SLAUGHTER AND MAY

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Pensions and Employment: Pensions Bulletin

Legal and regulatory developments in pensions

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Find out more about our pensions and employment practice by clicking here.

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For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or Rebecca Hardy.

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Forthcoming Events

I. The Watch List

The Watch List is a summary of some potentially important issues for pension schemes which we have identified and where time is running out, with links to more detailed information.

No.	Topic	Deadline	Further information/ action
1.	PPF levy 2015/2016	31st March, 2015 for submission of information and documentation for mitigation	Action plan sent out on 7th January, 2015 available from Lynsey Richards
2.	Information to retiring DC members about the guidance guarantee	6th April, 2015	Client note dated 17th February, 2015 available from Lynsey Richards
3.	Information to transferring DB members about the requirement for independent financial advice	6th April, 2015	Pensions Bulletin 15/03
4.	Cap on charges in default fund for auto-enrolment qualifying schemes	6th April, 2015	Client note dated 24th February, 2015 available from Lynsey Richards
5.	New governance requirements for all occupational DC schemes	6th April, 2015	Client note dated 24th February, 2015 available from Lynsey Richards
6.	Abolition of refund of contributions for members of occupational schemes with at least 30 days' pensionable service who are just provided with money purchase benefits	1st October, 2015	Pensions Bulletin 14/14
7.	Proposed ban on corporate directors	1st October, 2015 but exception proposed for corporate trustees	Pensions Bulletin 14/18
8.	VAT recovery changes	31st December, 2015	Pensions Bulletin 14/18
9.	Abolition of DB contracting-out: managing additional costs	6th April, 2016	Pensions Bulletin 14/11
10.	Abolition of DB contracting-out: practicalities	6th April, 2016	Pensions Bulletin 14/08
11.	Prohibition on Active Member Discounts in auto-enrolment qualifying schemes	6th April, 2016	Pensions Bulletin 14/16
12.	Automatic transfers of DC pots of £10,000 or less	Phase 1 1st October, 2016	Pensions Bulletin 15/03
13.	Registration for Individual Protection 2014	Before 6th April, 2017	Pensions Bulletin 14/12

6th April, 2015 changes

II. Pension Schemes Bill receives Royal Assent: Countdown begins

The Pension Schemes Bill received Royal Asset on 3rd March, 2015, following which the following regulations are to be laid before Parliament:

- regulations dealing with the new disclosure requirements relating to:
  - the new transfer option,
  - the "guidance guarantee", and
  - the new flexible benefit options for DC benefits,
- regulations setting out the new advice safeguards on transfers from DB to DC schemes,

- regulations amending section 68 of the Pensions Act 1995 to allow schemes to amend their rules to permit the new flexibilities, and

- regulations providing for the new "flexible benefit" transfer right.

Action point: The clock is now ticking. The legislation imposes new obligations affecting DB and DC schemes that take effect on 6th April, 2015, without any transitional provision. For a checklist setting out what needs to be done, or copies of our February, 2015 client publications on:

- DC governance requirements and charging restrictions,

- member communications, and

- DB to DC transfers post-5th April, 2015

please get in touch with your usual pensions contact at Slaughter and May.

III. Signposting to Pension Wise: Guidelines for pension providers and schemes

On 16th February, 2015, HM Treasury ("**HMT**") published guidelines and 2 sample letters for signposting scheme members to the Government website providing guidance on pensions options, Pension Wise. One letter is for use before 6th April, 2015 and one for after that date. The letters are not compulsory and can be adapted to suit particular schemes.

HMT says that "*the official letter communicates a message from Pension Wise directly to the reader and is the recommended method of signposting*". It warns that providers and schemes should avoid including contact details relating to anyone other than Pension Wise if there is a risk of leading members to believe they are contacting Pension Wise or undermining the effectiveness of the signposting.

Providers and schemes should also avoid use of any language or messaging that implies Pension Wise does anything other than offering "*free and impartial guidance to help consumers with DC pension pots understand and navigate their options are retirement*".

HMT says the Pension Wise contact centre will be up and running in March, at which point the telephone number will be made available for the telephone guidance being provided by TPAS. The roll-out of face-to-face delivery across Citizens' Advice Bureaux will begin "shortly" to ensure the service is up and running in time for 6th April, 2015.

The Pension Wise website, as at 2nd March, 2015, sets out 6 steps that individuals with DC pension pots should take before deciding how to access those pots and then links to 13 short guides providing more details about the options.

Action point: Schemes need to consider how they will comply with their signposting and other new disclosure requirements as a matter of urgency. Please get in touch with your usual pensions contact at Slaughter and May for appropriate wording.

IV. Second line of defence: Update

Pensions Bulletin 15/03 noted that the FCA is to issue new rules, effective from 6th April, 2015, to provide additional consumer protection for members of personal pension schemes by placing a requirement on providers for a "second line of defence".

The Government subsequently confirmed that it is working with the Pensions Regulator to introduce similar requirements for trust-based schemes.

On 27th February, 2015, the FCA published a policy statement (PS15/4) containing its rules for this "second line of defence".

These will require FCA-regulated firms to give appropriate retirement risk warnings to members who are accessing their pension savings. The firms must first ask the member relevant questions, based on how the member wants to access their pension

savings, to determine whether risk factors are present. If they are, risk warnings must then be given.

The FCA emphasises that the new rules do not require firms to replicate the Pension Wise service. Instead, the rules are intended to ensure that providers flag specific risks to members, and give them appropriate warnings about the choices they have in accessing their pension savings. The FCA believes these retirement risk warnings can be given without providing FCA-regulated advice, as the FCA is not requiring firms to tell members what to do, or implying that the member's decision will be wrong.

The policy statement includes a list of risk factors that apply to particular ways that members may access their savings, and questions to help firms identify if a risk factor is present.

The FCA notes that the Pensions Regulator is to publish guidance for trustees following the laying of amendments to the Disclosure Regulations (see **I.** above).

The FCA says that, as well as providing "clarity" for trustees on the new requirements to signpost pensions guidance, the guidance will set out the Regulator's expectations of trustees in relation to the provision of information to members on the "generic risks" of the decumulation options.

PS15/4 is on the FCA website.

Comment: It appears that the "second line of defence" requirement for trust-based schemes will be to provide information on "generic risks", rather than risks applicable to a particular member. The requirement will not be set out in legislation, but in Regulator's guidance. Until that is published (we are told "early March"), it is difficult to know what additional information trustees will need to provide.

But remember that guidance is just that: trustees are not obliged to comply with it, although it can be useful as an indicator of how to comply with their general trustee duties.

V. DC charges and governance (1): Final rules for independent governance committees

On 4th February, 2015, the FCA published Policy Statement (PS) 15/3 with its final rules for independent governance committees ("**IGCs**").

The rules take effect on 6th April, 2015 and will require providers of workplace personal pension schemes to set up and maintain IGCs. IGCs will have a duty to act in the interests of all scheme members and will operate independently of the pension provider. They will asses, and where necessary raise concerns about, the value for money of default strategies in workplace personal pension schemes.

Providers with smaller schemes will be able to put in place a "Governance Advisory Arrangement ("**GAA**"), run by a third party, instead of an IGC.

Responses to the FCA's August, 2014 consultation requested that IGCs should also be required to assess value for money of the scheme members in decumulation. The FCA will consider making this a requirement "once IGCs have their immediate priorities in hand". But the primary focus of IGCs will be on default strategies.

The FCA will be conducting a review of the effectiveness of IGCs in 2017, possibly in the context of a broader FCA/DWP review of workplace pension reforms.

Comment: A point to draw out is that most pension providers offering a personal pension scheme only have 1 or 2 personal pension schemes in the sense of a personal pension scheme which has been approved by HMRC as a registered pension scheme. Employers using that scheme as their "group personal pension scheme" will then either "brand" it for their employees or offer them the standard product. Either way, the IGC operates at the provider level and not at employer level.

VI. DC charges and governance (2): DWP guidance on charge cap

On 2nd March, 2015, the DWP published detailed guidance on the Regulations, due to take effect on 6th April, 2015, that restrict the sums that can be charged to member's retirement accounts with regard to "default arrangements".

The guidance covers:

- what schemes and scheme members are affected by the cap,
- the restrictions on charge structures and levels,
- how to identify a default arrangement (including a detailed flowchart and case studies),
- what happens when a fund cannot be offered below the charge cap, and
- how trustees can access the charges borne by members.

The guidance is on the gov.uk website.

Our client briefing, looking in detail at the new charging and governance requirements and including action points, is available to clients. Please get in touch with Lynsey.Richards@Slaughterandmay.com if you would like a copy.

VII. PAYE on "flexible benefits": Pension Schemes Newsletter 67

HMRC published Pension Schemes Newsletter 67 on 18th February, 2015. It deals with how PAYE will operate for payments taken under the pension flexibility rules, expanding on the information in Pension Schemes Newsletter 66 (Pensions Bulletin 14/19).

Newsletter 67 contains 5 specimen scenarios setting out the approach administrators should take to PAYE coding and real time information (RTI) reporting.

Lump sum tax-free payments, such as the tax-free portion of a UFPLS or lump sum death benefits payable on the death of a member under the age of 75, should not be reported under RTI, although HMRC advises administrators to maintain appropriate records of such payments to show that the correct tax treatment was applied.

HMRC confirms that there are no transitional arrangements regarding payments that are requested before 6th April, 2015 but paid after that date. For example, if a member applies for a trivial commutation lump sum under a money purchase arrangement before 6th April but the payment is not processed until the new tax year, the payment should be treated as a UFPLS because, after 6th April, 2015, a trivial commutation lump sum can only be paid under a DB arrangement.

Newsletter 67 is on the gov.uk website.

New Law

VIII. Banking reform: Pensions Regulations

A. Overview

1. On 17th February, 2015, HM Treasury published its response to its 31st July, 2014 consultation on the draft Regulations[1] that prevent UK ring-fenced banks being responsible for group-wide pension liabilities.

   Note: The requirements apply only to "UK institutions", defined as body corporates incorporated in the UK. They will not, for example, apply to a UK branch of a German bank.

2. From 2026, a UK ring-fenced bank will only be allowed to participate in a non-segregated multi-employer scheme if the other participating employers are its wholly-owned subsidiaries or other UK ring-fenced banks in the same group (or their wholly-owned subsidiaries).

B. Clearance

1. The Consultation Paper proposed that, if a corporate reorganisation was required to allow

[1] The Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015.

a UK ring-fenced bank to comply with the Regulations, the bank should apply for clearance from the Pensions Regulator.

2. In response to the Consultation, the Government has added a materiality threshold, requiring banks only to seek clearance if a change or series of changes to their pension scheme or the employer group supporting it could be "materially detrimental" to the scheme and its members. Obtaining clearance will not be mandatory.

C. Members with tax protections

1. Respondents to the Consultation requested that changes be made to protect employees who have transitional tax protections that may be lost in the process of restructuring pension schemes; given the uncertainty about how individuals will be affected and the commercial choices that banks will make in order to separate pension schemes, HM Treasury says it is not going to address this issue at the moment.

2. But it commits to addressing transitional tax protection issues once it has a greater understanding of the route banks will take to implement the ring-fence and the nature of any detrimental impact on individuals as a result of scheme changes.

D. Service companies

Respondents also requested that UK ring-fenced banks be allowed to have shared pension liabilities with supporting service companies, but the Treasury thought that allowing this may expose the ring-fenced bank to significant risks.

E. Timing

The Government intends that the Regulations be brought into force as soon as possible to allow banks and trustees to start planning and using the mechanisms available under the Regulations. The 2026 completion deadline will be retained.

The response to the Consultation is on the gov.uk website.

IX. Changes to the Investment Regulations following Law Commission Report "Fiduciary duties of investment intermediaries"

A. Overview

1. On 26th February, 2015, the DWP published for consultation draft regulations amending the Investment Regulations 2006[2] following the Law Commission's July 2014 report (Pensions Bulletin 14/11).

2. Among other things, the Law Commission recommended that the Government review:

   2.1 the reference to "social, environmental or ethical considerations" as one of the matters to be included in the Statement of Investment Principles, to ensure that it accurately reflects the distinction between financial factors and non-financial factors, and

   2.2 whether trustees should be required to state their policy (if any) on stewardship.

B. Regulator's guidance

1. The Law Commission also recommended that the Pension Regulator should consider how the Law Commission's guidance on fiduciary duties could be given greater exposure and authority to assist trustee investment decisions.

2. The Regulator has now updated the guidance provided via its trustee toolkit to reflect the Law Commission's findings. It says it will update its investment guidance in the course of 2015 as part of a general review of its DC publications.

Comment: The changes put in motion by the Law Commission report result from a conflation

[2] The Occupational Pension Schemes (Investment) Regulations 2006.

by the Commissioners of 2 cases[3]. The report helpfully distinguished between financial and non financial factors (noting that financial factors may include risks to the long term sustainability of a company's performance arising from, for example, a poor environmental or safety record). But it went on to conclude, wrongly in our view, that trustees can in some circumstances take account of non financial factors. The Regulator's guidance should be viewed in that context.

C. Draft regulations

1. The DWP now seeks views on how the existing requirement that the Statement of Investment Principles should cover, amongst other things, "*the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments*" could be amended to provide greater clarity for trustees, in particular to distinguish more clearly between financial and non-financial factors.

2. The DWP also proposes to introduce a "comply or explain" requirement with reference to the FRC's to require trustees to comply with the Stewardship Code.

[3] Cowan v Scargill and Harries v Church Commissioners

The Consultation Paper, on which responses are invited by 24th April, 2015 is on the Gov.UK website. The DWP expects that any changes to the Investment Regulations resulting from the consultation will be made in 2016.

Comment: There are, as yet, no draft regulations so the consultation paper takes us little further.

But, as previously noted, if the trustee's decision to take account of non financial factors has an adverse impact on investment performance in a DB scheme, that will increase, £ for £, the funding cost to the employer and amount to a breach of the duty owed by the trustee to the employer.

In a DC scheme, providing an ethical fund that results in a smaller pension pot may result in a challenge from a disaffected member. And the suggestion that trustees may take account of non financial factors runs counter to the new governance requirements for schemes that provide money purchase benefits that take effect on 6th April, 2015.

Tax

X. Inheritability of joint life and guaranteed annuities: Finance Bill 2015 clauses

In the Autumn Statement on 3rd December, 2014, the Chancellor announced that changes to the tax treatment of death benefits announced in September, 2014 would be extended to include joint life and guaranteed annuities.

Where an individual annuitant dies before reaching age 75, his beneficiary will be able to receive future payments from the policy free of tax. If the individual dies at or after age 75, the beneficiary will be taxed on withdrawals at his or her marginal rate of income tax (unless the benefits are paid in lump sum form, in which case a 45% charge will be levied in 2015/16 and thereafter marginal rate taxation will apply).

Additionally, a joint life annuity may be paid to **any** beneficiary of a deceased policyholder, not just (as now) a "dependant".

The legislation implementing these changes (to be contained in the Finance Bill 2015) was published, alongside explanatory notes, on 19th February, 2015. The changes are expected to take effect on 6th April, 2015, but it is not clear whether the Finance Bill will be passed before Parliament is dissolved on 30th March, 2015.

The easements will apply only to annuities purchased after the member's death, where the member died on or after 3rd December, 2014.

Cases

XI. IBM v Dalgleish: Remedies' judgment

A. Overview

1. On 20th February, 2015, Warren J handed down his judgment on remedies following the breaches of duty by IBM established in the main judgment dated 4th April, 2014 (Pensions Bulletin 14/06).

2. The main judgment concerned an application by the Trustees of the IBM Defined Benefits Pension Plan to the High Court asking it to rule upon a list of issues relating to IBM's purported changes to the Plan, known as Project Waltz.

3. In the main judgment, Warren J found that IBM had acted in breach of its duty of good faith to members of the Plan when it:

   – closed the Plan to future accrual, and

   – imposed a new early retirement policy

   in the light of "reasonable expectations" engendered in the members by reason of IBM's conduct during previous benefit change exercises.

4. Warren J also found that:

   – asking members to sign Non- Pensionability Agreements ("**NPAs**") in 2009 by which future pay increases would be non-pensionable in circumstances where members were led to believe that otherwise there would be no pay increases, and

   – the consultation with member representatives on the changes

   gave rise to a breach of IBM's contractual duty of trust and confidence.

B. NPAs

1. In his remedies judgment, Warren J concluded that IBM had acted in breach of contractual duty by requiring members to agree to the 2009 NPAs. As a consequence, the non-pensionability term arising from the NPAs could not be enforced by IBM. Salary increases awarded under the NPAs were valid, with members being entitled to keep all of the salary increases and to continue to be paid salary incorporating those increases.

2. As the 2009 NPAs were invalid, NPAs signed in 2006, which retained a link to final salary, remained in force.

3. Members who did not agree to the NPAs, and who, as a consequence, did not receive any salary increases, could not now claim pensionable salary increases equal to the salary increases awarded to those members who did sign. Instead, they were entitled to claim damages from IBM to reflect the salary they would have received in the ordinary course of events.

C. Closure of the DB Plan to future accrual

1. Warren J held that the exclusion notices used by IBM to close the plans to future DB accrual could be set aside at the instance of the affected members. Members who now take steps to set the exclusion notices aside will therefore be treated as still being in DB pensionable service from 6th April, 2011 to the present (or up to the date of leaving service if earlier).

2. The mechanism and timetable for members to give notice to the Trustee and IBM of the intention to set aside the exclusion notice has yet to be determined.

3. Members who decide not to be treated as being in DB pensionable service from 6th April, 2011

will instead be treated as having remained in DC membership and will remain "hybrid deferred" members of the DB Plan (an option not open to members who elect to rejoin the DB Plan).

4. Because the 2009 NPAs were invalid, hybrid deferred members will retain final salary linkage under the 2006 NPAs.

5. Warren J found that IBM was now entitled to serve further exclusion notices to end members' DB accrual with effect from a future date, but only after having carried out a proper consultation, based on a new proposal and taking into account changed economic and financial circumstances.

D. Early retirement

1. Warren J held that, in principle, members who retired pursuant to the early retirement window were entitled to claim damages/compensation from IBM.

2. IBM could not rely on its new early retirement policy against members who voluntarily left service between 6th April, 2010 and 5th April, 2014. Such members were entitled to have the old early retirement policy applied to them and on the basis that consent to early retirement was not needed or was given.

3. Members who remained in service but who would have taken early retirement if the old policy had continued would have to prove that they would have taken early retirement.

4. Warren J made no decision in respect of members leaving service on or after 6th April, 2014. He concluded that IBM could now change its early retirement policy any time after that date and left the point open for further argument as to whether IBM was required to give members a notice of change of policy post-6th April, 2014.

E. Consultation

1. Warren J held that IBM could not now close the DB Plan to future accrual without first conducting a proper consultation based on the new proposal and changed economic and financial circumstances.

2. He said he was willing to consider granting an injunction against IBM to stop it from taking steps to close the DB Plan to future accrual unless it gave a binding commitment and undertaking that it would not serve future exclusion notices without conducting a proper consultation.

3. But he decided that IBM should be permitted to serve an immediate exclusion notice conditional on IBM succeeding in overturning certain aspects of his main judgment on appeal. The mechanism for this, and also whether an injunction should be granted, will be addressed at a future "consequential matters" hearing.

4. Warren J concluded that, in principle, IBM's breach of duty in respect of the consultation gave rise to a claim by members for damages for financial loss, although he doubted this would give rise to any additional claim over and above the other claims.

F. Next steps

1. It is expected there will be a further hearing at which Warren J will consider whether to give permission to appeal, and to address other consequential matters.

2. The parties have agreed in principle to stay implementation of the main judgment and the remedies judgment until such time as any appeal proceedings are resolved.

Comment: The remedies judgment in effect unwinds the benefit changes that comprised Project Waltz. IBM is expected to appeal both this and the main judgment.

Action point(1): When considering proposals for cessation of future accrual, employers and trustees should consider carefully whether the proposals are

consistent with the Imperial duty of good faith. This may include considering whether members have "Reasonable Expectations" of continued accrual or other benefits under the scheme, with reference to previous communications with members. This may be particularly relevant to benefit change exercises proposed to coincide with the April, 2016 ending of DB contracting-out.

Action point (2): So far as consultation with members is concerned, since failure to consult in accordance with the legislation[4] does not invalidate the change, in some cases, for commercial reasons, the requirements may not been met in full. For example, the 60 day time limit may not always be complied with on a corporate transaction. But Warren J's finding that the manner in which the consultation was carried out here amounted to a breach of the contractual duty of good faith suggests that employers will in future need to re–evaluate the rigour with which they engage in the consultation process.

Employers need to make sure that the reasons for the change as explained in the consultation are consistent with the internal reasons put to the employer's board. Trustees may well ask, post IBM, to see the presentation to the board.

Where the employer group has promulgated its core values or mission statement, ensure that all internal and external messaging is consistent with that. Failure to do so weighed heavily against IBM in Warren J's main judgment. And assume that all internal communications, unless protected by solicitor/client privilege, could have to be produced in court (ie. made very public).

XII. Liability of employers for Section 75 debt: High Court decision in relation to the Merchant Navy Ratings Pension Fund

On 25th February, 2015, the High Court approved rule amendments to Merchant Navy Ratings Pension Fund ("**MNRPF**") to introduce a new contribution regime under which all participating employers, whether current or historic, could be liable to contribute to the Section 75 debt.

The court also held that the scheme was "frozen" after 31st May, 2001, since thereafter there was no employment to which the scheme related and no active members in the statutory sense.

We will be looking in more detail at the judgment, and its implications for schemes that have closed to future accrual but that remain "open" for Section 75 purposes (because for example, they retain a final salary link) in a future Pensions Bulletin.

XIII. Obligation to take personal pension benefits before NPA for the purposes of calculating means-tested benefits: BRG v Secretary of State

On 10th June, 2014, the Upper Tribunal of the Administrative Appeals Chamber dismissed the appeal of an individual claiming State Pension Credit against the DWP's decision that benefits available to him under a personal pension scheme (the "**scheme**") should be taken into account.

The individual, BRG, was age 63. He was entitled to take benefits under the scheme at age 55, although normal pension age under the contract was age 65.

The State Pension Credit Regulations 2002 require any pension income foregone to be treated as possessed by the individual, including where a person is "entitled to money purchase benefits under a personal pension scheme and …. fails to purchase an annuity with the funds available in that scheme".

The Upper Tribunal held that the provision applied where the beneficiary had not yet reached the retirement age which he originally selected but had reached an age at which he could request that benefits be made available to him.

Comment: This decision may have implications for other means-tested benefits and is likely to be of greater significance when individuals have more flexibility in accessing DC benefits from 6th April,

[4] The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendments) Regulations 2006

2015. Pension Wise has a guide on the interaction between flexible benefits and state benefits.

XIV. Forced retirement at age 70: Whether age discrimination: Sharma v Lee

On 21st October, 2014, the Watford Employment Tribunal dismissed the unfair dismissal and age discrimination claims of an employee who was "pressured" to retire at reaching age 70.

The employer argued that the reason for asking him to retire was to avoid the indignity of performance proceedings. Following *Seldon v Clarkson Wright and Jakes* [2012] IRLR 590 the Tribunal found that this was a legitimate aim. Further, pressurising Mr Lee to resign was a proportionate means of achieving that aim. The Tribunal found this pressure had been applied "*somewhat gently and appropriately in order to achieve the aim of avoiding what might have been described as the "shifty way" of disciplinary or capability proceedings. It was done as a means of avoiding unpleasant capability proceedings and it was proportionate, in our view, to that aim*".

XV. Two year time limit for paying death benefits: Ombudsman's determination in relation to Mrs Bashford

On 26th January, 2015, the Pensions Ombudsman held that a scheme administrator should have made a member's widow aware of the statutory two year time limit for payment of death benefits to avoid the payment being an unauthorised payment for tax purposes. He also held that, if the administrator had done so, Mrs Bashford would have provided the necessary documents to allow it to make the payment within the time limit.

The Ombudsman partially upheld a complaint by the widow of the holder of a retirement annuity contract with Scottish Widows. She had provided Scottish Widows with a grant of probate 4 years after she informed it of the policyholder's death.

The Ombudsman directed Scottish Widows to reimburse the widow for the unauthorised payment charge and the unauthorised payment surcharge (totalling £36,866) that resulted from the ensuing unauthorised payment, with interest. But he also held that the late payment of these charges after the due date was caused by an accountant instructed by the widow and was entirely outside Scottish Widows' control. Scottish Widows therefore had no responsibility for the resulting late payment surcharges and the interest on late payment (totalling £5,865).

As Scottish Widows' failings had caused the widow distress and inconvenience, it was directed to pay £200 in compensation. But the Ombudsman did not make any award for the legal fees claimed because the complaint was "relatively straightforward".

Points in Practice

XVI. PPF Levy 2015/16: Answers to FAQs

On 20th February, 2015, the PPF Board published answers to a number of new FAQs.

These deal in particular with:

- Mitigating the impact of the "mortgage age" variable in calculating employers' Experian insolvency scores, including confirmation that a duly appointed deputy company secretary can sign the relevant certificate.

  Note that we have separately had confirmation from the PPF that this also applies to the officer's certificate required in relation to a Type A contingent asset,

- ABC arrangements (the PPF confirming that:

  – schemes that do not wish to certify an ABC value may still claim credit for ABC payments up to 31st March, 2015 (for the levy year 2015/16), and

  - no credit will be given for either the ABC value or ABC payments where the ABC arrangements are self-funded and have not been included in a Section 179 valuation), and

- Last man standing schemes, dealing with the practicalities of the requirement to confirm that legal advice has been received that the scheme is a last man standing scheme; after 31st March, 2015 schemes that have previously certified themselves as last man standing schemes will receive an email from the Pensions Regulator asking for confirmation that they have received the necessary legal advice. The email will link to an online form posted on the PPF's website that will ask the trustees to confirm that they have received legal advice. The deadline for submitting the form is 29th May, 2015.

The answers to FAQs are on the PPF website. Our action plan gives more information about the PPF levy 2015/2016 and steps to mitigate it. Please contact Lynsey Richards lynsey.richards@slaughterandmay.com for a copy.

This Bulletin is prepared by the Pensions and Employment Group of Slaughter and May in London.

We advise on a wide range of pension matters, acting both for corporate sponsors (UK and non-UK) and for trustees. We also advise on a wide range of both contentious and non-contentious employments matters, and generally on employee benefit matters.

Our pensions team is described in the 2015 edition of Chambers as follows:

- "*they employ professional and personable members of staff with a great depth of knowledge and practical know how*", and
- "*their ability to organise a transaction and make sure all things come into action is very, very good and they are incredibly thorough*"

Our recent work includes advising:

- Imperial Chemical Industries Limited and Akzo Nobel N.V. on the de-risking of the ICI Pension Fund by way of a circa £3.6 billion transaction. The transaction, which was announced on 26th March 2014, involved the Trustee of the ICI Pension Fund entering into bulk annuity buy-in policies with Legal & General Assurance Society Limited and Prudential Retirement Income Limited respectively in relation to in aggregate circa £3.6 billion of liabilities of the ICI Pension Fund (which comprise approximately one quarter of the Akzo Nobel pension liabilities). The Legal & General buy-in is the largest ever bulk annuity policy arranged by a pension scheme in the UK
- BBA Aviation plc on the pensions aspects of its disposal of the APPH entities and a "section 75 debt" apportionment arrangement with the trustees of its defined benefit pension scheme, the BBA Income and Protection Plan (the "IPP"), and thereafter on the structuring and implementation of an asset backed funding arrangement with the trustees of the IPP. The asset backed funding arrangement replaces a previously agreed schedule of contributions and is designed to generate an annual income stream of approximately £2.7 million for the pension scheme whilst minimising the risk of scheme over-funding in the future
- Aviva on the de-risking of the Aviva Staff Pension Scheme by way of a circa £5 billion longevity swap transaction involving insurance and re-insurance arrangements. The transaction is the largest of its type to date and allows the defined benefit scheme to re-insure the longevity risk relating to approximately 19,000 of its members (roughly a third of its total longevity risk). Aviva's in-house legal team also advised.
- Premier Foods, on a revised funding arrangement with the group's defined benefit pension schemes as part of Premier Food's refinancing plan. Revisions to the funding arrangements included reduced pension deficit contributions and the granting of additional security to the pension schemes
- Unilever Plc on the creation of an innovative pension funding vehicle under which a unit-linked life policy was established to fund centrally certain overseas unfunded retirement benefit obligations
- General Motors, on the pensions aspects of the sale of Millbrook Proving Ground Limited (the test and engineering technology centre). The sale was dependent on structuring a pensions reorganisation so that the Millbrook Pension Plan and all pension liabilities were retained in the General Motors group
- ConocoPhillips, on complying with its auto-enrolment duties, including analysing how different categories of employees would be provided with pension benefits in compliance with those duties and setting up a new DC pension plan and a new registered life cover pension plan
- Royal Mail on a benefit change exercise which enabled Royal Mail to use some of the c£2bn of assets remaining in the Royal Mail Pension Plan following the 2012 transfer of its pension liabilities to HM Government to fund a £300 million a year gap which would otherwise have opened up between the pension contributions which it could afford and the amount which was required to keep the Plan open for the future accrual of benefits. We had previously advised on the 2012 transfer of approximately £30 billion of Royal Mail's historic pension liabilities to HM Government
- The Trustee of the General Motors UK Retirees Pension Plan, on the surrender in October, 2012 of 2 insurance policies and the purchase of a bulk purchase annuity policy with Rothesay Life. The transaction covered all or substantially all of the Plan's benefit obligations and had an aggregate value of approximately £230 million

If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact **Jonathan Fenn** jonathan.fenn@slaughterandmay.com or your usual Slaughter and May adviser.

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