

TPR's next steps

TPR's approach is founded on the message that "good governance matters". It states that past research has shown the "poor-good" governance gap to be worth at least 1-2 per cent of additional return per annum for members. TPR's research shows that governance is currently "patchy" and not all schemes are meeting the expected standards, and TPR states that members should not suffer poor outcomes because they happen to be in a scheme that is poorly run; all occupational scheme members have a right to expect that their savings are being looked after.

TPR sets out three steps it will take to drive up standards of governance and administration, and to improve the competence of those managing occupational pension schemes and public service schemes

- Using more targeted education and tools to raise the standards of poor trustees.
- Setting out clearly what it means in practice by the higher standards it already expects of professional trustees and the specific qualities and skills it expects chairs to bring to trustee boards.
- Using tougher enforcement against trustees who fail to meet the required standards.

Schemes will be expected to meet the standards required and, for those currently not doing so, to meet them quickly.

TPR is clear that it does not intend to impose new standards of governance and administration but that it wants to see compliance with those standards that are currently in place. As such it intends to focus on the "building blocks" of governance, namely

- Board competence (with greater focus on skills), including recruitment and succession planning, skills and knowledge assessments, performance reviews, action plans and ongoing training and development.
- Clear roles, responsibilities and accountabilities for key scheme participants.
- Effective governance structures and decision-making processes.
- Effective business planning.

TPR intends to publish clarification on the definition of a "professional trustee" as part of a consultation on its penalty policy "in the first part of [2017]". In addition, as part of its guidance on investment policy, also due in 2017, it will focus on areas that are key to improving member outcomes, such as investment governance, conflicts of interest, administration and record-keeping.

Practical online tools

As part of its drive to improve governance, it will also signpost existing materials that may assist trustees as well as produce further "practical tools", such as templates, checklists, best practice examples and case studies. This will be coupled with changes next year to streamline and consolidate the existing guidance into "key overarching pieces of guidance to cover the principles or issues common to all pension schemes". It will also be improving the functionality of its website. The education campaign will start in "Spring [2017]".

The results of this campaign to improve scheme governance will then be reviewed and TPR will consider whether a "fit and proper" regime, including barriers to entry as a trustee, should be introduced. This mirrors the requirements being introduced for the new master trust authorisation regime and the new IORP II requirements.

Comment

TPR's response centres on the premise that "good governance matters". However, the response reflects that put such a regime in place is no easy matter. While there was a broad acceptance from the respondents that improvement was necessary, there was no unified agreement on how this could be achieved.

However, TPR seems quite determined to address poor governance, with priorities including improving trustee education and support, harmonising guidance, improving its website, greater use of engagement and, if needed, enforcement.

Given that there is currently extensive TPR guidance on scheme governance, any addition to online materials and toolkits may be viewed with trepidation, as it will mean more work for both schemes and their advisers. However, clarification on the role of the professional trustee, including the expected standards, and the responsibilities and accountabilities which TPR expects them to meet, will be welcomed as a way of measuring the value they bring to boards.

In addition, the issue of scheme consolidation is of interest, and this is a key aspect of the House of Commons Select Committee's report on DB pension schemes (see below). Historically, TPR has found that smaller schemes are much less likely to have good governance than are larger ones, and this may form a part of future policy on protecting good member outcomes.

View TPR's response paper.

Forthcoming Green Paper on DB Schemes – Parliamentary Committee report recommends 'nuclear deterrent' fines to ensure sponsors meet funding obligations

Of interest to all DB schemes is the recently issued report by the House of Commons Work and Pensions Committee (the Committee), which proposes punitive fines of "nuclear deterrent" levels to ensure scheme sponsors "honour their promises" on funding DB occupational pension schemes. This is one of many suggested measures the Committee wishes to see included in the Government's forthcoming Green Paper on DB schemes, expected **early in 2017**.

The report is wide-ranging and includes suggestions on consolidation of smaller DB schemes, the use of conditional and absolute rule changes to switch scheme indexation rules from RPI to CPI, and factoring a scheme's risk profile into its PPF levy bill. Many of the changes have been suggested in the past, but have not been implemented.

It remains to be seen how many of these suggestions will be taken up by the Government. In addition to the work involved in making any necessary amendments to primary and secondary legislation, there may be unintended adverse impacts on a DB scheme's employer covenant. For example, lenders may be less inclined to offer credit to DB scheme employers where there is a risk of a punitive fine, and they may also be seen as less attractive by investors.

Background

The Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the DWP and its associated public bodies. In 2016, the Committee contributed to a report examining the failure of BHS with a particular focus on the management of its DB pension scheme and the involvement of Sir Philip Green. The report was highly critical of the involvement of Sir Philip, and it highlighted perceived governance shortcomings in the transaction as well as being critical of the "reactive" and "slow-moving" Pensions Regulator.

As a result, the Committee undertook a more detailed examination of what it referred to as "wider flaws in DB schemes and their regulation". It heard evidence from many representatives of the pensions industry, including TPR and the PPF. On December 21, 2016 it published a report of its findings and recommendations, including suggestions for matters to be included in the Government's forthcoming Green Paper on DB pension schemes. These are outlined below

- **"Nuclear deterrent" anti-avoidance power for TPR** – this would enable TPR to "ensure scheme sponsors honour their promises", with the Committee recommending that the Government should consult on introducing a punitive fine on employers that could triple the amount due to the scheme under a contribution notice or a financial support direction. The aim would be to encourage employers to seek clearance where they might otherwise be subject to anti-avoidance powers and the report comments that such a sanction may have proved a sufficient incentive for Sir Philip Green to "sort" the BHS pension scheme's deficit.

- **Advance clearance from TPR on certain transactions –** there should be consultation on proposals to require advance clearance from TPR for certain corporate transactions that could be materially detrimental to the funding position of a DB scheme. It is acknowledged that the circumstances in which clearance could be compulsory would have to be narrow to prevent a disproportionate effect on normal economic activity.

- **Power for trustees to demand information from employers** – the report states that the key to a good relationship is open and frank communication between trustees and sponsors, including the full and timely supply of information. It suggests that trustees should be given the powers "necessary to represent the interests of scheme members", including the ability to demand "timely" information from an employer, for example where a corporate restructuring is ongoing. The access to such information could enable trustees to develop solutions for the future of the pension scheme which might see it achieve better member benefits than if it were allowed to go into the PPF. An extension to the current disclosure of information requirements would enable trustees acquire the relevant information while the corporate events are ongoing.

- **PPF levy reduction for good governance** – the Committee recognises that good governance is key to a well-run scheme, and that it can boost a scheme's performance. The Committee suggests that the PPF should consider allowing a reduction in the risk-based levy as part of its review of the levy formula over the next triennium, that is, the 2018-21 levy years. It reasons that the PPF's overall levy collected would not be reduced, since allowing a small discount for well-governed schemes would mean that those with poor governance would need to pay a higher levy. This could incentivise schemes to improve governance.The report states that a risk-based levy is only fair if it accurately reflects risk, and recommends that as part of the PPF's forthcoming review of its levy rules it should examine the effect of the levy framework on particular types of employer, including mutual societies and SMEs.

- **Consolidation of schemes** – the Committee states that the DB scheme landscape is "ripe for consolidation" as many small schemes and their sponsors suffer due to economies of scale. Such schemes have less bargaining power to negotiate fees and the fixed costs of administration and management are met between a small group of members. Research from the TPR confirmed that in 2014 cost per member of running DB schemes with fewer than 100 members was over £1,000, compared to £200 for schemes with more than 5,000 members. Consolidation offers small schemes an opportunity to address the disadvantage of such economies.

- **Increased powers for TPR** – the report comments that, had TPR been more proactive, it might have able to stop the problems that arose in the BHS pension scheme before they escalated. Evidence given to the Committee confirmed that TPR currently operates a system of triggers to help it decide how to allocate its resources, but that it also had increased its engagement with schemes, particularly at the pre-valuation stage. It had also initiated a new scheme called "TPR Future", a review that will cover all aspects of its regulatory remit. The review will look at its operational practices, how TPR uses its powers and other regulatory tools and consider whether its resources are adequate. The Committee will monitor its progress.

- **Changes to the valuation process –** on the issue of the DB valuation process, the Committee recommends: TPR should adopt a risk-based approach to scheme valuations so that "riskier" schemes should provide them more frequently
  - The statutory timescale for the submission of valuations and recovery plans should be reduced to nine months (from fifteen). Where TPR has concerns about the sustainability of a scheme or the progress of recovery plan, it may intervene sooner
  - Trustees should keep TPR updated on the progress of funding discussions and be offered support where necessary
  - TPR should be tougher on deficit recovery plans and plans longer than ten years should be exceptional. Particular attention should also be paid to any plan which concentrates employer contributions in "the distant future"
- **Managing underfunded scheme**s – the Committee considered several options for those running and sponsoring underfunded pension schemes.
  - The report states that there needs to be more flexibility in managing outcomes for underfunded schemes, and the tools available for trustees of stressed schemes for working with sponsors and TPR were "very blunt". In particular, the Committee commented that the rules governing regulated apportionment arrangements (RAAs) are too inflexible and the process includes potentially harmful delays, stating "it is an emergency measure, but it does not operate at an emergency pace". It suggests that in its green paper the government should consult on.
  - Reducing the 28-day period between TPR issuing a warning notice of an impending RAA and issuing a final notice.
  - Relaxing the requirement for insolvency to be inevitable within 12 months for an RAA to be approved.
  - Amending TPR's guidance to encourage its involvement at an earlier stage in the formulation of RAA proposals in order to facilitate a more iterative approach.

The Committee also recommended that the government should broaden TPR's power to order the wind-up of a pension scheme when it is satisfied that this would be in the best interests of the PPF and its levy payers, and that no alternative option is realistically available to deliver a better outcome for members.

- **Changes to members' benefits** – the Committee heard evidence that trustees should have more flexibility to restructure members' pension benefits, where these have become unaffordable, and to be able do this before the employer becomes insolvent. One area that has historically been considered as an avenue for altering members' accrued pension rights was indexation. Evidence had been heard that switching to CPI indexation would improve the affordability of pension schemes for sponsors and that the UK's combined DB deficit could be reduced by £175 billion if all schemes could switch from RPI to CPI for pension increases and revaluation. The Committee concluded that any change to the terms of the pension promise should not be taken lightly. In circumstances where an adjustment to the scheme rules would make the scheme substantially more sustainable, a reduction in benefits could well be in the interests of members. Trustees should be empowered to take decisions in the long term interests of scheme members.

The Committee recommended that the government should consult on permitting trustees to propose changes to scheme indexation rules, where this in the interests of members.

Comment

The BHS pension scheme legacy is the foundation for the changes proposed by the Committee and a section of the report is dedicated to how these measures would have protected that scheme.

Many of the suggestions have been considered in the past in one form or another. For example, most commentary on the recent RPI/CPI cases mentions that some form of legislation would be needed to break "hard-wired" indexation rules. The risk-factoring for the PPF levy was also something that was considered, and dismissed, some time ago.

However, the consideration of DB scheme consolidation is of interest, either in total or at a funding level, in order to better protect members in smaller schemes. This comes at a time when TPR is also looking at such a measure for DC schemes as part of its consultation on "21st century trusteeship" (see above).

The proposed introduction of a "nuclear deterrent" punitive fine power for the TPR may seem at first glance to be a welcome addition to its enforcement tools. However, in a broader context it is may have an indirectly adverse effect on DB scheme sponsors and corporate restructurings. Any employer with an underfunded DB scheme would have to measure how likely the threat of any such sanction is before it undertook such a transaction. Even if a threat of a fine is not made by TPR, how a lender would factor in such a risk when lending to a DB sponsor is uncertain and any purchaser of an underfunded DB sponsor, or group company, may take such a risk as a disincentive to proceed with a sale.

We will be producing a client briefing on the detail of the Green Paper once it is published.

View the Committee's report.

Auto-enrolment: DWP confirms earnings trigger and qualifying earnings for 2017/18 and announces review of automatic enrolment

Of general interest is the Department for Work and Pensions' (DWP) upcoming review of automatic enrolment during 2017, which will focus on ensuring that auto-enrolment continues to meet the needs of individual savers.

The review will be led by the DWP and supported by an external advisory group made up of experts within the pensions industry and those representing member and employer interests. The Government will announce membership of the advisory group and the terms of reference in early 2017. The report setting out policy recommendations is expected to be published at the end of 2017. The review will cover the following areas

- The existing auto-enrolment policy and whether any policies disproportionately affect different categories of employers or could be further simplified.
- The coverage of auto-enrolment and the needs of those not currently benefitting, such as employees with multiple jobs who do not meet the criteria for auto-enrolment in any single job. The review will also examine how self-employed individuals can be helped to save for retirement.
- The auto-enrolment thresholds (the earnings trigger and qualifying earnings band) and the age criteria for automatic enrolment.

- The requirements relating to the statutory review of the alternative quality requirements for DB schemes and the certification requirements for money purchase schemes.

- The level of the charge cap to assess whether it should be changed and whether it should cover some or all transaction costs.

Evidence will also be gathered about the appropriate level of future contributions into workplace pensions, although the Government does not expect to make policy decisions on this area during 2017. To this end, the DWP has confirmed that for the 2017/18 tax year the earnings trigger will remain fixed at £10,000, and the lower and upper ends of the qualifying earnings band will continue to be set in line with the National Insurance contributions lower and upper earnings limits (£5,876 and £45,000 respectively).

PPF publishes provisional 2017/18 levy determination and related FAQs

Following the consultation in September 2016, on 15 December 2016, the Pension Protection Fund (PPF) published its provisional levy determination for 2017/18 which is of interest to DB schemes. The levy rules remain largely unchanged for the third year of the triennium. The levy estimate of £615 million has been confirmed, and this is also unchanged from 2016/17. The changes include a mechanism for stakeholders to notify Experian where the move to new accounting standard FRS102 would otherwise cause an artificial movement in their rating.

"No substantive sponsor" consultation

In addition, the PPF may consult further on its approach to charging a levy to eligible schemes which cease to have a substantive sponsoring employer after a restructuring. David Taylor, Executive Director and General Counsel at the PPF, commented:

"We will put in place a special rule recognising the risk profile of schemes which cease to have a substantive sponsoring employer, should that be necessary. For that reason alone, the rules published today are not absolutely final, but our intention is only to change them in relation to this one area, if at all. Accordingly we encourage schemes to act on the levy rules now, for example putting in place and certifying risk reduction measures. This can both improve security for members and help to reduce bills by minimising the risk to the PPF – something we are keen to encourage."

The final 2017/18 levy determination will be published by **March 31, 2017** at the latest.

More substantial changes will be considered for the next triennium, starting in 2018/19, on which the PPF plans to consult in spring 2017.

A full list of the relevant deadlines for the 2017/18 levy year has been published alongside the levy Determination, and these are set out in the table below:

Monthly Experian Scores	Between April 30, 2016 – March 31, 2017
Deadline for submission of data to Experian to impact Monthly Experian Scores	One calendar month prior to the Score Measurement Date (though accounts for new guarantors can be provided up to midnight on March 31, 2017)
Submit scheme returns on Exchange	By midnight, March 31, 2017
Reference period over which funding is smoothed	5-year period to March 31, 2017
Contingent Asset Certificates to be submitted on Exchange and with hard copy documents as necessary to PPF	By midnight, March 31, 2017

ABC Certificate to be sent to PPF	By midnight, March 31, 2017
Mortgage Exclusion ('Officers') Certificates and supporting evidence to be sent to Experian	By midnight on March 31, 2017
Accounting change certificates (with supporting evidence)	By midnight on March 31, 2017
Deficit-Reduction Contributions Certificates to be submitted on Exchange	By 5pm, April 28, 2017
Certification of full block transfers to be completed on Exchange or sent to PPF (in limited circumstances)	By 5pm, June 30, 2017
Invoicing starts	Autumn 2017

View the provisional Determination and related documents.

On **December 22, 2016**, the PPF updated its levy-related online FAQs and the new material covers the following topics

- The circumstances in which Experian will re-calculate insolvency scores if revised accounts are filed by levy-payers in light of the switch to the FRS 102 accounting standard. Broadly speaking, the position varies depending on whether the revised filing is made before or after the end of February 2017.
- How Experian converts non-sterling accounts to sterling for the purpose of calculating insolvency scores.
- Whether Experian will accept accounts not published in English. The answer is that it will, so long as a translation is provided which is certified as accurate by the auditor.
- How an insolvency score adjustment can be requested if a levy-payer is affected by the switch to FRS 102. The PPF says Experian will make available a standard-form accounting standard change certificate for use by an employer, guarantor or ultimate parent company, together with guidance and a "what if" online tool. However, levy-payers are urged to test whether an adjustment will affect their mean score and levy band, as the PPF's analysis suggests that in most cases it will not.

View the new FAQs.

DWP consults on changes to requirements for DC bulk transfers without consent

Of interest to all schemes providing DC benefits is the DWP's call for evidence "Bulk transfers of defined contribution pensions without member consent", which was published on December 20, 2016, with the consultation period running until **February 21, 2017**.

The DWP is seeking views on possible changes to the restrictions on making bulk transfers between DC schemes without the members' consent. The DB transfer processes is not included in the call for evidence, nor are DC schemes that offer "valuable guarantees" during the accumulation phase either by an investment guarantee or a guaranteed annuity rate.

Currently, a DC to DC transfer requires

- An actuarial certificate that the rights the members will have in the receiving scheme are “broadly no less favourable”.

- The satisfaction of a “relationship condition” test applied to the employers.

The DWP asks whether both of these tests can be changed to make transfers easier, including allowing certification based on a new test looking more broadly at the benefits in the new scheme. In addition, it asks whether a party other than an actuary could be called upon to provide certification.

The DWP’s engagement with stakeholders has confirmed that the relationship condition is less problematic to solve than the actuarial certification requirement. However, two specific issues were raised

- Small pots – the condition could prevent efficient consolidation of small pots in occupational pension schemes, for example, by preventing single employer schemes from transferring out former employees of the sponsoring employer to a separate scheme. This barrier could arise because, until the first member was transferred from a single employer scheme without consent, the transferring scheme and the receiving scheme would not relate to persons who are or have been in employment with the same employer.

- Orphaned schemes – where there is no employer, due to dissolution, and no trustee remains, then unless there had been a prior enrolment or transfer the relationship condition for a bulk transfer without consent cannot be met. The DWP is considering an exemption from this condition for affected schemes.

The DWP also asks for views on whether the current restrictions on without consent transfers between stakeholder schemes could be changed to allow for transfers from a stakeholder to either a personal or group personal pension scheme. This issue relates to pension rights on TUPE transfers as, currently, a transferee employer can satisfy its obligations under the TUPE Regulations by providing transferring employees with access to a stakeholder pension, but not to a group personal pension scheme. There have been suggestions that this should be changed and, although it would involve a change to primary legislation (section 258, Pensions Act 2004), the DWP has asked for comments on this issue.

The consultation paper outlines a proposed new system that moves away from the current process that applies to both DB and DC schemes. The DWP states that the proposed changes would have the effect of reducing unnecessary burdens on schemes, while still protecting members’ best interests. It would also allow stakeholder schemes to transfer members to more modern low cost arrangements.

View the consultation paper.

Comment

A proposal to change the current DC to DC transfer regime is likely to be welcomed by practitioners. The current process has never been an ideal fit for DC schemes, being based on the DB transfer model.

In a wider context, a change in the legal requirements that apply to making bulk transfers without consent would remove one of the obstacles to the possible consolidation of small DC schemes to improve scheme governance, as advocated by the Pensions Regulator (TPR) in its initiative on “21st century trusteeship”.

HM Treasury and DWP consult on single public financial guidance body

Of general interest is the publication on December 19, 2016, of the Government's consultation paper seeking views on its plans to create a single public financial guidance body. The consultation closes on **February 13, 2017**.

The paper summarises responses to the Government's March 2016 consultation on the public financial guidance review and sets out a model for a new single financial guidance body (SFGB) that will commission advice for those in problem debt, co-ordinate efforts to improve financial capability and provide information and guidance on matters relating to pensions, financial scams, and wider money matters.

The paper confirms that the Government has accepted respondents' views that a single body would be better able to respond to the different financial guidance needs of consumers, making it easier for them to access the help they need to make effective financial decisions. The new SFGB will bring together pensions guidance, money guidance and debt advice in one place, delivering and commissioning specific services to ensure that as many consumers as possible receive high quality impartial financial guidance.

The SFGB will also have a strategic function, focusing on ensuring that the market understands and meets consumer demand, delivers value for money, and scales up financial capability projects that have been proven to work. With the exception of debt advice, the SFGB will not fund regulated financial advice, but will signpost consumers to other providers to ensure that consumers' guidance and advice needs are met.

The creation of the SFGB is subject to the Cabinet Office approval process and it is anticipated that it will be launched no earlier than **Autumn 2018**. In the meantime, the Money Advice Service, the Pensions Advisory Service and Pension Wise will continue to deliver their statutory functions.

View the consultation paper.

TPAS launches online pension scam guidance tool

Of interest to all scheme members is the Pensions Advisory Service's (TPAS's) newly-launched online guidance tool to help customers identify potential pension scams.

The self-service tool provides information and guidance to those who believe they have been scammed or approached by a scammer. TPAS Chief Executive Michelle Cracknell said: "We are seeing positive signs that consumers are now more aware of pension scams, which is great news, but we must continue to offer consumers opportunities to learn about scams; how they work, the consequences and understand how they can best protect their pension savings. The tool we have launched today will go a way to helping those who may initially be too embarrassed or worried to ask for help."

View the pension scam guidance tool.

HMRC publishes Countdown Bulletin no. 23

Of interest to all schemes formerly contracted-out on a final salary basis is the latest edition of HMRC's Countdown Bulletin, published on January 9, 2017.

This issue includes

- Details of the appointment of a new customer relationship manager, Lynne Fletcher, to support the work of the scheme reconciliation service (SRS).
- A reminder to trustees that there will be no facility to raise queries through SRS after October 2018, and that they have until December 2018 to complete the reconciliation. Failure to reconcile scheme data with HMRC records could result in schemes being liable for GMPs of which they are not aware.
- Questions and answers in relation to GMPs which were raised during recent pension forums.
- Details of the service providing SRS query automation.

View the Countdown Bulletin.

TPR fines master trusts for failing to complete chair's statement

For the first time in relation to this statutory requirement, TPR has fined the trustees of four master trust schemes for failing to prepare a chair's statement.

A section 89 report published in January 2017 explaining the regulatory intervention confirms TPR's tougher approach towards professional trustees in relation to governance. The maximum fine of £2,000 was imposed on the trustee of the Nurture Master Trust, a professional trustee. Fines totalling £3,020.70 were also imposed on the trustee of three Save & Prosper Funds for failing to comply with this requirement.

Occupational pension schemes providing money purchase benefits are required to produce an annual chair's statement within seven months of the end of each scheme year. Failure to comply with this requirement will result in a mandatory penalty of between £500 and £2,000.

View the section 89 report.

Progress of the Pension Schemes Bill 2016/17: report stage in the House of Lord

On **December 19, 2016**, the Pension Schemes Bill reached its report stage in the House of Lords. Several Government amendments were agreed, including provisions ensuring that the affirmative parliamentary procedure will be used the first time certain regulation-making powers in the Bill are exercised. The Government had promised during the Bill's committee stage to reconsider the degree of scrutiny afforded to secondary legislation following criticism of the wide use of the negative procedure. Provisions that will be subject to affirmative resolution as a result of these amendments include those concerning the fit and proper person test, financial sustainability, systems and processes, continuity strategy and significant events that are notifiable to TPR.

In terms of the timescale for the regulations, it is anticipated that initial consultations will begin in **Autumn 2017**, followed by a formal consultation, with the regulations likely to be brought into effect in October 2018.

Despite Government opposition that such a measure was unnecessary and potentially costly, an amendment was agreed requiring the Secretary of State for Work and Pensions to establish a "funder of last resort" for cases where a master trust is unable to meet its wind-up costs, offering protection to master trust members against the risks of regulatory failure. The Government has not yet responded to the defeat, but it is possible it will seek to reverse the amendment in the Commons.

The Bill's third reading in the Lords was scheduled for January 16, 2017.

Briefing Paper published on Master Trust regulation

In addition, on January 6, 2017, the House of Commons Library published a briefing paper on the regulation of Master Trusts. The paper provides a useful summary of the background to the Bill and the areas of risk which the Government has identified in connection with the master trust structure. The paper also summarises the Parliamentary debates on the Bill and provides an overview of the amendments which have been made at the various stages as a result.

View the briefing paper.

IORP II: Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision published in Official Journal

Directive (EU) 2016/2341 of the European Parliament and of the Council of December 14 2016 on the activities and supervision of institutions for occupational retirement provision (the IORP II Directive) was published in the Official Journal on **December 23, 2016**.

The Council formally adopted the European Commission proposal for a recast of Directive 2003/41/EC of the EP and of the Council on the activities and supervision of institutions for occupational retirement provision (the IORP Directive) on December 8, 2016.

The IORP II Directive sets out rules for the taking-up and pursuit of activities carried out by IORPs. It applies to all IORPs. Where, in accordance with national law, IORPs do not have legal personality, member states will apply the IORP II Directive either to those IORPs or, subject to certain exceptions in Article 2, to those authorised entities responsible for operating them and acting on their behalf.

The IORP II Directive will come into force on the 20th day following that of its publication in the Official Journal.Member States will have then until **January 13, 2019** to transpose it into their national laws and the original IORP Directive will be repealed from that date.

Comment

The status of all EU law will depend on the Brexit negotiations over the period following the date when notification is given by the Government under Article 50of the Treaty on European Union triggering the UK's exit from the EU.

Judgment is currently awaited from the Supreme Court following the hearing of the appeal against the High Court decision in R (*Gina Miller and Deir Tozetti Dos Santos*) v *The Secretary of State for Exiting the European Union 2016*. The High Court held that the Government did not have power under the Royal prerogative to give notification under Article 50 and thus trigger withdrawal from the EU.

The appeal was heard between 5 and December 8, 2016. Judgment is anticipated by the end of January.

The outcome of the case may affect the timetable laid out by the Prime Minister in Autumn 2016, under which she indicated the Government's intention to give notification under Article 50 by the end of March 2017. If Government triggers the Article 50 exit process as intended, there are plans to include a Great Repeal Bill in the next Queen's Speech in April or May 2017, which would be introduced into Parliament in the next session and take effect at the end of the two-year Article 50 process in the first quarter of 2019. The Great Repeal Bill will repeal the European Communities Act 1972.

EMIR: European Commission adopts Delegated Regulation further extending temporary clearing exception for pension schemes under EMIR

The European Market Infrastructure Regulation (EMIR) applies to pension schemes which are subject to the IORP Directive in respect of any over-the-counter (OTC) derivatives in their investment portfolios. Where EMIR applies, trustees may need to clear relevant trades under the new centralised clearing structures.

On December 20, 2016, the European Commission (EC) adopted a Delegated Regulation amending EMIR as regards the extension of the transitional periods related to pension scheme arrangements (PSAs).

In a related press release, the EC explains that it has decided to extend the transitional relief for PSAs from central clearing for their OTC derivative transactions until **August 16, 2018**. It explains that PSAs (which encompass all categories of pension funds) are active participants in the OTC derivatives markets in many Member States. Without the extension, PSAs would have to source cash for central clearing. As PSAs do not hold significant amounts of cash or highly liquid assets, imposing central clearing requirements would require very far-reaching and costly charges to their business model. This could ultimately affect pensioners' income.

The EC ordered a study on whether necessary efforts have been made by central counterparties (CCPs) to develop appropriate technical solutions for the transfer of non-cash collateral by PSAs. Having analysed the results of the study, the EC has concluded that CCPs need the additional time to find solutions for pension funds.

The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulation. If neither of them objects, it will enter into force the day after it is published in the Official Journal of the EU.

Mr E (PO-12248): pensions tax – member entitled to late payment of pension commencement lump sum, despite possible unauthorised payment charge

The Pensions Ombudsman (TPO) has given his determination in a complaint by Mr E against Cartwright Benefit Consultants Ltd and the Wildfowl & Wetlands Trust (the Scheme).

Summary

A scheme that mistakenly underpaid a member's benefits on his retirement in 2012 should have given him the option of receiving the correct pension commencement lump sum (PCLS) after the mistake was discovered in 2014, although this would have been an unauthorised payment as it was over a year since his retirement.

TPO upheld a complaint by a member of a scheme which closed to future accrual in 2005, when members' pensionable salaries were also thought to have been frozen. The member retired in 2012, taking a PCLS. When the trustees realised in 2014 that the final pensionable salary link had not been broken in 2005, they increased the members' annual pension. However, they refused to offer him the option of an increased PCLS on the basis it would result in an unauthorised payment charge and was therefore against pensions legislation, general pensions practice and the scheme rules.

TPO held that the member had not yet been put in the position he would have enjoyed if the mistake had not occurred and he must be offered the option of taking the extra PCLS, regardless of costs and tax charges. Noting the tax penalty exemption provisions in section 241 of the Finance Act 2004, he said it was "entirely possible" HMRC would make a concession if the original mistake were explained to them, but that in any event it was for the scheme to pay any resulting tax liability and associated costs. He also held that the £500 already paid to the member was reasonable compensation for any distress and inconvenience.

Legal background

A registered pension scheme may pay a member a PCLS in certain circumstances. Among the statutory requirements that apply in order for a PCLS to qualify as an authorised payment, the lump sum must be paid within the period beginning six months before and ending one year after the member becomes entitled to it.

Facts of the case

Mr E was a member of the Scheme which, in 2005, closed to future accrual under a deed of amendment which the trustees understood had frozen members' pensionable salaries as at October 31, 2005.

In 2011, the trustees and the Scheme's new administrator began a review of the Scheme's benefit structure and sought counsel's opinion on several matters. During the review period, the Scheme granted Mr E early retirement from December 2012 and he was given the option of taking either a yearly pension of £6,713.76 or a PCLS of £35,491.55 plus a reduced yearly pension of £5,323.68; he opted for the latter.

However, in 2014 the review concluded that the final pensionable salary link to a member's final salary had not been broken by the 2005 deed of amendment and must be maintained until the member actually retired. The administrator therefore informed Mr E that his benefits had been understated when he retired in 2012. It said it could not increase his PCLS because this would be an unauthorised payment as more than a year had passed since his retirement. Instead, it included the extra cash in calculating his revised yearly pension, which was increased to £9,393.30 from May 2015, with arrears backdated to his retirement. Mr E's subsequent complaint under the Scheme's internal dispute resolution procedure (IDRP) was unsuccessful, although the trustees made a goodwill payment of £500 for the inconvenience he had suffered.

Mr E took his complaint to TPO, submitting that the administrator and the trustees (together the Respondents) should have recalculated his PCLS and allowed him to take the extra cash sum. The Respondents argued that making an unauthorised payment went against pensions legislation and would give rise to additional tax charges on the Scheme, which would be inequitable to other Scheme members and the ongoing funding position of the Scheme. HMRC had confirmed the payment of extra cash would be an unauthorised payment whether the Scheme treated it as a new entitlement or a continuation of an existing entitlement. The Respondents also submitted that the payment would be against general pensions practice and the Scheme rules, which specifically stated they did not confer a right to an unauthorised payment on any party

Determination

TPO upheld the member's complaint, noting that he agreed with the Ombudsman adjudicator's initial opinion, which the respondents did not accept.

The trustees' understating of Mr E's benefits in 2012, caused by their initial failure to interpret the rules correctly, amounted to maladministration. This maladministration caused Mr E financial loss because he received lower benefits. Although the trustees later recognised the mistake and attempted to put matters right in May 2015, they provided only a partial remedy and did not put Mr E in the position he would have enjoyed if the mistake had not occurred. TPO agreed with his adjudicator's finding that it was "not sufficient to cite factors of costs and tax charges as reasons for not paying the additional PCLS". Instead, Mr E must be given the opportunity to fully reconsider his early retirement options as if they had been correctly calculated at the time of his retirement in December 2012.

The Respondents argued that payment of extra PCLS outside the recognised time limits would go against pensions legislation, general pensions practice and the scheme rules. However, TPO highlighted section 241 of the Finance Act 2004 (FA 2004), which provides that:

"(2) An unauthorised payment is exempt from being scheme chargeable if –

...

(c) it is made to comply with an order of a court or of a person or body with power to order the making of the payment;

(d) it is made on the ground that a court or any such person or body is likely to order the making of the payment (or would be were it asked to do so)."

TPO therefore said that it was "entirely possible" that if the circumstances were explained to HMRC it would make a concession recognising that a "genuine mistake" occurred in 2012. In any event, it was unreasonable of the trustees to argue that Mr E should pay any personal tax liabilities arising from the payment of extra PCLS, given the mistake was directly caused by their "fundamental misunderstanding" of the salary link in the scheme rules, dating back to 2005.

TPO directed the administrator, on behalf of the trustees, to calculate the additional PCLS that would have been payable to Mr E in December 2012, with interest, and to offer Mr E the option of taking this sum as cash. The trustees must be liable for any related costs and charges, including any unauthorised payment charges, any scheme sanction charges and the cost of carrying out the calculation. If he took the extra PCLS, the administrator must also reach a mutually agreeable arrangement with Mr E for him to repay any overpayments received on his yearly pension since May 2015. TPO also noted that the £500 already awarded to Mr E by the trustees was reasonable compensation for any distress and inconvenience he had suffered.

Comment

This decision shows that bringing a complaint in reliance on section 241 of the FA 2004 can deliver a useful outcome for both the member complainant and the administrator. In the past, administrators have been reluctant to rely in advance on the section 241 provision, given the general uncertainty about whether it will be possible to rely on the exemption once an unauthorised payment has actually been made. However, TPO's views are likely to carry some weight with HMRC and may lead to no unauthorised payments charges being levied in this and similar cases.

View the Determination.

Mr E (PO-13588): trustees had no duty to warn member of change in transfer value calculation basis after end of guarantee period

Summary

The Deputy Pensions Ombudsman (DPO) found that the trustees of a DB pension scheme had no duty to inform a member who received a cash equivalent transfer value (CETV) statement guaranteed for three months that the basis for calculating CETVs had significantly changed during the guarantee period.

The DPO dismissed a complaint by a member who failed to complete his application to transfer within the three-month guarantee window and was then offered a much lower transfer value, as the trustees had meanwhile changed the calculation basis in line with actuarial advice. The member complained that he should receive the original amount and that the trustees had suddenly changed the calculation basis without informing him to suit their own needs at the time the new pension freedoms were introduced.

TPO held that trustees' decision was in line with their legal obligations and duties when reviewing the appropriateness of the assumptions and actuarial factors used in the calculation of transfer values. This could include the possibility of an increase in transfer value requests due to changes in legislation where the existing basis would result in transfer values that the trustees considered too high and detrimental to members remaining in the scheme.

Facts

Mr E was a member of the Northern Foods Pension Scheme (the Scheme). In March 2015, he requested a CETV statement from the scheme administrator, Capita. This was issued on March 26, 2015 with a transfer value of £73,765.06 and stated that the amount was "guaranteed for three months from the date of calculation". A copy of the CETV sent by Capita to Mr E's independent financial adviser in April 2015 also stated it was guaranteed until June 25, 2015.

On June 19, 2015, Capita sent a reminder to Mr E that the CETV was about to expire and said it needed to receive all the completed forms by June 25, 2015 for the transfer to proceed. But Mr E did not sign the forms until July 2, 2015 and they were returned to Capita by the receiving scheme a week later.

As Mr E had missed the guarantee deadline, Capita issued a new CETV statement. This was for the much lower amount of £57,078.84 because it was recalculated using a new basis introduced on April 1, 2015 in line with actuarial advice (that is, after the first CETV was issued). Mr E decided to proceed with the transfer on the revised basis. But after its completion he complained to Capita and to the Scheme's trustees that the CETV should have been for the original £73,765.06. They rejected his complaint, asserting among other things that trustees do not have a general disclosure requirement to notify all members about a change in the CETV calculation basis.

Mr E complained to the Ombudsman's office that his CETV should not have been reduced under the new calculation basis simply because he missed the June 25, 2015 deadline. He also submitted that the trustees should not be allowed to make sudden and significant reductions to CETV to suit their own needs. He questioned how this was possible given the set methodology that applied to all schemes and queried the timing of the move, which coincided with the introduction of the new pension freedoms.

Determination

The DPO dismissed the complaint, noting that she agreed with the Ombudsman adjudicator's initial opinion, which Mr E did not accept.

The Transfer Values Regulations 1996 provided that the cash equivalent must be calculated on an actuarial basis that reflected the amount needed to make provision for a member's accrued benefits, options and discretionary benefits. The trustees were legally bound to monitor and review the appropriateness of the assumptions and actuarial factors used in the calculation of transfer values. This was not limited to the interest rates, age and life expectancy factors. It could also include the possibility of an increase in transfer value requests due to changes in legislation where the existing basis would result in transfer values that the trustees considered too high and detrimental to members remaining in the Scheme. The trustees had a duty to take into account the financial interests of all Scheme members, including members who remained in the Scheme, provided that it was in accordance with the Scheme's governing provisions.

The DPO therefore found that although the July 2015 CETV was significantly lower, the trustees' decision was in line with these obligations and duties. She also agreed with the adjudicator's finding that Capita did not have to inform Mr E about the change in calculation basis from April 1, 2015, as he had already received a CETV that was guaranteed and valid until June 25, 2015. In addition, Mr E had decided to proceed with the transfer knowing he would receive a reduced amount.

Comment

This determination highlights that trustees have a very broad discretion in setting the basis underlying CETV calculations. The 20 per cent reduction in the complainant's quoted CETV was obviously detrimental to him, but was justifiable on the grounds that the trustees were concerned by the potential harm to the Scheme if a large number of members took CETVs in order to take advantage of the new flexible access regime. In fact, experience since April 2015 suggests DB schemes have not seen an outflow of members to the degree some feared, and recent media reports suggest CETVs are generally becoming more generous again.

However, while there is no statutory duty on trustees to tell the recipient of a guaranteed CETV quotation that the CETV basis has been changed while their original quotation remains valid, trustees may wish to consider volunteering this information as a matter of good practice. At the very least, it may help avoid the cost and time spent in defending complaints to the Ombudsman.

Mrs D (PO-10901): DB scheme not required to provide investment information potentially relevant to prospective member's religious beliefs

Summary

TPO has dismissed a complaint by a deferred member of the Local Government Pension Scheme (LGPS) who submitted that she would not have joined the scheme if she had been informed that it had a fund invested in certain shares that she said were against her religious and ethical beliefs, as well as in cash that earned interest.

As a DB scheme, the LGPS was not required to provide a prospective member with information about the existence of the underlying fund in which contributions were invested, the assets held within it or information potentially relevant to the individual's religious or ethical beliefs.

TPO agreed with his adjudicator's initial finding that there was no requirement under disclosure-of-information regulations for this information to be disclosed by a DB scheme, given that the benefits paid were not dependent on the fund's asset performance. Nor were European fair trading and consumer protection laws cited by the complainant relevant. Although the complainant should not have been expected to know the LGPS had an underlying fund invested in shares and cash, the adjudicator found that her "strong beliefs" gave her the responsibility to make all of the enquiries necessary to understand what she was entering into.

Facts

Mrs D was a deferred member of the LGPS with two periods of pensionable service beginning in 2000 and 2008. On both occasions, she received an initial guide to the LGPS when she joined which did not provide any information on the fund's investments. In 2014, Mrs D discovered that the LGPS had a fund invested in shares and cash that earned interest. She asked for a refund of her contributions on the basis that it was against her religious and ethical beliefs under Sharia law to contribute to businesses that undertook certain activities, or to earn interest. The scheme administrator, West Yorkshire Pension Fund (the Administrator), declined on the grounds that the LGPS rules did not allow a refund of contributions where the length of qualifying service was under two years.

Mrs D complained to TPO that she should be permitted a refund of her contributions, without interest, because she had not been given sufficient information to make an informed choice about whether to join the LGPS. She asked TPO to consider "European Fair Trading Laws" and "Consumer Protection from Unfair Trading Regulations" in respect of her complaint and also questioned whether the death grant available under the LGPS was permissible under her religious beliefs.

The Administrator submitted that it did not provide information about the workings of the fund in its initial guide as these were complex, but Mrs D should have been expected to know there was a fund and that it was invested in shares and held cash that earned interest.

Determination

TPO's adjudicator's view was that, after several telephone calls with Mrs D, he believed it was for her to come to her own conclusion as to whether the LGPS was permissible under Sharia Law. But they had agreed that the LGPS rules did not allow a refund of her contributions and that her complaint was about her ability to make an informed decision when she joined, based on the information provided.

The Disclosure of Information Regulations, summarised in the online "Public Service Toolkit", did not require the disclosure of the assets held within a DB scheme or of information potentially relevant to an individual's religious or ethical beliefs. Noting that in a DB scheme, the benefits payable were not dependent on the performance of the fund's assets, the adjudicator therefore held that it was for the Administrator to decide whether information on the fund should be included.

European fair trading and consumer protection laws concerned the purchase of goods and the requirement for the relevant information to be provided regarding what was being purchased, rather than how the business conducted itself or what it did to provide the goods or services promised. Therefore, these laws were not relevant to Mrs D's complaint.

The adjudicator did not agree that Mrs D should have known there was a fund invested in shares and cash. However, he concluded that "where someone holds strong beliefs … responsibility would be with them to make all of the enquiries necessary to understand what they were entering into and paying for". He also said he could not comment on whether the LGPS's "death benefit" was permissible under Sharia Law.

Ombudsman's findings

TPO dismissed the complaint, agreeing with the adjudicator's initial opinion. His decision was therefore limited to responding to further key points raised by Mrs D.

The requirement in the Disclosure Regulations that schemes must provide a statement that the pension payable would "depend on several factors including … the performance of investments…" applied only to money purchase benefits and therefore not to the LGPS. The requirement in the Disclosure Regulations for schemes to include information on "how and when benefits in payment are increased", as well as a similar statement in the Public Service Toolkit, was likewise inapplicable as it referred to the indexation of pensions in payment rather than the growth of the LGPS fund itself or the assets within it.

It was not the case that schemes must provide any information not expressly excluded by the Disclosure Regulations. The regulations' purpose was to describe the information required and therefore information not listed need not be provided to members.

Comment

Concerns about the impact of members' religious or ethical beliefs are an ongoing issue for pension scheme trustees and administrators. The key point about membership of a DB scheme is that the primary promise made by the scheme to the member is the provision of certain benefits, and there is no specific statutory duty on trustees or administrators to give members further particulars about the investments underpinning those benefits.

Trustees and administrators are likely to welcome the decision that, where a prospective member has strong views about such issues, the onus is on them to investigate the position fully. However, ensuring that a brief explanation about the basic structure of a DB scheme is included in explanatory materials may help prospective members understand how these schemes work.

Mr Y (PO-8890): transfers – administrators were responsible for delays ‘within their control’

The DPO has given her determination in a complaint by Mr Y against Curtis Banks Ltd and Fidelity Worldwide Investment, ruling that the transferring and receiving scheme administrators in a pension transfer request must each pay pro-rated compensation based on the period of unnecessary delay that occurred while the outstanding task was “in their hands and within their control”.

The DPO upheld a complaint by a self-invested personal pension (SIPP) member whose intended receiving scheme requested a transfer via the electronic Origo system on December 4, 2014. Instead of informing the receiving administrator that this particular transfer could only proceed manually outside the Origo system, the transferring administrator entered it as “in progress” in Origo. The error was not discovered until the receiving scheme chased the matter 23 working days later on January 9, 2015. The first period of delay was later followed by a second period as the receiving scheme took 13 working days to forward various documents to the member for competition. But for the delays, the transfer could have been completed with a value £13,917.06 higher than was eventually the case.

The DPO found that the transferring scheme was solely responsible for the first period of delay (23 working days) and the receiving administrator for the second (13 working days) and therefore directed them to pay 64 per cent and 36 per cent of the member’s financial loss respectively, as well as £250 each for the member’s distress and inconvenience. In doing so, she dismissed the argument, previously accepted by the Ombudsman adjudicator, that the receiving administrator should have queried the first period of delay earlier and should therefore share in its redress.

Comment

The electronic Origo pension transfer system is now widely used among pension providers, but does not cover all transfers. This determination suggests providers using the system need to take further measures to ensure transfers that are outside its scope do not fall between the cracks.

It should be noted that, in this case, the DPO reached a different view from the Ombudsman’s adjudicator with regard to the apportionment of liability between the respondents. It is unusual for the DPO (or the PO) not to agree with the adjudicator’s view but where a party has doubts regarding an adjudicator’s decision, it could then be worthwhile pursuing the matter to a formal determination.

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