SLAUGHTER AND MAY

Pensions and Employment: Pensions Bulletin

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Legal and regulatory developments in pensions

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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 your normally deal at Slaughter and May or Bridget Murphy

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 (or has recently run out), with links to more detailed information. New or changed items are in **bold**.

No.	Topic	Deadline	Further information/action
1.	Reduction in annual allowance for high income individuals Note: Up to £80,000 annual allowance for tax year ending 5th April, 2016	Applies for tax years starting on or after 6th April, 2016	Summer Budget 2015 Supplement:
2.	Severance payments and tapered annual allowance pitfall	From 6th April, 2016	Pensions Bulletin 16/06 2.1 Since 6th April, 2016, the £40,000 annual allowance for high income individuals is reduced by way of a taper to a minimum of £10,000 for those with income of £210,000 or more. 2.2 For the taper to apply, the individual must have UK taxable income in 2016/17 of : ♦ £110,000 "threshold" income, and ♦ £150,000 "adjusted" income. 2.3 Any taxable element of a termination package counts towards both threshold and adjusted income. A taxable termination payment could therefore catapult an individual over the £150,000 limit, resulting in a tax charge for the member on pension provision already made. 2.4 There may be scope for timing taxable termination payments to straddle tax years but care would be needed in view of anti-avoidance provisions. Termination procedures should be reviewed to build in a process to identify and manage this point.
3.	Reduction in Lifetime Allowance from £1.25 million to £1 million	6th April, 2016	Pensions Bulletin 15/19
4.	Members who intend to apply for Fixed Protection 2016 ("FP 2016") must have stopped accruing benefits	6th April, 2016	Pensions Bulletin 15/16
5.	Abolition of DB contracting-out: practicalities	6th April, 2016	Pensions Bulletin 15/16 5.1 Employers to notify affected employees of change in contracted-out status "at the earliest opportunity" and in any event by 6th May, 2016. 5.2 Schemes to notify affected members before, or as soon as possible after, 6th April, 2016 and in any event by 6th July, 2016. 5.3 Change template contracts of employment for new joiners to remove references to contracted-out employment. 5.4 Update, where applicable, pensions section of employee handbook to cover consequences of contracting-out ending.
6.	Abolition of DB contracting-out: Rule amendments needed Note: Statutory power to amend, retrospective to 6th April, 2016, expires on 5th April, 2017	6th April, 2016	If your scheme was contracted-out on 6th April, 2016 and currently has active members accruing benefits (and who continued to accrue benefits after 5th April, 2016 in the scheme), then your scheme will, more likely than not, require a rule amendment effective from 6th April, 2016 to prevent the inadvertent addition of an additional underpin to the accrued GMPs of those active members. See further Pensions Bulletin 16/03 .
7.	Abolition of DB contracting-out: Compliance with auto-	6th April, 2016	If employer is using COSR as a "qualifying scheme" for auto-enrolment purposes, scheme will need to satisfy either:

No.	Topic	Deadline	Further information/action
	enrolment requirements		♦ "test scheme standard", or ♦ alternative "cost of accruals" quality test if it is to continue as a "qualifying scheme". Pensions Bulletin 16/05
8.	Requirement to provide risk warnings when member provided with means of accessing DC benefits	6th April, 2016	Pensions Bulletin 16/04
9.	Put in place register of persons with significant control ("PSC") for trustee company where trustee is a corporate	6th April, 2016	Pensions Bulletin 16/03
10.	Ban on member-borne commissions in DC schemes used for auto-enrolment	5th July, 2016 at the latest	Trustees must notify "service providers" if the scheme is being used as a "qualifying scheme" for auto-enrolment purposes and some or all of the benefits are money purchase. Pensions Bulletin 16/04
11.	Cyclical re-enrolment	Within 6 month window by reference to third anniversary of employer's staging date	For example employers with a 2013 staging date must complete cyclical re-enrolment process between December 2015 and June 2016. Publication available to clients on request from usual pensions contact.
12.	First Chair's annual governance statement	Within 7 months of end of scheme year (for scheme years ending on or after 6th July, 2015)	For example, schemes with a 31st December year end must submit statement by 31st July, 2016. Client note dated June, 2015 available from Lynsey Richards.
13.	"Brexit"	Referendum held on 23rd June, 2016	Consider potential impact on pension schemes. Client publications available on Slaughter and May website
14.	DC Code of Practice 13 on governance and administration takes effect	28th July, 2016	Schemes offering money purchase benefits (including money purchase AVCs, insofar as the legislation applies) must familiarise themselves with the revised Code.
15.	Provisional date for Supreme Court to hear appeal in *Walker v. Innospec* (see also the Advocate General's Opinion in *Parris v. Trinity College Dublin*)	November 2016	To establish whether survivor benefits for civil partners will be retroactive to a date before the Civil Partnership Act 2004 came into force
16.	HMRC's existing practice on VAT and pension schemes ends (please see our item on this in Pensions Bulletin 16/13)	31st December, 2016	Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover
17.	Data protection: New Regulation	25th May, 2018	Pensions Bulletin 16/05
18.	IORP II expected transposition deadline	October/ November, 2018	Pensions Bulletin 16/11

New Law

I. PPF and FAS long service cap - consultation on PPF cap

1. Richard Harrington (Parliamentary Under Secretary of State for Pensions) announced in a written statement before Parliament (on 15th September, 2016) that a consultation was about to be launched to introduce the long service cap for the Pension Protection Fund, with effect from 6th April, 2017.

2. The statement also says that the Government intends to introduce an equivalent cap for the Financial Assistance Scheme, with effect from April, 2018.

3. The consultation regarding the long service cap for the PPF was issued on 15th September, 2016 and closes on 9th November, 2016.

4. The increase to the cap will not be backdated and will be set at 3% for each full year of pensionable service over 20 years, with an overall cap of twice the standard cap.

5. Currently, the cap applied to an individual is the one in place when they first take their compensation. The 2016/17 PPF

compensation cap is £37,420.42 which produces, at age 65, a compensation amount of £33,678.38.

6. Section 50 of the Pensions Act 2014 (‘**the Act**’), once in force, will amend the Pensions Act 2004 to introduce a long service cap.

7. Under the Act, the PPF would be able to deem a length of pensionable service where a member has transferred-in, or where the PPF is unable to identify a length of pensionable service.

8. Where an individual is entitled to PPF compensation when the legislation comes into force, if they have 21 years or more pensionable service the 3% uplift would be applied to the cap that was originally imposed on that person’s compensation, without backdating. Survivors’ compensation would also be recalculated.

9. Where a terminally ill individual received their PPF compensation in lump sum form within a year of the long service cap legislation coming into force, the lump sum would be recalculated, if appropriate, and the increase would be paid to the individual or to their estate.

10. Other elements of the individual’s entitlement would not be adjusted. For example, if a person’s compensation has been reduced because part of it has been taken as a lump sum, the same reduction would be applied to the increased amount of compensation and no further lump sum would be paid.

11. For schemes in an assessment period, the test by which scheme assets are assessed against the cost of buying annuities (to cover benefits equal to PPF compensation) would be carried out as if the long service cap did not exist. However, members paid a pension reflecting a capped amount of compensation (which is what trustees must pay members during an assessment period) would have their benefits recalculated if they meet the long service cap conditions.

12. The consultation paper says that schemes winding up on a date before the legislation comes into force (expected to be 6th April, 2017) should follow the statutory priority order and allocate assets as if the long service cap did not exist.

13. Where an individual is entitled to benefits from more than one source (for example, they may have a pension credit entitlement in addition to benefits earned by their own pensionable service) the PPF has been applying separate caps to each entitlement. The legislation did not, initially, support that approach so the Pensions Act 2014 corrected the position to enable the PPF to continue on the same basis. The draft Pension Protection Fund (Modification) (Amendment) Regulations 2017 (‘**the draft regulations**’) will make a similar change to secondary legislation (SI 2005/670).

14. The draft regulations will also:

    - enable pensionable service attached to a second or subsequent tranche of PPF compensation to be taken into account when calculating an individual’s long service cap. This is designed to address the situation where an individual with a single entitlement receives that entitlement in more than one tranche because, for example, the scheme has changed its normal pension age from 60 to 65 during that person’s pensionable service,

    - enable the PPF to pay money purchase funds worth £10,000 or less directly to the member as a lump sum (the PPF currently do this where the pot is worth

£2,000 or less). The change would bring the PPF into line with the £10,000 figure introduced under the Registered Pension Schemes (Authorised Payments) Regulations 2009.

15. For information, the consultation document refers to two draft Orders, which are not being consulted upon:

- Draft Pensions Act 2014 (Commencement No.9) Order 2016 – bringing into force provisions regarding the long service cap,

- Draft Pensions Act 2014 (Pension Protection Fund: increased compensation cap for long service) (Pension Sharing on Divorce) (Transitional Provision) Order 2017.

Comment (1): The PPF long service compensation cap has been on the horizon for some time, as envisaged by provisions not yet in force in the Pensions Act 2014.

Comment (2): Any future introduction of the long service cap has recently been identified as a relevant factor in the context of the British Steel Pension Scheme. The DWP's consultation regarding that Scheme stated:

> *"We estimate that 776 members of the BSPS would be affected by the current PPF cap. Of these, 665 people (85 per cent) have more than 20 years' service so would benefit from the introduction of the long service cap. DWP estimate that around 500 of these individuals would not be subjected to the cap following the implementation of the three per cent uplift. The other 166 would benefit but potentially to a lesser degree.... However there is a significant minority of high earners that would not benefit as they have fewer than 20 years' service."*

II. Consultation on financial advice

1. HM Treasury is consulting on the definition of financial advice. The consultation was published on 20th September, 2016 and closes on 15th November, 2016.

2. The consultation is being launched to address the increased risk of consumers making poor investment decisions because firms are reluctant to offer guidance services for fear of providing regulated advice without being authorised to do so.

3. There are currently 2 definitions of financial advice. Regulated financial advice involves 'advising on investments' as set out in the Regulated Activities Order[1] (**RAO**). This definition is broader and less specific than the definition used in the Markets in Financial Instruments Directive (**MiFID**). The MiFID definition focuses on firms providing a personal recommendation.

4. The Financial Advice Market Review (FAMR) concluded that the MiFID definition is easier for firms to build into their compliance processes.

5. The consultation therefore proposes to amend the wording in Article 53 of the RAO to reflect the text set out in MiFID, so that consumers only receive "regulated advice" when they are offered a personal recommendation for a specific product.

Comment (1): Employers with group personal pension plans have had to pay careful attention to their communications so

[1] Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)

as to avoid falling foul of restrictions on who may provide financial advice. Where an occupational pension scheme is in operation, however, the RAO regime does not apply. However, care is still required to avoid liability based on negligent mis-statement.

Comment (2): A Financial Advice Working Group was established in June, 2016, following recommendations made by the FAMR, published on 14th March, 2016. The Working Group is tasked with taking forward 3 of the FAMR recommendations:

- Working with employer groups to develop a guide to the top 10 ways to support employees' financial health - the FCA and Pensions Regulator are planning to release a factsheet in early 2017;
- Publishing a shortlist of potential new terms to describe 'guidance' and 'advice' by the third or fourth quarter of 2016; and
- Designing a set of rules of thumb and nudges to increase consumer engagement by the first quarter of 2017.

III. NEST rule changes

1. On 20th January, 2016, NEST published a consultation on rule amendments to reflect the removal on 1st April, 2017 of NEST's restrictions on contributions and transfers.
2. NEST also proposed additional changes to deal with pensions flexibility following publication of its paper "The future of retirement: a retirement income blueprint for NEST's members" in June, 2015.
3. NEST had been relying on the statutory override provisions in the Taxation of Pensions Act 2014 to offer full uncrystallised funds pension lump sums (UFPLS) since April, 2015. It has now amended its rules to reflect this. It has also introduced partial UFPLS, allowing a member to takeout a cash sum that is less than the total value of their pots. Both changes were introduced with effect from 5th September, 2016. NEST have also made 'tidying up' amendments as part of this exercise.

IV. NEST's future - consultation deadline for responses extended

The Government's consultation on how NEST should evolve in the future was published on 7th July, 2016 (Pensions Bulletin 16/11). The deadline for responses has been extended to 5th October, 2016.

Comment: It is not entirely surprising that NEST wishes to reassess its role in a fast-changing pensions environment. Once the response is published, it will be interesting to see how much appetite there is outside of NEST for that master trust to change further. One option on the table involves considering whether there is a case for expanding the opportunities for individuals, employers and other schemes to access NEST's services (for example, allowing NEST to be used as the destination for a bulk transfer where the employer is not already using NEST for auto-enrolment).

Tax

V. Finance Act 2016

1. The Finance Bill has now received Royal Assent (on 15th September, 2016). Sections 19 to 23 of the Act relate to pensions and provide, amongst other things, for the reduction in the lifetime allowance for the tax years 2016-17 and 2017-18 to £1 million (down from £1.25 million). The Act also covers the transitional relief offered as a consequence, through Fixed Protection 2016 and Individual Protection 2016, and a number

of other provisions flowing from the reduced lifetime allowance (please see Pensions Bulletin 16/13).

2. Bridging pensions will be dealt with through regulations intended to align pensions tax legislation with the Pensions Act 2014. The intention is to enable schemes to continue paying bridging pensions up to the member's state pension age following the introduction of the single tier state pension.

3. Other changes aim to simplify the administration of dependants' pensions where the member died on or after reaching age 75. In that eventuality, the dependant's pension will not always have to be tested annually against the amount of the member's scheme pension, in certain circumstances.

4. A number of minor changes to certain benefits, including serious ill health lump sums and drawdown for dependants, are provided for under the Act, to remove unintended consequences flowing from the pension flexibilities introduced on 6th April, 2015.

VI. Autumn Statement date and publication of Finance Bill 2017 clauses

1. The draft Finance Bill 2017 clauses will be published on 5th December, 2016: (Written statement HCWS165 (Financial Secretary to the Treasury), following the Autumn Statement, which will be given on 23rd November, 2016.

2. The Government intends to close the consultation on the draft legislation on 30th January, 2017.

Cases

VII. Scally duty not applied re death benefit change

The Pensions Ombudsman has ruled (on 18th August, 2016) that an employer was not required to tell a member that ceasing to contribute could result in a much lower death benefit, as was then found to be the case almost one year later.

A. Facts

1. Mrs N had worked for Dundee City Council since 1971. She was a member of the Scottish Teachers' Superannuation Scheme and chose to stop payment of contributions on completing 40 years of pensionable service in November 2012. Mrs N died in October, 2013. As Mrs N was a deferred member, her death benefit was far lower than it would have been had she died as an active member of the Scheme.

2. Mr N (Mrs N's widower) complained. The Scheme administrator claimed to have written to Mrs N in January, 2013 to tell her that she should join the scheme again, since the maximum number of years pensionable service was 45 years. Mr N asserted that his wife had not received such a letter.

3. Mr N complained that had his wife been made aware of the implications of opting out of active membership she would not have done so, since she was ill by the time she opted out. He asserted that the form for opting out referred to a death grant being payable on death before retirement (under a section headed 'Why should I be a member of the scheme?') and his wife believed that the death benefit would not change on opting out. He also argued that the duty under *Scally* (requiring employers to take reasonable steps to inform employees about a contractual term in certain circumstances) had been breached.

B. Decision

1. The Ombudsman did not uphold the complaint.

2. The reference to death benefits in the opt out form was contained in a list of 6 bullet points, 4 of which applied equally to actives and deferreds. The bullet point regarding death benefits (along with another point about AVCs) did not apply to deferred members, however.

3. The opt out form also required the member to declare that she had read 'the guidance' and knew about the benefits under the scheme. This meant that *Scally* did not apply, since it could not be said that Mrs N could not in all the circumstances reasonably be expected to be aware of the term in question, unless it had been drawn to her attention.

Mr N (PO-9507)

Comment: There is no positive duty on an employer to provide advice to its employees about pensions. However, in certain circumstances, it would be an implied term of the employment contract that the employer is required to provide its employees with certain types of information. The leading case in this area is the decision of the House of Lords in *Scally* (23rd October, 1991). In that case the Court decided that the employer had to take reasonable steps to inform its employees about a contractual term, in order for the employee to take advantage of that term, where all of the following circumstances apply:

- the terms of the contract have not been negotiated individually,

- the term concerned makes available to the individual a valuable right contingent on the individual taking action to take advantage of that right, and

- an employee cannot, in all circumstances, reasonably be expected to be aware of the term, unless it is drawn to his attention.

VIII. Non-pensions case - Trustee liability (Section 61 TA1925) and Trustee Investment duty

In a ruling concerning a will trust, the High Court ruled that three professional trustees (who were solicitors) were not liable for losses experienced by the trust fund as a consequence of the poor performance of equities in the technology, IT and telecom sector in 2001.

A. Facts

1. The claimants were beneficiaries under a will. The way in which the assets were invested meant that the estate was adversely affected by the "dot com crash" which took place in 2001.

2. The beneficiaries did not claim that the trustees had failed to understand their duties. Rather, the beneficiaries argued that the trustees had not put in place an investment strategy reflecting the objectives and risk profile of the trust, did not keep the investments under review and relied on poor quality advice provided by independent financial advisers.

3. The Trustees argued that even if there had been found to be any breach of trust, the loss claimed had not been caused by such a breach. If that argument were not accepted, the Trustees sought protection under Section 61 of the Trustee Act 1925 because they had acted honestly and reasonably.

B. Decision

1. The judge examined each investment decision made by the trustees in the relevant period (2000-2002), asking whether the

investment decision concerned was one which no trustee, acting prudently, could reasonably have made in the circumstances (following *Wight v Olswang*).

2. The three professional trustees were found to be in breach of trust but the claim was dismissed because the breaches could not be linked to loss suffered by the beneficiaries. The judge found, however, that the investments selected (equities and cash) were not sufficiently diversified. Also periodic reviews ought to have been conducted to consider whether the investment strategy was still appropriate for the trust's attitude to risk.

3. The judge pointed out that, had he found the Trustees liable for breach of trust causing loss, he would have given them relief under Section 61 of the Trustee Act 1925 anyway, despite the fact that they were remunerated:

> *"The Defendants were by no means cavalier, self-interested or unthinking. On the contrary, I consider that they worked hard and consistently and over a long period of time, to the best of their abilities and in reliance on what they reasonably believed to be competent professional advice, to achieve the best results that they could for the Trust: even if it is right that they ought not to have succumbed to the aspiration that they could "generate significant capital growth", their sincere intention was always to benefit the Claimants….the degree of harm which any breaches of trust have occasioned to beneficiaries is a matter which may and typically should be taken into account when deciding whether trustees "ought fairly to be excused" under section 61. For this reason, if I had thought that any breaches of duty on the part of the Defendants had occasioned loss to the Claimants of the magnitude of their claim in these proceedings, I would have been more hesitant about granting the Defendants relief from personal liability."*

Daniel and Daniel v Tee and Others

Comment: Although this is not a pensions case it should be of interest to trustees generally. The courts are not keen to exercise their discretion to grant relief under Section 61 of the Trustee Act 1925, which allows courts to take that step where the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust. The Trustees in this case appear to have been particularly lucky given their status as professional trustees and as solicitors.

IX. Ombudsman exercises discretion to limit investigation to UK scheme

A. Overview

The Ombudsman has decided to exercise his discretion under Section 146 of the Pension Schemes Act 1993 to not investigate a complaint in so far as it relates to pension schemes based in the US.

B. Facts

1. Mrs B worked for Bank of America Merrill Lynch in the UK between 1975 and 1981. The bank sent Mrs B a letter when she left, stating:

> *"..as your pensionable service with Merrill Lynch exceeded five years, you have a vested pension benefit and…you will not receive a refund of contributions.."*

2. Mrs B asked about her pension benefits in 2013 and was told that the bank had been unable to trace any record of pension benefits. Correspondence continued between Mrs B, the bank and the scheme's former administrators, resulting in the bank expressing its view in 2015 that Mrs B had never been a member of its UK schemes, nor

of the US schemes. HMRC's confirmation that Mrs B had never been contracted-out was also referred to by the bank. HMRC's confirmation suggested that she had not been a member since, at the time of Mrs B's employment, the UK schemes required contracted-out membership. Mrs B complained to the Ombudsman. Although she acknowledged that her membership was most likely to be of a UK scheme, Mrs B argued that her membership could, potentially, relate to one of the bank's US schemes.

C. Decision

1. The Ombudsman dismissed the complaint. The letter sent to Mrs B in 1981 was not sufficient proof of membership. HMRC's confirmation regarding an absence of any contracted-out employment records was good evidence that Mrs B was not entitled to pension benefits under the bank's UK schemes.

2. As regards the US schemes, the Ombudsman decided to exercise his discretion under Section 146 of the Pension Schemes Act 1993 to not investigate a complaint in relation to those schemes. If he were to make a ruling concerning the US schemes, that ruling would only be binding in the UK:

> *"The Pension Schemes Act 1993, relates to my jurisdiction with regard to the types of schemes that I can investigate. That includes complaints about the management and administration of occupational (work based) and personal pension schemes. Part of the definition of an occupational pension scheme is one that is wholly administered in the UK, or outside of the European Economic Area. While technically it would be possible to investigate a complaint about a US based scheme, there is a requirement for in depth knowledge and expertise of foreign pension law to allow this Service to fully investigate such a complaint. "*

Mrs B (PO-11020)

Comment: There is a provision in the Pensions Act 2004 (Schedule 12, paragraph 23) which provides for the Ombudsman to conduct investigations, in prescribed circumstances, "whatever the extent of any connections with places outside the United Kingdom". That provision has not been brought into force, however.

Points in Practice

X. PPF levy consultation

1. The PPF is consulting (from 22nd September, 2016 to 31st October, 2016) on the 2017/18 PPF levy. The PPF says that it will publish its conclusions by the end of 2016.

2. The consultation confirms that the levy scaling factor and scheme-based levy multiplier for 2017/18 will not change, nor will the levy estimate, which will remain at £615 million.

Proposals outlined include the following:

3. **Accounting standard - impact on insolvency risk measurement**

    3.1 The introduction of FRS 102 brings the accounting standards into line with International Financial Reporting Standards, which apply widely (including to entities listed on EU stock exchanges). At a general level, it changes how entities value certain assets and liabilities in their accounts.

    3.2 The PPF has found that the impact on scores is limited. However, where the move to the new standard leads to the

inclusion or exclusion of new items for the first time (known as change variables) that could affect an employer's score without reflecting an improved understanding of the employer's strength. The PPF therefore intends to allow employers most affected (large and complex and not-for-profit scorecards) to certify an adjustment to the figures in the accounts used for change variables.

4. Absence of 'genuine' sponsor

4.1 The PPF's consultation refers to the British Steel Pension Scheme consultation response from the PPF, in which it expressed concern about the impact on other levy payers where a shell or special purpose vehicle (SPV) employer is in place. The PPF considers that it would not be appropriate for the standard methodology for calculating the levy to be applied in those circumstances. Instead, the PPF would focus on:

(i) the level of scheme underfunding at which PPF entry would be triggered; and

(ii) a measurement of the likelihood that that trigger level of underfunding would be reached, which would involve an examination of the scheme's investment strategy.

4.2 However, the PPF has decided not to introduce detailed rules to give effect to this approach at this stage:

> *"At this stage, therefore, we are simply reiterating our commitment to ensuring the levy is calculated appropriately for schemes in such a position (not least so that we can ensure there is no cross-subsidy from other levy payers). If it becomes necessary we will bring forward specific proposals separately to this consultation."* (para 1.4.3)

4.3 Where the PPF is asked to consider a proposal for a regulated apportionment arrangement and the scheme is running on without a 'genuine' sponsor, the consultation paper says that the PPF would examine the wider arrangements around the SPV or shell. Those wider arrangements (such as guarantees from group companies or a suitably rated bank) would need to provide a level of covenant that, taken together with the position of the scheme, means that the scheme will be supported in the long term and that a claim on the PPF is "highly unlikely".

5. ABCs - simplified requirements extended to 2017/18

The consultation paper confirms that the PPF intends to allow the lighter touch approach to recertifying asset backed contributions, introduced for 2016/17, to continue for 2017/18:

> *"We will always expect the trustees to ask a valuer to consider the value (and for that to continue to be based on legal advice about the ABC), but this can be by updating the previous valuation, and legal advice. The valuer will, however, need to owe the same duty of care to the PPF as with the original valuation, and so will have to form a view on what can be relied upon from the previous valuation in that context." (para 4.3.2)*

6. Submission of scheme data deadline

To align deadlines with the Pensions Regulator, the Measurement Time for submission of scheme data for the 2017/18 levy will be midnight, 31st March 2017.

XI. 2016 Consultation on assumptions used for Section 143 and Section 179 valuations

1. The PPF is proposing to update the assumptions used for Section 143 and Section 179 valuations. There would also be consequential changes to valuations carried out under Sections 152, 156 and 158.

2. To see the PPF's page on how each of these valuations is used, please click here.

3. The intention is to bring the valuation assumptions into line with current pricing in the bulk annuity market.

4. The most significant proposed changes are:

    - to use separate discount rates for pensioners and non-pensioners post retirement;

    - to use yield indices that have durations that better match average liability durations, including the introduction of a new index-linked gilt yield; and

    - to update the mortality assumptions.

5. The PPF's consultation invites comments until 31st October, 2016. The intention is that changes would be introduced from 1st December, 2016.

6. To see the consultation paper please click here.

XII. Pensions Dashboard prototype launch expected for Spring 2017

1. The Government has announced that a prototype of the Pensions Dashboard will be ready by March, 2017. The idea behind the Dashboard is that it will enable individuals to see the value of all their pensions in one place, providing a link to lost pension pots at the same time.

2. The hope is that individuals will become better engaged with their pension provision and would therefore be more likely to seek advice about their pension savings.

3. The ABI will manage the pilot project, under which 11 pension providers[2] will build the prototype.

    Comment (1): The Government's intention to introduce a Pensions Dashboard was announced in its 2016 Budget. To read about the ABI White Paper on the Dashboard, please see Pensions Bulletin 16/9.

    Comment (2): It seems likely that a regulation-making power will be introduced to compel schemes to engage with a Dashboard so that it can work. An example of this approach is the Incentive Exercises Code. The Code is voluntary but backed up by the 7-year power to make regulations banning those exercises (set out in Section 34 of the Pensions Act 2014).

    Comment (3): Trustees should note that the Dashboard will present another reason for the need to make sure that their scheme data is being well maintained.

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[2] Aviva, Aon, HSBC, LV=, NEST, Now: Pensions, People's Pension, Royal London, Standard Life, Zurich and Willis Towers Watson

XIII. Pensions Wise - FCA consultation on standards for guidance providers

1. The FCA's consultation paper CP16/22 proposes changes to the Pension Wise standards to which designated guidance providers are subject.

2. This stems from the Government's intention to introduce a secondary annuity market in April, 2017 and its decision to extend access to Pension Wise to people considering selling their annuity income and to contingent beneficiaries with an interest in those annuities.

3. If implemented, the FCA proposals would mean that the level of knowledge expected of designated guidance providers would be set out in the standards. There would also be requirements regarding the minimum content of guidance sessions, with each 'session' possibly covering more than one appointment.

4. The consultation ends on 4th October, 2016. The FCA are planning to publish their final standards in a Policy Statement in December, 2016.

XIV. EIOPA communication tools report

1. (EIOPA) has published a report on good practices regarding communication tools and channels for communicating to occupational pension scheme members.

2. EIOPA consulted, on 16th December 2015, on the draft report.

3. EIOPA has analysed the communication practices of IORPs, insurance undertakings and employers, among others, focusing on:

    - how the welcome/enrolment pack is transmitted to new members;
    - in which form active and deferred members receive any regular information about the status of their pension entitlements;
    - whether there are any retirement planning tools made available to members;
    - how ad hoc information on changes directly affecting members is being communicated; and
    - how members are told about their options when they change jobs or approach retirement.

4. The report concludes that most member states follow a rules-based approach towards disclosure and communication. In a number of jurisdictions, there is a gradual transition towards a more principles-based approach.

5. The most prevalent communication channel is paper but there is a shift towards the use of electronic communications. The report recommends storing all communication with scheme members in one online platform, accessible to all scheme members at any point in time.

    Comment (1): The report acknowledges that the good practices identified are not binding nor subject to a 'comply or explain' principle.

    Comment (2): In certain circumstances, UK pension schemes are able to provide members with information electronically, if the procedure set out in the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 is followed and the member or beneficiary in question has

not opted out of receiving information in electronic form.

Forthcoming events

XV. Pension Update Seminar

Our next Pensions Update Seminar will take place on 23rd November, 2016, between 9.30am and 1.00pm. Invitations have been sent out separately. A few places remain available.

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 or your usual Slaughter and May adviser.

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