SLAUGHTER AND MAY

# Pensions Bulletin

2 November 2018 / Issue 15

Legal and regulatory developments in pensions

## In this issue



Back issues

More about our pensions and employment practice

Details of our work in the pensions and employment field

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 Bridget Murphy

# New law

## I. Bulk DC transfers without consent - Master Trusts regime now in force

1. DC scheme trustees contemplating a bulk transfer without consent should note that one easement recently introduced by the Government in respect of such transfers is now possible.

2. The Government has, since 6th April, 2018, permitted some additional situations in which without consent transfers from DC schemes may take place. To read more about this please see Pensions Bulletin 18/05.

3. One of those situations involved the receiving scheme being authorised under the master trust regime introduced under the Pension Schemes Act 2017. In practice, however, this sort of transfer was not possible because the master trust regime had not been brought into operation at that stage.

4. Regulations[1] have now brought the master trust regime into force on 1st October, 2018.

5. Schemes falling within the statutory definition of a master trust will need to seek authorisation from the Pensions Regulator by 1st April, 2019 if they are to continue to operate (please see Pensions Bulletin 18/13).

# Tax

## II. Pension Schemes Newsletter 103

HMRC's Pension Schemes Newsletter 103 contains some useful reminders for trustees about its new online service, annual allowance pensions savings statements, master trusts, and its Trusts Registration Service.

### *A. New online service*

1. Trustees (who are typically the "scheme administrator" of occupational pension schemes for tax purposes) should log into the current Pension Schemes Online service and verify that their details are up to date. Not doing so carries the risk that they will not be migrated onto HMRC's new Manage and Register Pension Schemes Service, which is currently expected to go live in 2019 (please see Pensions Bulletin 18/07).

2. HMRC will only migrate "active" schemes and scheme administrators onto the new Service. It appears HMRC will treat a "scheme administrator" as "inactive" if they have not logged into the current Pension Schemes Online service since April 2015. Trustees who delegate their scheme administration to a "practitioner", such as third party administrators, may not have logged into the service themselves for some time and should therefore do so now.

### *B. Annual allowance pensions savings statements*

The newsletter reminds scheme administrators (trustees, for occupational pension schemes) that they:

1. must issue annual allowance pension savings statements for the tax year 2017/18 to members contributing more than their annual allowance by 6th October, 2018; and

2. should remind members who have exceeded their annual allowance to declare this on their Self Assessment tax return, where the deadline for submission and

[1] Occupational Pension Schemes (Master Trusts) Regulations 2018

payment of annual allowance charge due is 31st January, 2019.

**Comment:** The statutory requirement to issue a pension savings statement is triggered (1) where the individual has pension savings in the scheme in question that exceed the standard annual allowance (i.e. £40,000 for 2017/18) or (2) the scheme administrator believes that the individual has "flexibly accessed" a money purchase arrangement and their money purchase inputs in the scheme exceed £4,000. Any tapering is ignored, so a broader group of scheme members may in fact have an annual allowance charge to pay. Schemes can choose to provide annual allowance input information to a broader section, or all of, their members.

### *C. Master trusts*

From 1st October, 2018:

1. where a new master trust is to be registered, application to the Pensions Regulator for authorisation must be made at the same time.
2. existing master trusts have 6 months to apply for authorisation from the Regulator.
3. existing schemes that change status to become a master trust must inform HMRC within 30 days of the change on form APSS578 and must apply for authorisation from TPR.

### *D. Trust registration service and money laundering*

1. Scheme administrators of registered schemes (trustees, for occupational pension schemes) are reminded in the newsletter to keep their details up to date on the Pension Schemes Online/ Manage and Register Pension Scheme services to meet their Trust Registration Scheme ('**TRS**') obligations, and also of the process for seeking a repayment of income tax.
2. Detailed guidance on trust based registered pension schemes not having to register with the TRS to meet their money laundering obligations was given by HMRC in May 2018. Non-registered schemes set up under trust must register with the TRS if a UK tax liability is incurred.

# Cases

## III. GMP Equalisation - High Court rules schemes must take action

1. The High Court has handed down its judgment on the GMP equalisation case involving the Lloyds Bank pension schemes, ruling that trustees must address any inequalities brought about by unequal GMPs in respect of service on and from 17 May 1990.
2. The court assessed a number of equalisation methods. It rejected some and identified others which could be adopted, and held that the banks were entitled to require the Trustee to adopt the least costly method out of those that were acceptable.
3. The court concluded that beneficiaries will be able to make claims for arrears of payments plus interest without being subject to a limitation period, subject to what the rules of the scheme in question may provide on that issue.
4. Trustees will need to give careful consideration to what they should be communicating to members.
5. Trustees will also wish to discuss with the scheme actuary what this decision could mean for their scheme funding arrangements. Is its 'technical provisions' deficit increased? Will there be an impact

on the scheme's recovery plan, for example? Should a reserve be set up?

6. Trustees will also need to discuss the implications with their administrator. Are the administration systems set up so that benefits can be calculated in a way that complies with this ruling (as and when the position is resolved following any appeal)? Will they have the ability or the resources to implement any changes required?

7. Employers will wish to understand the implications of this judgment for their scheme's funding position, and their own obligations to meet any increase in the deficit that it brings about. They will also need to discuss with the Trustees which equalisation method is the most appropriate given the specific circumstances of their scheme.

8. Schemes and insurers in the throes of buy-out negotiations will need to consider how this decision may impact on the premium being discussed. It may well have implications for the pace at which those negotiations progress. In addition, schemes that have already implemented a buy-in or buy-out will need to consider how the decision impacts the benefits secured and whether any changes are appropriate.

9. It is not yet known how UK legislation on the conversion of GMPs into normal scheme benefits might, indirectly, be affected by this litigation. In a consultation in 2016 the Government promised to make such conversion easier to achieve. Currently, the realities of taking that step are unknown for schemes considering that option.

10. Also now uncertain is the Government's position on its long-running GMP equalisation campaign, which it indicated when the Lloyds Bank case was launched would be put on hold pending the outcome of that litigation.

11. The court's conclusion that a range of methods for GMP equalisation would be acceptable may offer some leeway for schemes with a preference (depending on their membership profile and benefit structure, and the views of the employer) for one method over another. There is a note of caution to be sounded, however, about the applicability of this decision to other schemes, requiring careful analysis on a scheme-by-scheme basis.

# Points in practice

### IV. PPF Compensation following Hampshire: Update

1. Those involved in running DB schemes may wish to take note of a recent PPF announcement about how it plans to deal with the impact of the *Hampshire* decision. *Hampshire* has meant that DB pension schemes may need to revisit calculations, and consequent decisions or exercises (such as scheme buy-outs or wind-ups), based around what had been understood to be PPF compensation levels. This is because *Hampshire* concluded that PPF compensation must equal at least 50% of each recipient's benefit (please see Pensions Bulletin 18/13).

2. Although the PPF's approach does not give a definitive answer to how UK legislation will be amended in the wake of *Hampshire*, it is notable that the PPF's announcement says that it is working closely with the DWP '*to make sure that our approach is likely to be consistent with the necessary future changes to legislation*'.

3. In advance of expected DWP legislation, the PPF is planning to make a one-off change, implemented via a process whereby:

   3.1 it will value the benefits that the eligible PPF member expected to receive from their scheme at the point of their PPF assessment date, and then value the member's PPF compensation from the same date; and

   3.2 where the PPF finds the compensation is less than 50%, it will increase the headline level of compensation payments until the total value is at least equal to 50% of the expected pension, with existing

PPF indexation and revaluation rules applied to the increased headline amount.

### V. DC Trustees fined £5,000 for failure to allocate contributions correctly

1. Trustees should continue to ensure that their scheme governance arrangements are such as to minimise future involvement from the Pensions Regulator. The Regulator's focus on governance appears to be sharpening.

2. A recent regulatory intervention report published by the Regulator outlines the first occasion on which it has issued a penalty for the failure of DC trustees to process 'core financial transactions' promptly and accurately.

3. Trustees of a master trust were issued with a penalty of £5,000 for failing to allocate £1.4 million of pension contributions to members' accounts.

4. Since 6th April, 2015, trustees of schemes providing non-AVC money purchase benefits have been required[2] to ensure that "core financial transactions are processed promptly and accurately".

5. The failure arose out of a manual process for allocating contributions, since replaced with an automated system. The Trustees reported the breach and a penalty notice was issued for the period between 6th April, 2015 and the date of appointment of a new trustee (17th October, 2016). The Regulator decided that the new trustee should not be penalised because it had had little time, between its appointment and the breach being reported, to take any action.

**Comment:** The Regulator's DC Governance Code of Practice states that Trustees should:

- *"review payment methods and use electronic processing where possible"*,
- *"invest contributions within 3 working days following receipt"*, and
- *"ensure that contributions and investments, and the records relating to them, are reconciled at least monthly, and discrepancies resolved promptly"*.

[2] Regulation 24 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

## 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. | Put in place register of persons with significant control ("PSC") for trustee company where trustee is a corporate | 6th April, 2016 and ongoing requirement | Pensions Bulletin 16/03 |
| 2. | Ban on member-borne commissions in DC schemes used for auto-enrolment | 5th July, 2016 at the latest and ongoing requirement | 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. |
| 3. | Cyclical re-enrolment | Within 6 month window by reference to third anniversary of employer's staging date | For example employers with a 1st July, 2015 staging date must complete cyclical re-enrolment process between 1st April, 2018 and 30th September, 2018.<br>Publication available to clients on request from usual pensions contact. |
| 4. | Money purchase annual allowance, | Retroactive effect from | Member communications should include a warning |

| No. | Topic | Deadline | Further information/action |
|---|---|---|---|
| | which applies to individuals who have flexibly accessed their money purchase pot on or after 6th April, 2015, has dropped from £10,000 to £4,000 under Finance (No.2) Act 2017 | 6th April, 2017 | note about this, highlighting the retroactive effect. |
| 5. | GMP equalisation | | |
| 5.1 | Part 8 action brought by female staff, trustee and Lloyds Trade Union | 15th May, 2017<br>**Judgment published** | We will continue to monitor developments in this litigation, which has implications for all schemes with GMPs accrued in the period 17th May, 1990 to 5th April, 1997.<br>**26th October, 2018** |
| 5.2 | Government response **to** consultation on GMP equalisation published | 13th March, 2017 | Pensions Bulletin 17/7 |
| 6. | HMRC's existing practice on VAT and pension schemes to continue indefinitely | | Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover.<br>Pensions Bulletin 17/18 |
| 7. | DC bulk transfers without member consent: introduction of easements | 6th April, 2018 | Pensions Bulletin 17/18<br>Pensions Bulletin 18/05<br>Pensions Bulletin 18/08 |
| 8. | Bulk transfers of contracted-out rights without consent: introduction of easements | 6th April, 2018 | Pensions Bulletin 18/01<br>Pensions Bulletin 18/05 |
| 9. | Deferred debt arrangements become available | 6th April, 2018 | Pensions Bulletin 18/05 |
| 10. | Disclosure of costs, charges and investments - new requirements<br>**Chair's statement and website must publish costs and charges information** | Mostly in force 6th April, 2018<br>**Within 7 months of scheme year end falling on or after 6th April, 2018 - so earliest compliance deadline is 5th November, 2018** | Pensions Bulletin 18/05 |
| 11. | Auto-enrolment total minimum DC contributions increase to 5% (of which minimum employer contribution of 2%) | 6th April, 2018 to 5th April, 2019 | |
| 12. | CJEU decides PPF compensation must equal at least 50% of each recipient's benefit (*Hampshire - Case C-17/17*) | 6th September, 2018 | Pensions Bulletin 18/13 |
| 13. | Data protection: New Regulation: EU General Data Protection Regulation in force | 25th May, 2018 | Pensions Bulletin 16/05<br>Employment Bulletin 16/15<br>As data controllers, trustees need to ensure that compliance with the EU General Data Protection Regulation is achieved.<br>A compliance checklist for trustees is available to clients from their usual Slaughter and May contact. |
| 14. | Existing EMIR exemption extension for pension scheme arrangements ends<br>EU Parliament confirms further extension of pensions exemption, with further extensions possible | 16th August, 2018<br>12th June, 2018 | Pensions Bulletin 17/01<br>Pensions Bulletin 18/12<br>Pensions Bulletin 18/10 |
| 15. | Master trusts new authorisation and supervision regime starts | 1st October, 2018 | Pensions Bulletin 18/12<br>Pensions Bulletin 18/13 (note: SI later re-issued as SI 2018/1030) |
| 16. | IORP II transposition deadline | 12th January, 2019 | Pensions Bulletin 16/11 |

| No. | Topic | Deadline | Further information/action |
|---|---|---|---|
| | | | |
| 17. | Brexit | By 29th March, 2019, unless extended | UK leaves EU from effective date of withdrawal agreement or, failing that, 2 years after giving Article 50 notice unless:<br>(a) European Council and UK unanimously decide to extend period, or<br>(b) UK withdraws, if able to do so, its Article 50 notice before 29th March, 2019. |
| 18. | Auto-enrolment total minimum DC contributions will increase to 8% (of which minimum employer contribution of 3%) | 6th April, 2019 onwards | |
| 19. | Trustees must ensure Statement of Investment Principles meets new requirements on ESG and stewardship | Most requirements to be met by 1st October, 2019 | Pensions Bulletin 18/13 |

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.