SLAUGHTER AND MAY

Pensions Bulletin

April 2020

In this Bulletin we analyse how COVID-19 regulatory guidance has evolved and we look at guidance on transfer values, the Pension Schemes Bill, GMP rectification and the Pensions Regulator's statement on the Brexit transition period.

COVID-19: REFRESHER

The Pensions Regulator (TPR) has issued a number of pieces of guidance and updates. The detail can be found in our bulletins and updates in March and April.

Funding and investment concerns

Our first COVID-19: Pensions Bulletin covered TPR's guidance for trustees of DB and DC pension schemes on scheme funding and investments.

Some employers are taking advantage of TPR's indication that from its viewpoint trustees can open to a sponsor request for temporary suspension or reduction of deficit contributions. As the guidance emphasises, trustees will need to ensure they are treated fairly with other stakeholders; for example, TPR provides that sponsors need to provide legally binding commitments not to pay dividend or other shareholder returns.

Our bulletin highlighted the particular concern TPR has that members may choose to transfer out benefits from DB pension scheme, and become subject to pension scams, or change investments in DC schemes, crystallising heavy losses. We cover more detail on transfers in the section below on DB transfers

An area of focus for TPR has been in ensuring the pension schemes can continue to function. Trustee boards are now conducting their meetings remotely and confirming with their administrators that key processes can be maintained.

Our bulletin covered the important statement from the Pension Protection Fund on submission of contingent asset documentation, and the fact that there is no need to revisit assessments already finalised. There is also some discussion of the impact emergency volunteering leave on pension schemes.

Regulatory easements

A number of further regulatory easements followed in April, which will be in place until at least 30 June 2020. We set these out in our 14 April Bulletin on the Pensions Regulator's announced easements.

In general, TPR make reference to two "guiding principles":

- **If the breach will be rectified within three months, and does not have a negative impact on members, there is no need to report.**
- **TPR says it will adopt a flexible approach, for example granting longer periods to comply, and taking COVID-19 into account.**

Two examples of specific easements apply where (a) trustees and employers have been unable to meet the 15-month deadline for agreeing technical provisions and recovery plans and (b) the requirement for certain employers to consult with employees on listed changes to pension terms for a minimum of 60 days, where pension contributions are being reduced for furloughed staff.

For DC pension arrangement, in [guidance for scheme providers] issued on 9 April, TPR has asked trustees and providers to report late contributions at 150 days late rather than 90. The "reasonable periods" for reporting to TPR (within ten working days of the 150 days late payment date) and for informing members (30 days after reporting) are unaffected.

There are other areas where the guiding principles do not apply, such as Chairs' statements, where TPR has no discretion - but it will not issue penalty notices before 30 June 2020.

Coronavirus Job Retention Scheme

We issued an update on 21 April 2020 on CJRS and compensation for employer pension contributions. This follows more detailed guidance from HM Revenue & Customs (HMRC) and TPR, and the directions from HM Treasury relating to the application of the CJRS.

Our update explains in more detail the maximum compensation for pension contributions under the CJRS. It also highlights that compensation for employer pension contributions is not as generous as may have been expected, particularly for employers offering minimum automatic enrolment contributions and who have in place salary sacrifice arrangements.

In addition, the update notes other considerations for employers looking to amend pension provision. TPR's guidance to trustees is not particularly helpful for employers that need to obtain trustees' agreement to change DC contributions. A regulatory easement is in place in relation to the employer's duty to consult. However, the guidance suggests that the employer may have to demonstrate a genuine risk that it will not be able to continue as a going concern.

Further consequences of COVID-19

- HMRC have confirmed that where the 31 March quarter accounting for tax return or associated tax due is made late (i.e. after 15 May 2020) due to scheme resources being affected by COVID-19, and penalties or interest are charged, HMRC will cancel them (on request). (Pension Schemes Newsletter 118.)
- HMRC has also confirmed that where schemes are providing payment holidays on loans from connected parties or rents on commercial properties, and the decision is on an arm's length basis, this can be agreed without an independent valuation. (Usually HMRC would require an independent valuation to ensure that the payment holiday is on a commercial basis.) (Pension Schemes Newsletter 118.)
- The planned 10% increase in General Levy rates has been postponed: see link. The Government will now focus on its wider review of the levy.
- TPR has extended its consultation on scheme funding until 2 September 2020. For details of the consultation, see our March 2020 Bulletin.
- The Pensions Ombudsman has announced that it will be focusing on existing enquiries and complaints only. Wherever possible, the Ombudsman will use its discretion to extend the time limit of three years for new applicants affected by the restricted service.
- The Government's consultation with the UK Statistics Authority on reform to the Retail Prices Index methodology will close on 21 August 2020, not 22 April 2020 as originally planned. (See link.)

DB Transfers: PASA Draft Code of Practice and TPR Guidance

For the first time the Pensions Administration Standards Association (PASA) has issued a draft Code of Practice, rather than its usual "guidance" or "checklists". The draft Code on transfers from DB schemes states that it must be taken into account by TPR, a court or tribunal, if relevant to what is being decided. PASA also anticipates the Pensions Ombudsman will reference the revised Code when reviewing complaints, as a source of what good industry practice looks like. At the same time, DB transfer quotes have been the subject of TPR's COVID-19 regulatory easements.

The objectives of the draft PASA DB Transfers Code of Good Practice are:

- *Faster, safer transfers.* The Code sets out the expected timescales for processing transfers. The time from receipt of member's request to issue of a guaranteed cash equivalent transfer value (CETV) quote should be 7 to 10 working days (or 12 to 15 working days where referral to the actuary for review or sign-off is required). Once the member returns the forms, the settlement process should take 9 to 11 working days.
- *Improved communications and transparency.* The Code emphasises the importance of keeping members and stakeholders properly informed.
- *Improve efficiency for administrators.* The Code recommends using standard forms and templates, in particular the Transfer Template standard form included in the Code, to ensure all required scheme and member information is included.

Recommendations of note include:

- Where possible, CETV quotes for members above the minimum retirement age should also include an early retirement quote.
- Schemes should review their referral criteria on a regular basis to consider the number of CETV calculations that need to go to the actuary.
- All reductions in CETVs following recalculation should be communicated to members prior to being put into payment.

The consultation was originally scheduled to close on 30 April 2020, but PASA has extended the deadline for responses to 30 September 2020, with the final Code being released by the end of the year.

The Code should be a helpful reference point for schemes, not least to help reduce the risk of scam transfers. PASA points out that the level of detail an adviser has been able to obtain (for a transfer of £30,000 plus) has been far below what is required. As a result, some advisers confirm that they cannot advise, or they make assumptions about the scheme. Both are potentially detrimental to members in terms of risk. Since the draft Code was issued, TPR has identified COVID-19 scams as a key risk for pension scheme members and has advised trustees to urge them to exercise caution.

As mentioned above, TPR has agreed not to take action in the next three months against those trustees who suspend CETV quotations or stop transfer payments (see our COVID-19: Pensions Bulletin and Bulletin on the Pensions Regulator's announced easements). If, at the end of the three-month period, trustees feel it is still in the best interests of their members to continue with the CETV suspension or delayed quotation, they should notify TPR (with reasons). The guidance refers to trustees deciding to suspend quotations and payments "to give themselves time to review CETV terms and/or to assess the administrative impact of any increase in demand for CETV quotes". It is not clear, therefore, if TPR's intention is to provide a blanket waiver, or if it is limited to particular circumstances.

In any event, trustees' fiduciary duties, their obligations under the scheme rules, and the legislation, all continue to apply. Hence, trustees will still be open to possible action from members if they fail to comply with their duties, although the Pensions Ombudsman will take TPR's guidance, and the impact of COVID-19 generally, into account when determining whether trustees took reasonable action.

Also as discussed in the COVID-19: Pensions Bulletin, trustees may also want to consider a change to transfer value factors and/or review the terms they offer for other benefit options such as cash commutation at retirement and early retirement terms.

Pension Schemes Bill: Future Developments

The Pension Schemes Bill's progress in Parliament has stalled because of COVID-19. However, we have some more information on the thinking behind a central repository of schemes' Statement of Investment Principles, the Government's view that no further legislative changes are needed in relation to the payment of dividend, and about the likely content of pensions dashboards.

Baroness Stedman-Scott, Minister in the Lords, has responded to various points raised in the Committee stage debates on the Pension Schemes Bill. The letters provide some helpful insights into Government thinking as follows:

- The DWP is working on a central repository of Statements of Investment Principles (SIPs), to be collated through scheme returns. The intention is to access SIPs and other documents through the websites on which they are published. The letters acknowledge that there is no legal duty to report the location of SIPs but it is confident that TPR can structure the scheme return to encourage a very high response. However, an amendment to regulations, to include a requirement to disclose the location of the SIP, has not been ruled out.
- The interrelationship between the payment of dividends and deficit reduction contributions, was debated on several occasions in Parliament. The Minister notes that TPR's fair treatment regulatory initiative (now in abeyance because of COVID-19) has proved to be effective and, in a number of cases, has resulted in increased funding for schemes. The letters reiterate the Government's position that it is not appropriate for it to oversee or approve the payment of dividends.

Earlier this month, the Money and Pensions Service (MaPS) published an update on the work they have done on pensions dashboards, focusing on the data required and the approach to implementation. MaPS plans to undertake a formal consultation on its working papers in Autumn 2020 and is optimistic that it will be able to set out a more detailed programme timeline before the end of the year.

The papers set out the proposals for the specific data items that pension schemes should be required to make available to dashboards. All schemes will need to provide a future "estimated retirement income", in current money terms, including from when it is payable, as well as data about accrued entitlement. For DB schemes, this would be the annual retirement income accrued to date (plus any additional accrued cash lump sum); whilst for DC schemes it would be the current pot value. Any supporting data (for example, contributions, investment funds in which a DC pot is invested, guarantees, and dependants' benefits) will not form part of the mandatory data requirements that the legislation will compel schemes to supply.

PASA Guidance on GMP Data Rectification

The Pensions Administration Standards Association (PASA) Working Group on Guaranteed Minimum Payment (GMP) Equalisation has issued guidance on "When to rectify". This gives a practical insight into the steps trustees need to take in readying rectified GMP data for a simultaneous or subsequent equalisation *exercise, and offers some guidelines to decision making on relative timings of those exercises.*

PASA suggests trustees should undertake four steps now to inform decision making on timing:

- Understand the data.
- Understand the nature and timing of the task to rectify benefits.
- Consider the impact on members (particularly pensioners) of any delay to rectification to tie in with equalisation.
- Consider and document the scheme's position on other factors influencing the decision-making.

Pension Regulator's Guidance on the Brexit Transition Period

TPR has published guidance for trustees during the Brexit transition period, currently due to end on 31 December 2020. Trustees should be able to show that they understand how Brexit may affect their scheme and the steps they have taken to address any issues.

The statement, Prepare your pension scheme for future EU relationship, pre-dates COVID-19 guidance but, nevertheless, it does explain what TPR expects from trustees. TPR expects trustees to focus in particular on the following areas:

- *Investment:* Trustees of DB schemes should review the scheme's position and scenario planning as part of ongoing integrated risk management. Despite potential market volatility, trustees should not focus too much on short-term market movements. Investment advisers should be asked to explain any short-term investment performance, in the context of the scheme's overall investment strategy, and to advise whether any specific actions or mitigations are appropriate. DC scheme trustees should continue to review the longer-term performance of individual funds on a regular basis. Investment volatility may affect groups of members in different ways and trustees should work with providers and advisers to monitor developments and manage any emerging risks.
- *Employer covenant:* Trustees should speak to their covenant advisers if they have concerns about the impact of Brexit on the employer. Clearly, this will vary depending on industry sector, exposure of the particular business, and the nature of the UK's future relationship with the EU and other countries. As with its later guidance on deficit repair contributions as a result of COVID-19, TPR expects any proposal by the employer to reduce DRCs as a result of Brexit to be tested. Trustees should assess whether the reduction is necessary, ensuring that other stakeholders are being treated fairly, that dividends are not proposed and that security is offered as mitigation for reductions in DRCs where this is available.
- *Administration:* Trustees and administrators need to make sure that the payment of benefits across the EU border is uninterrupted. TPR refers to DWP guidance on pensions and benefits for EEA and Swiss citizens in the UK and for UK nationals in the EEA or Switzerland. (The EEA comprises EU countries and also Iceland, Liechtenstein and Norway.) Trustees need to be clear about the impact of Brexit on any key services, such as asset management, that are provided from the EU or by firms with exposure to the EU.
- *Member communications:* Trustees should be prepared to explain to members (EU residents in particular) how Brexit may affect the scheme and the steps they have taken to address any issues.

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Dated April 2020