NORTON ROSE FULBRIGHT

Essential UK Pensions News

December 2020

Introduction

Essential UK Pensions News covers the latest pensions developments each month.

New consultation on DWP pension schemes levy

On December 16, 2020, the Department for Work and Pensions (DWP) published a new consultation on the general levy on occupational and personal pension schemes. This levy is used to fund the core activities of The Pensions Regulator, the activities of The Pensions Ombudsman and part of the activities of the Money and Pensions Service. The levy is charged to schemes on a per-member basis (subject to a minimum charge per scheme), and were last increased in 2008. There is currently an £80m deficit (largely caused by increased regulatory activity), and so DWP need to increase the levy.

The consultation seeks views on options for change to the structure and rates of the levy from April 2021 onwards. All the options proposed include an increase to levy rates, but opinions are sought on whether all schemes should pay the same levy rates, whether Master Trusts should benefit from a lower levy than all other schemes, or whether there should be different levy rates for each of DB schemes, DC schemes other than Master Trusts, Master Trusts and Personal Pensions schemes.

The consultation runs until January 27, 2021, and can be found here.

TPR reveals initial thoughts on DB funding code consultation

Following the consultation on the draft DB Funding Code that closed in September 2020, David Fairs (the Pension Regulator's Executive Director of Regulatory Policy, Analysis and Advice) has written a blog which appears to clarify TPR's approach. He notes that there was general support for the idea that mature schemes should be de-risked. However he has clarified that whilst it will still be possible for immature schemes to take more risk, immaturity alone is not sufficient to justify this, and the scheme should also have sufficient support to "get back on track" if its risky investments do not pay off. Open or immature schemes should also "be able to evidence to us how they could (among other things) manage the risk of their scheme closing or maturing faster than expected".

The blog also touches on the differences between the proposed 'Bespoke' and 'Fast Track' options for regulatory engagement, noting that whilst Fast Track allows a scheme a "fast track way for a scheme to sail through", the 'Bespoke' track will require more regulatory engagement, but that "in many cases, there is unlikely to be any (or only minimal) additional engagement if the thinking has been done, is clearly explained and well documented".

Comment
This blog arguably shows a possible softening in the Regulator's approach, as it seeks to reassure schemes that the new code will not in fact changes things all so much from the current system. It also notes that parliament could decide differently through the ongoing progress of the Pensions Scheme Bill. A second consultation on the DB funding code is expected to be carried out in mid-2021.

FCA reveals concerns and publishes a supervision strategy for SIPPs

The Financial Conduct Authority (FCA) has published a news article warning savers about the possible pitfalls of transferring their UK pensions in to overseas self-invested personal pensions (SIPPs). The FCA warns that this type of transfer often exposes members to high or unnecessary charges, as well as offering little tax advantage. They recommend taking advice from the Pensions Advisory Service for impartial guidance before transferring.

The FCA has also published a letter addressed to the "CEOs" of SIPP operators. This letter sets out how SIPPs are now offered to a much wider group of consumers than the high-net-worth individuals they were originally launched for, and echo the point that their benefits are redundant to many of the people SIPPs are offered to. It also mentions the growing problem of SIPPs being recommended by unregulated advisers, or as part of a pension scam. The letter then goes on to set out a number of FCA 'expectations' for SIPPs, including:

- Firms must maintain adequate financial resources.

- Firms must have appropriate management controls and take reasonable steps when handling complaints to identify and remedy any recurring or systemic problems.
- Firms must be wary of scams, and if they become aware of problems with an investment or with those introducing business to the firm, they must take appropriate action to act in the best interests of their clients, which may include declining to proceed with the investment or new business.
- Firms should have strong product governance procedures in place, and products should be reviewed on an ongoing basis to ensure they are reaching their target market, and the needs of vulnerable consumers are met appropriately.
- A firm operating an international SIPP that includes acceptance of offshore investment bonds should consider whether it delivers appropriate customer outcomes.

Comment
There has been growing use of SIPPs as a vehicle in which to accept a transfer from a traditional UK pension scheme. These two new policies from the FCA show that the FCA recognises the growing need to protect consumers in this area, and make sure that the products that they transfer to satisfy their needs.

PPF publishes Purple Book 2020 containing insight to DB landscape

On December 2, 2020, the Pension Protection Fund (PPF) published the 2020 edition of the Purple Book. This is an annual publication which presents data collected by the PPF as part of its activities with defined benefit pension schemes, and provides an insight to the pensions landscape on a year-on-year basis.

This year's book showed that the number of PPF eligible schemes had decreased slightly from 5,436 in 2019 to 5,327 in 2020, as had the number of DB members (10.1 million in 2019 to 9.9 million in 2020, of which 1 million members are still accruing benefits). 46 per cent of defined benefit schemes are now closed to all benefit accrual, compared to 44 per cent in 2019. Average scheme funding slipped from 99.2 per cent in 2019 to 94.9 per cent funded in 2020. Note that this data set is as at March 31, 2019 and so may not reflect the full extent of COVID-related investment losses.

Comment
The Purple Book is a useful tool to track trends in defined benefit pensions over several years. This year's book shows a continued trend towards closure to new members and to continued accrual. Schemes continued to de-risk, in line with industry guidance. Average scheme funding fared worse this year than it did in recent years, due of course in part to global market uncertainties.

Arcadia enters administration with a £350m pension deficit

The clothing retailer Arcadia entered administration on December 1, 2020, following a troubled year of trading. It has been reported that the Arcadia Group's pension scheme has a deficit in the region of £350m.

The Work and Pensions Committee wrote to the Pensions Regulator the day before the group entered administration questioning how the scheme would be protected, including whether the guarantee from Lady Green would be called upon, and what lessons had been learnt from the Regulator's experience with the BHS pension scheme. The committee also highlighted how members of the scheme may be at increased risk of pension scams.

Comment
The Arcadia pension scheme has been on TPR's radar for some time. In January 2020, a regulatory report was published detailing TPR's involvement with the scheme following the CVAs that were entered in to in 2019. There is significant interest to (as highlighted in the WPC's letter) see whether TPR will utilise its powers in an increased or more heavy-handed way following the criticism of its actions in other recent insolvencies.

Pensions Minister announced new industry working group for ESG policy

On December 1, 2020, Guy Opperman MP (the Minister for Pensions) announced via a speech that he has launched a new working group – "the Taskforce on Pension Scheme Voting Implementation" – that aims to focus on reducing barriers that exist to pension schemes having effective environmental, social and governance (ESG) stewardship policies. Specifically it will focus on how to overcome voting system issues and how to encourage asset managers to engage and implement ESG policies.

The group will be chaired by Simon Howard (ex-CEO of the UK Sustainable Investment and Finance Association), with vice-chair Sarah Wilson (CEO of Minerva Analytics). The group will include members of the Association of Member Nominated Trustees with the rest of the membership to be announced in due course.

Guy Opperman also announced that he would be 'taking forward' the recommendation of a "central directory of Statements of Investment Principles" that was made by the UK Sustainable Investment and Finance Association earlier this year. This had been recommended in order to allow the adequacy of schemes' SIPs to be scrutinised.

Comment
ESG has been a key policy area that Guy Opperman has sought to promote (including via a recent opinion piece in the Times) and the regulatory direction of travel shows no signs of slowing down. The establishment of this working group and the indication that SIPs, in addition to recent requirements for them to be publically available may be collected centrally so that the can be compared side by side, are indications that it will remain a priority in future years to require pension scheme trustees to really embrace ESG in their investment thinking. This is reflected in interest from members; a report from the Association of Consulting Actuaries published this month found that 52 per cent of schemes report greater interest from members in investments in socially responsible, environmental and climate areas.

FCA fines financial adviser for unsuitable pension transfer advice

On December 9, 2020, the FCA published the notice that it issued to an independent financial adviser which had failed to consider whether the investment recommendations it was making were suitable to its customers. LJ Financial Planning Limited recommended that 114 customers transfer their pensions into SIPPs, without providing any advice on the underlying investments which were to be held in those SIPPs. The FCA's Conduct of Business Sourcebook ("COBS") requires firms to consider whether that recommendation was suitable, both in that a SIPP was a suitable vehicle for the customer in the light of his personal circumstances, but also that it was suitable in the light of the investments which were proposed to be held within the SIPP. The FCA found that customer's needs had not been considered, and investments were "often high-risk, esoteric and illiquid". Assets of over £6 million in total were transferred to "high-risk investments which, in many instances, are now worthless".

LJ Financial Planning was fined £153,200, reduced to £107,200 for early settlement. To date, LJ has also paid redress of over £2.5 million to affected customers.

Pensions Dashboards Programme publishes key data standards

Key data standards that will be used in pensions dashboards have been published by the Pensions Dashboards Programme. The Pensions Dashboards Programmes is responsible for designing and implementing the infrastructure that will be required to operate a pensions dashboard. Pensions dashboards are intended to show a user information on all of their pensions information online in one place.

The 'data standards' published this month are minimum requirements that pensions providers will need to ensure that the data they hold is consistent with, so that when it is fed in to a dashboard members are easily able to compare the information against information from other pensions that they hold.

ESMA publishes a second report on clearing solutions for PSAs

The European Securities and Markets Authority (ESMA) has published a second report on clearing solutions for Pension Scheme Arrangements (PSAs). Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories ("EMIR"), as amended by Regulation (EU) 2019/834 ("EMIR Refit") introduced a retirement for mandatory clearing for certain types of derivatives between certain counterparties (i.e. a third party known as a Central Counterparty (or CCP) will reconcile the derivative purchase and ensure that the seller receives the correct price, and the buyer receives the correct securities). This creates a problem for pension schemes, as in order to do this, CCPs require certain levels of cash holdings, which pension schemes often do not have, as the majority of their funds are invested.

Due to this difficulty, an initial exemption from the clearing obligation was granted to PSAs, and is currently set to expire in June 2021 whilst a solution is found. ESMA has been tasked in writing an annual report to update the Commission on progress towards this solution. This second report notes that although some progress has been made, no *"no single "silver bullet""* solution has emerged so far and therefore the June 2021 deadline is unlikely to allow for a *"thorough analysis and potential development of these operational changes and/or regulatory adjustments to be effective".*

The report suggests that the solution is likely to be the "optimisation by different actors (regulators, central counterparties, clearing members and their clients) of already existing solutions".

ESMA's report suggest that the deadline is extended by an additional year to June 2022.

Comment
Whilst it would be for the Commission and not ESMA to grant an extension, given the lack of an agreed solution, it seems likely that an extension will be given. The UK regulation that ensures that EMIR will continue to operate effectively at the point at which the UK leaves the EU has already extended the deadline at which the pension fund exemption would expire to June 18, 2023, and this also has the ability to be extended for an additional two years if a solution cannot be found before then.

And finally... Richard Curtis releases spoof Christmas video thanking pension schemes for "destroying the planet"

The man famous for giving us Love Actually has released a different Christmas film this year; a tongue-in-cheek video in which a fake CEO "Guy Byrne-Woods" thanks pension scheme investors for a record-breaking year of destroying *"more natural habitat than we ever thought possible, from Alaska to the Amazon, Siberia to Sudan."*

Curtis launched a campaign backing ethical pension investments earlier this year, and has said that this latest video is an attempt to raise awareness of the issues to consumers who might think that they are living an otherwise 'green' life, and therefore encourage them to put pressure on their pension providers to do better.

Pensions issues in the pipeline

New Pension Schemes Bill – The new Pension Schemes Bill includes provisions covering the Pensions Dashboard, the Pension Regulator's powers, and the revised Funding Regime. The Bill completed the committee stage in the House of Commons on November 5, 2020 and had its report stage and its third reading in the House of Commons on November 16, 2020. A date for the House of Lords to consider suggested amendments has not yet been set

December 31, 2020 – End of transition period for exit from the European Union.

January 6, 2021 – Deadline for submitting compliance statement in relation to objective setting for investment consultants under the CMA Order.

January 27, 2021 – Deadline for responses on the DWP pension schemes levy consultation.

October 1, 2021 – New requirements apply for trustees to publish information on a publicly available, free website relating to voting and capital structure of investment companies under the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019 following the transposition into UK law of the revised Shareholder Rights Directive (SDR II).

October 1, 2021 – New requirements for trustees of DB schemes to publish an implementation statement online under amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013. For "relevant schemes" (broadly, money purchase schemes with 100 or more members), the requirement to publish an implementation statement online applies as soon as the accounts have been signed after October 1, 2020 (but in any event no later than October 1, 2021).

Revised Funding Regime – A revised Code of Practice is expected by the end of 2021, after the Pension Schemes Bill 2019/21 becomes law.

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