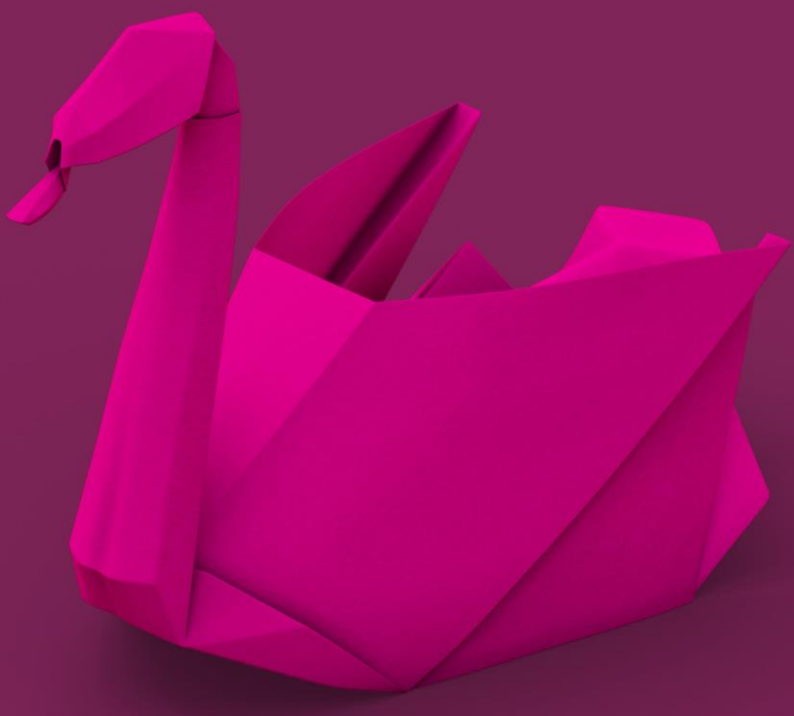
Your Quarterly Pensions Update

Dalriada Trustees – Industry Changes

Quarter 3 2020



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A better way

October 2020

Contents

01 Introduction

The purpose of this report is to provide an update for pension scheme sponsors and trustees on recent industry changes in the quarter.

For your convenience, we have summarised the key developments and highlighted the necessary actions sponsors and trustees may need to take.

We also include links to further relevant information and any deadlines you should be aware of.

We trust you will find the update useful and informative. If you require further information about how any of the topics covered might impact on your scheme specifically, please get in touch with Adrian Kennett, (adrian_kennett@dalriadatrustees.co.uk) or your usual Dalriada contact.

NOTE

This document is aimed at providing you with generic information about recent developments in the pensions industry.

You should not take any action as a result of information included in this document without seeking specific advice in relation to the impact these matters might have on your scheme or company. Dalriada Trustees Limited accepts no liability for actions taken or not taken as a result of this document.

02 Investment Market Q3 Quarterly Update

The price of gold again hit all-time highs in August, driven by loose monetary policy and the decline in the US dollar. Copper increased by 10%, driven by the improving outlook for global economic growth, while oil prices declined due to oversupply.

UK equities fell approximately 3% over the period, driven by the higher exposure to oil and financial sectors in the index, which have underperformed. Investor sentiment was reduced by the increased prospects of a no deal Brexit and a second wave in Covid-19 infections with possible lockdown restrictions.

Emerging market equities increased by about 5% (in GBP) over the quarter, as economic data improved and the US dollar declined, making dollar denominated debts cheaper to service. Chinese economic growth rebounded more than expected despite US-China tensions escalating, with the US imposing additional restrictions on Chinese tech companies. Corporate bonds performed well, driven by positive investor sentiment as economic conditions improved, with riskier, high yield debt outperforming investment grade alternatives.

US equities were up by around 4% (in GBP) driven by tech stocks, which benefited from more people working and shopping from home as a result of the Covid-19 pandemic. The Federal Reserve announced an important new policy framework of inflation targeting an average of 2% over the long term, which will result in longer periods of higher inflation and lower interest rates. Investor optimism was dampened due to the uncertainty surrounding the upcoming US presidential election, as there may not be an orderly transition if President Trump is defeated and the result may be contested due to the increased use of postal votes and claims of potential fraud.

Nominal UK gilt yields increased (i.e. prices decreased) over the quarter as investors favoured riskier asset classes. All else being equal, this acts to decrease the value placed on pension schemes' fixed liabilities. UK long-term inflation expectations were unchanged over the quarter, as an improving economic outlook offset worsening Covid-19 news. Credit spreads decreased over the quarter, as riskier corporate bonds increased in price due to the improving economic outlook and continued government stimulus.

This quarter, trustees of schemes with at least 100 members will need to include an Implementation Statement in their next annual report and accounts. Implementation Statements will require trustees to explain how they have invested in line with their policies, as detailed in their Statement of Investment Principles, during the scheme year. This will include information on how their investment managers followed their policies on ESG principles including climate change, voting and engagement.

03 The Corporate Insolvency & Governance Act 2020: Pension Implications

The Corporate Insolvency & Governance Act 2020 ("the Act") came into force on 26 June 2020.

Purpose of the Act

The over-arching objective of the Act is 'To provide businesses with the flexibility and breathing space they need to continue trading during this difficult time. The measures are designed to help UK companies and other similar entities by easing the burden on businesses and helping them avoid insolvency during this period of economic uncertainty' (Explanatory Notes to the Act).

While the Act contains some temporary measures, we have focused on the main permanent changes below:

- New Moratorium procedure and 'super' priority following a moratorium.
- New Restructuring plan
- Protection of supply contracts

1. Moratorium Procedure and Super priority following a moratorium

To be eligible for a moratorium, the directors of the company must consider that it is, or is likely to become, unable to pay its debts and an appointed monitor (insolvency practitioner) must consider that it is likely that the moratorium would result in the rescue of the company as a going concern. A moratorium could potentially last for a year with creditor agreement and even longer with court approval.

During a moratorium, the company can continue trading but will be overseen by the monitor and will, among other things, benefit from a 'payment holiday' in relation to some debts.

In terms of what this means for trustees, certain pension debts such as deficit reduction contributions and scheme expenses are probably not payable. The trustees may also be left with fewer options to recover debts to the scheme and to enforce security. Meanwhile, debt payments which are not subject to the payment holiday effectively get 'super priority' on any company insolvency within 12 weeks after the moratorium.

It is worth noting that the moratorium is not a trigger for a Pension Protection Fund ("PPF") assessment period or a section 75 debt, although the PPF and The Pensions Regulator must be notified when certain conditions are met.

Comment: Given this new restructuring tool the trustees may wish to consider the following:

- Asking their covenant advisor to comment on what the position of the scheme would be in the event of a moratorium.
- Reviewing how they monitor the performance of the employer(s) supporting the scheme and what (if any) additional information might be appropriate to ask for.
- Asking the employer to inform and or consult with the trustees before entering into a moratorium. These comments apply equally to restructuring plans (see below).

2. Restructuring Plan

This new restructuring tool allows a company to enter compromises or arrangements with creditors if, broadly, financial difficulties are affecting or will/may affect its ability to carry on business as a going concern. Such a plan may compromise pensions debts but would not trigger a section 75 debt.

To reach agreement creditors will be divided into classes and any plan will be voted on by each class. While there are safeguards in place, it is possible for a class to be disregarded, a creditor within a class to be outvoted or a dissenting class to be overruled by the court and nonetheless be bound by the court sanctioned plan.

As this is a court sanctioned plan it is very flexible, allowing for debt write down, debt postponement, change in management team and the sale of loss-making parts of a company.

Comment: Due to the cost involved in seeking court approval, restructuring plans are unlikely to be a viable option for small companies, but could be a good option for large corporates. Indeed, we have already seen the first use of this tool, with Virgin Atlantic Airways announcing on 14 July 2020 that they had applied for a restructuring plan to implement a solvent recapitalisation, which is expected to raise £1.2bn.

3. Protection of supply contracts

New protections have been introduced for contracts for the supply of goods and services to distressed companies, meaning that particular provisions (e.g. termination) may not be automatically triggered in the context of a relevant insolvency procedure. Although it is worth noting that consent may be given to terminate contracts in certain circumstances and there are other exclusions (e.g. many finance contracts).

Comment: Sponsors and trustees should be aware of this change in law and consider what it might mean in terms of their relationships with their suppliers, particularly where they have concerns about the future solvency of a supplier.

Helpful Links:

Link to the Act

https://www.legislation.gov.uk/ukpga/2020/12/contents/enacted

Link to the Explanatory Notes to the Act

https://publications.parliament.uk/pa/bills/cbill/58-01/0128/en/20128en.pdf

04 New PASA Guidance

The Pensions Administration Standards Association ("PASA") has issued fresh guidance to pension scheme administrators, as we continue to live through the pandemic.

PASA initially issued guidance in March, when we entered lockdown and all pension administrators initiated their Business Continuity Plans. The initial guidance focussed on immediate priorities, such as ensuring pensioners continued to be paid, cashflow managed, retirement and death cases processed, contributions invested, disinvestments were timely, pension increases applied appropriately and members were provided with effective communication.

The updated guidance, like the first version, is warmly welcomed and recognises that many of us will not now be "returning to normal", with some of the changes implemented during lockdown now being adopted as the new normal. In developing their guidance, PASA has looked at best practice across the sector, to support administrators in preparing and planning for the next important stages.

The guidance has been largely based on a survey carried out among both third-party administrators and schemes administered in-house. It covers a number of key areas such as visibility and accessibility, digital workflow, homeworking and wellbeing and productivity. What can be seen in many of these areas is that lockdown has forced the administration industry into accelerating changes that were planned for the future, for example around online member access, advanced biometric identity verification techniques and more flexible working patterns.

The guidance concludes that administrators have demonstrated that they can work just as efficiently from home, but that how permanent this becomes will differ between organisations. What is certain though is that we will not see a return to the old normal, with the same working patterns as before.

ACTION

Trustees and sponsors should be discussing this with their scheme administrator to understand how their processes are being adapted to meet the needs of both their own staff and that of the scheme members. Administrators who initially prioritised and reported only on key activities should now be demonstrating that not only can they return to full reporting, but they can also incorporate the increased challenges that the "new normal" creates (such as Cyber Security, on which new guidance has been issued by the Pensions Research Accountants Group). Trustees then need to update their Risk Registers accordingly and ensure that effective risk controls are in place.

Helpful Links:

https://www.pasa-uk.com/wp-content/uploads/2020/08/PASA-Guidance-Covid-The-Road-Ahead-tables-FINAL.pdf

05 Pensions Tax Relief Administration: A call for evidence

With a focus on defined contribution schemes, a "call for evidence", announced in the Budget 2020, sought views on an unintended consequence in the way pensions tax relief operates.

The current system of tax relief on pension contributions has evolved over time. Originally, pensions were typically provided through occupational pension schemes, meaning that pension contributions could be deducted from gross pay prior to tax being deducted ("Net Pay" arrangements). However, following the introduction of personal pensions from 1988, the Net Pay arrangement was not compatible, as savers were making their pension contributions to personal pensions after tax pay. So, another system was introduced for administering pension tax relief (i.e. "Relief at Source", or "RAS").

In a RAS scheme, the employer deducts only 80% of the pension contribution from the employee's salary; the scheme then adds an amount equal to basic rate tax relief, which it then reclaims from HMRC. The key point to note here is that the scheme adds this top-up to the employee's contribution, whether or not the employee is earning enough to pay tax in the first place.

In many cases, pension savers are unaffected by which method of pensions tax relief administration their scheme uses, and for individuals in the basic rate income tax band or above, this only affects the paperwork. However, for those who earn less than the personal allowance (currently £12,500), there is a real impact.

By way of example, both John and Suzie earn £10,000 and have the same level of take-home pay. However, Suzie has a larger contribution going into her pension pot:

- Suzie is a member of a RAS scheme, and it is therefore assumed, for pension purposes, that she is at least a basic rate taxpayer. So, while Suzie also contributes £800 into her pension pot, her pension provider claims £200 in tax relief from HMRC to top up the total pension contribution to £1,000.
- John contributes to his pension scheme through a Net Pay arrangement. Over the year, £800 is deducted from his pre-tax salary of £10,000 and £800 goes into his pension pot. This leaves John with take-home pay of £9,200. Under this arrangement, John has missed out of £200 of tax relief.

As members of RAS pension schemes are granted basic rate tax relief of 20% on pension contributions of up to £2,880 a year, HMRC would top up a net contribution of £2,880 to £3,600. Over an entire working lifetime, and assuming 3% net investment growth, the difference this makes could be worth more that £50,000, or the equivalent of four years' salary.

The government has launched a consultation, entitled "Call for Evidence", where it is seeking views on what deliverable options for change may exist. The Call for Evidence states: "The government considers that any administrative changes should be sustainable, long-term reforms that provide stakeholders with confidence and certainty. This means any changes need to be enduring and not create further unintended consequences and, as such, any changes need to be considered in the round alongside and within the wider context of pensions tax relief administration."

However, this is no easy task, as the Call for Evidence goes on to say: "To completely align the tax treatment for those contributing to pension schemes with the same incomes but using different methods of tax relief would require a number of steps. In addition to considering what the individual has saved in the scheme, it would be necessary to consider both the amount individuals receive in their pay packet and the amount of personal allowance available after the tax on their earnings have been calculated."

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The main approaches suggested so far include paying a bonus based on real-time information, introducing a standalone charge on RAS schemes, and mandating the use of RAS. However, each approach has its pros and cons. For example, while mandating use of RAS, ensuring all low earners receive the top-up on their pension savings, would have significant appeal in terms of fairness and simplicity, challenges include potential significant investment in systems, changes to scheme and payroll processes, and a potential review of employment contracts to properly understand the impacts on employees.

Finally, we wonder whether, given the impact of Covid-19 on Government revenues, this tax relief debate could be a further reason for the Chancellor to announce a single rate of tax relief on all pension contributions?

Helpful Links:

Further information can be found in HM Treasury's 36 page "Pension tax relief administration: Call for Evidence" document at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902338/Pensions_tax_relief_administration_CfE_docx.pdf

06 Safeway v Newton Equalisation Case – Court of Appeal Decision

The Court of Appeal has handed down its judgment in the long running case of Safeway Ltd ("Safeway") v Newton and Safeway Pension Trustees Ltd ("Newton").

The Court of Appeal held that the introduction of section 62 of the Pensions Act 1995 on 1 January 1996 was an effective measure to close the "Barber window" (the period from 17 May 1990 until pension schemes validly equalised their retirement ages – typically at age 65). Consequently, pension benefits earned from 1 January 1996 were payable from age 65 and not age 60, as would otherwise have been the case.

Background

On 17 May 1990, the European Court of Justice ruled that pension benefits were considered as "pay" and, therefore, it was unlawful for schemes to provide different retirement ages for men and women.

By an announcement issued to members of the Safeway Pension Scheme ("the Scheme") on 1 December 1991 ("the 1991 announcement"), Safeway notified members of the equalisation of retirement ages in the Scheme from age 60 to age 65. However, the change was not included in a formal deed of amendment until 2 May 1996 ("the 1996 Deed"). Significantly, however, the Scheme's amendment power meant that any amendments were allowed to take effect retrospectively from the date of an earlier written announcement to members. The Scheme had been administered on the basis that benefits were equalised with effect from 1 December 1991.

Previous judgments on the case determined that the 1991 announcement was not sufficient to equalise retirement ages and that the retrospective amendment under the 1996 Deed was prohibited.

There was also a question as to whether retrospective amendment was prohibited by EU law. This was referred to the Court of Justice of the European Union ("ECJ"), which concluded that there was such a prohibition under EU law. The ECJ said that the Barber window did not close until a measure was introduced into domestic law that brought about legally enforceable rights and remedies to "Article 119" (equal pay for equal work) compliant benefits. Prior to that date, Article 119 required that the benefits of the disadvantaged sex accruing during that period had to be treated as "levelled up" to the benefits of the advantaged class. However, once Article 119 had been implemented into domestic law, all that Article 119 required was equal treatment and it was a matter of domestic law policy as to what the level of those benefits ought to be.

A final issue for the Court of Appeal was therefore whether the introduction of section 62 of the Pensions Act 1995 (on 1 January 1996) could, as a matter of domestic legislation, itself have closed the Barber window. As such, did Article 119 only prohibit the 1996 Deed from retrospectively increasing NPAs to 65 for the period between 1 December 1991 (date of the announcement) and 31 December 1995 (when section 62 was introduced), and not for the period between 1 January 1996 and 2 May 1996 (when the 1996 Deed was effective) on the basis that this period was governed by domestic law?

The Latest Judgment– when did the Barber window close?

As referred to above, it had been previously decided that benefits were not equalised until 2 May 1996, the effective date of the 1996 Deed.

However, the introduction of section 62 of the Pensions Act 1995 effectively wound the clock back and closed the Barber window when it came into force. So, it has now been confirmed for the first time that the introduction of section 62 was a domestic law measure capable of closing the Barber window for any occupational pension scheme where the Barber window was still open on 1 January 1996. In other words, for Safeway, the 1996 Deed was able to retrospectively equalise benefits from 1 January 1996, but not from 1 December 1991 as originally intended.

ACTION

Whilst there are no general actions for trustees at the moment, it may be beneficial for trustees to consider whether this decision of the Court of Appeal is relevant to their pension schemes.

If a scheme contains an amendment power which permits retrospective amendments and any retrospective amendments to equalise benefits were executed after 1 January 1996 (and before the introduction of section 67 of the Pensions Act 1995 (effective 6 April 1997)), then this case might be of interest.

Helpful Links:

https://www.wilberforce.co.uk/wp-content/uploads/2020/07/Safeway-v-Newton-approved-judgment-130720.pdf

07 Measures to help pension schemes tackle COVID-19 challenges

In our last Quarterly Update, we covered the latest guidance from The Pensions Regulator ("TPR") designed to help pension scheme trustees and employers cope with the financial impact of COVID-19. That guidance, effective from July, expired at the end of September and has now been replaced.

The updated guidance specifies that from 1 January 2021, defined contribution (DC) schemes and providers will be asked to resume the reporting of late contribution payments no later than 90 days after the due date (reduced from the maximum time frame of 150 days that was set at the start of the pandemic in March 2020). In other words, the normal timescales in TPR's Code of Practice on Late Reporting will apply from the start of next year.

Also, from 1 October 2020, other types of enforcement will start to return to normal. This includes the enforcement of the requirement for schemes to submit audited accounts and investment statement reviews.

According to Mel Charles, Director of Automatic Enrolment at TPR: "… now is the right time to return to our usual reporting and enforcement". We have been clear that employers continue to have to pay contributions in full and on time and schemes have continued to refer serious automatic enrolment breaches to us which may require enforcement action to ensure compliance and to protect savers."

Guidance for trustees considering employer requests for a reduction or suspension of Deficit Recovery Contributions ("DRCs") (last updated June 2020) remains unchanged at this time. However, according to TPR, "it remains under review, to be updated in line the evolving situation". While data shows around 10% of DB schemes have sought to defer DRCs, with discussions ongoing for others, TPR recognises that deferrals may continue to be appropriate in certain circumstances. This should be subject to trustees undertaking due diligence, particularly since TPR expects greater insight into an employer's short-term liquidity to have developed since the COVID-19 lockdown began.

ACTION
Note expiry and replacement of easements which applied between July and September (inclusive).

Helpful Links:
https://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider

08 Guaranteed Minimum Pension (GMP) Equalisation

Guidance to help trustees understand the issues and explain them to their members.

Two recent guides to help pension schemes comply with their duties to equalise benefits for the effects of GMPs have been published.

Most importantly for trustees, the GMP Equalisation Working Group ("GMPEWG"), a cross-industry organisation chaired by the Pensions Administration Standards Association ("PASA"), has published new guidance on communications with members. This Guidance, aimed at trustees of schemes who are in the early planning stages of GMP Equalisation ("GMPE"), comprises four main sections:

- Broad principles to follow when planning communications to members. A key message (accompanied by do's, don'ts, and examples to follow) is: "rather than focus on everything we could tell members about GMP Equalisation, think about what they really need or want to know". In fact, an early question to consider is: "Do you need to say anything at all?". If you are going to communicate then think about what you want members to know, how you want them to feel and what you want them to do.
- Model Questions & Answers that members might ask, which trustees and administrators can use as a starting point to respond to members.
- A checklist of the communications to members which may need to be reviewed in light of GMPE, which schemes can use as a starting point. This is broken down into different areas – general scheme information (including booklets and scheme rules), ongoing member communications, and administration and process communications.
- A jargon buster to use as a guide to help avoid using words and phrases members may find confusing. PASA "strongly encourage all schemes to use these definitions so that individuals have a consistent experience".

Also, the data sub-committee of the GMPEWG has published guidance on the data required for GMPE. The guidance considers the data aspects of a GMPE project and aims to help trustees understand the measures they can take to get their scheme data ready for equalisation. It is relevant regardless of whether a year-by-year comparison ('better of') or conversion approach to GMPE is taken.

On a related note, HMRC has published its second pensions newsletter on GMPE. Aimed more at pension scheme administrators, this guidance, as with HMRC's first newsletter issued in February, relates to pension adjustments where the reason for the adjustment is solely for GMPE. Pension schemes that have started to pay pensions and made lump sum payments may need to top-up those benefits because of GMPE. The guidance in the second newsletter covers tax issues in respect of lump sums previously paid and the payment of lump sums because of GMPE.

ACTION

It is now nearly two years since the High Court ruled that inequalities from GMPs must be addressed. Trustees, who have not already done so, should be starting to take steps to ensure that all their members, with GMPs accrued between 1990 and 1997, receive their correct pension scheme entitlements.

Helpful Links:

https://www.pasa-uk.com/wp-content/uploads/2020/08/GMPEWG-Comms-Guidance-August-2020-FINAL-1.pdf
https://www.pasa-uk.com/wp-content/uploads/2020/07/GMPE-Data-Guidance-vFINAL.pdf

https://www.gov.uk/government/publications/guaranteed-minimum-pension-gmp-equalisation-newsletter-july-2020

09 Pensions and Inheritance Tax

Omission to take pension benefits by a terminally ill member was 'transfer of value' for inheritance tax ("IHT") purposes.

The Supreme Court has published its judgement in the matter of Commissioners for HMRC (Respondent) v Parry and others (Appellants). This long-running case is an appeal against the Court of Appeal decision that the pension scheme transfer by a terminally ill individual, six weeks before her death, and her omission to take income benefits which were then payable, were 'transfers of value', for the purposes of the Inheritance Tax Act 1984 ("IHTA 1984").

The original pension policy, established as part of a divorce settlement, was transferred into a new personal pension plan ("PPP") to avoid the possibility of any benefit reverting to her ex-husband. The crucial difference between the original pension and the PPP was that the death benefits from the original pension would have passed into the individual's estate, following which it would be assessed for IHT, before then being distributed to her sons as her beneficiaries. With the PPP, her sons were nominated as beneficiaries who would receive any death benefits directly, rather than via the estate, and therefore free of IHT.

On a spilt decision of 3:2, the court decided that there was intent for the individual to improve her sons' inheritance by the combination of her omission to take benefits and the associated transfer, meaning that the death benefits from the PPP should be added to the estate and assessed for IHT.

HMRC has updated its Inheritance Tax Manual following the decision.

ACTION

For consideration in the context of your scheme. Trustees need to ensure that all relevant information is provided to members at appropriate times. Serious Ill Health cases can be some of the most challenging, owing to the potential timeframes and the emotional circumstances.

The Parry case is an important decision, as one of the reasons that transfers often take place is to improve the benefits that are payable on a member's death. That said, the proceedings in this case started over a decade ago and, since then, both IHT and pensions tax legislation have changed. In particular, on death before age 75, following the introduction of the Freedom & Choice legislation in April 2015, it is possible for death benefits, even if 'crystallised', to be passed on to dependants tax-free.

The Pensions Ombudsman has also been busy in recent times on the subject of Serious Ill Health cases, which trustees should be aware of. One example is where the complaint was upheld against the trustees for not mentioning that the benefits were dependent on the member making a lifetime choice, and that failing to do so would reduce his wife's future benefits.

Again, trustees need to ensure members have all of the relevant information and inform them of the importance of obtaining professional advice.

The Parry case illustrates that pension scheme members view their pensions as part of their overall personal financial planning, which is then interconnected with all other aspects of personal financial planning, such as IHT. But remember, trustees and can only inform and guide members. Let the professional advisers give the advice.

Helpful Links:

Link to judgment
https://www.bailii.org/uk/cases/UKSC/2020/35.pdf
Link to HMRC manual

https://www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm17108

10 PPF Levy 2020 – 2022

2020-21 Levy: 'Time to pay'

The Pension Protection Fund ("PPF") risk-based levy invoice is normally payable within 28 days of receipt. The PPF cannot routinely extend levy payment terms. However, in some good news for levy payers, the PPF has recently announced that those financially impacted by COVID-19 may apply for an extension of the payment terms. Details of those who may be eligible and the process for obtaining an extension are in the Helpful Links below. Applications can only be made once a levy invoice has been received. PPF levy invoices are issued in the Autumn.

In more positive news, the PPF has also stated that there are no current plans to increase the levy due to the impact of COVID-19 on the PPF.

The PPF has started issuing levy invoices for this year and has confirmed that invoices are being sent to the email addresses on Exchange, in the following order:

- Levy contact;
- If there is no levy contact, the scheme contact; and,
- If there isn't a scheme contact, all the trustees listed on Exchange.

Finally, the previous quarterly update covered the 'Hughes' case on PPF compensation levels. It has been announced that both the PPF and the Department for Work and Pensions ("DWP") have applied for permission to appeal against the High Court's decision that the compensation cap constitutes unlawful age discrimination contrary to EU law. The DWP has lodged an appeal against the ruling that the compensation cap is unlawful. The PPF is appealing against part of the judgement concerning the approach it may adopt to meet the requirement for members to receive 50% of the value of their pension entitlement and how survivors' benefits should be dealt with.

2021-22 Levy: 'Draft determination'

Looking forward, the draft levy determination for 2021-22 was published at the end of September.

The PPF is proposing to collect £520m from the 2021-22 levy. This is a reduction of £100m relative to what it expects to collect in 2020-21. Reasons for the reduction include:

- A 50% reduction in uncapped levies for schemes with liabilities of less than £20m (tapering to no reduction for those with liabilities of £50m or more). This results in a reduction to the levy estimate of around £10m.
- A reduction in the risk-based levy cap from 0.5% to 0.25% of scheme liabilities; equating to a reduction in the levy of around £40m.
- Reflecting latest assumptions guidance, which improves schemes' funding positions.

It should be noted that the PPF has flagged that the proposed reduction for 2021-22 does not imply the 2022-23 levy will also reduce. It could increase, by up to 25%, dependent on claims experience which will be affected by Covid-19 related business failures, where those businesses operate a DB pension scheme. The PPF is also consulting on whether it should maintain the levy payment flexibility mentioned above.

The PPF is reviewing, with The Pensions Regulator, the asset information provided by schemes. This may lead to a change to the asset stresses and roll-forward indices for the 2022-23 levy. The PPF had indicated that the liability stress factors, and risk factor stresses will also be reviewed for the 2022-23 levy.

Finally, the PPF is proposing some minor changes to contingent asset eligibility rules and the exempt transfer rules.

ACTION
Consider eligibility and whether to apply for an extension to pay the PPF levy. Look out for final levy determination for 2021-22

Helpful Links:
https://www.ppf.co.uk/help-paying-your-levy https://www.ppf.co.uk/press-releases/ppf-consultation-levy-rules-202122

11 DB superfunds

Even though we had guidance from The Pensions Regulator ("TPR") at the end of June, we are still waiting for the first superfund transaction to complete. A key issue has been the continuing lack of guidance for trustees considering a bulk transfer into a superfund, although TPR's announcement at the recent PLSA conference suggests that this is imminent. In the meantime, we set out our perspective on key trustee considerations below.

Trustee considerations

In the absence of guidance, the onus falls on trustees to assess proposals from the sponsoring employer or, in many cases, direct approaches from the superfunds. The key considerations for trustees fall into the following categories:

- **Covenant:** what is the current employer covenant and what does this mean in terms of affordability of deficit contributions? In response to the Covid-19 crisis, many employers are seeking to minimise cash contributions to their scheme in order to manage the business through a very challenging period.
- **Longevity of covenant:** this has always been one of the most challenging areas to assess. Most companies don't look forward more than 3 years in any detail and the Covid-19 crisis has highlighted that circumstances can change very quickly. However, as trustees, we need to understand this aspect in order to compare the amount on offer to transfer to a superfund against the long-term contributions that could be funded by the employer.
- **Willingness of employer to contribute:** as schemes become better funded, the incentive for employers to continue contributions diminishes as the risk of overfunding increases, particularly if this leads to a refund of surplus subject to a high level of tax. An offer of lump sum funding may be attractive in this situation.
- **Insolvency outcome:** a stronger scheme position (particularly if this puts the scheme at, or close to, buyout) makes the superfund option far less attractive.
- **Journey plan / scheme maturity:** if there is limited visibility, certainty and/or commitment to the scheme's journey plan, then the option of transferring the scheme into a superfund could be attractive given the stronger framework this could provide over the medium to long-term.
- **Scheme size:** for larger schemes, particularly those approaching the levels of funding necessary to enter into a superfund transaction, a key question will be whether there is a "do it yourself" option. While some of the economies of scale of a superfund may not be available to a standalone scheme, they may not be necessary to make a transaction work and could result in better benefits for members.
- **Alternative options:** buyout is the obvious alternative but more capital providers are coming to market with innovative solutions. In particular, capital-backed solutions that provide additional support to the scheme over a defined period of time, but do not require the trustees to sever their link to the sponsoring company, are a more practical alternative for trustees. They are easier to explain to members and do not need the same level of regulatory scrutiny given the ongoing fallback of support from the sponsor.

PPF+ cases

All of the above assumes an ongoing employer covenant, but we are seeing an increasing number of schemes in PPF assessment that can provide benefits in excess of PPF compensation ("PPF+ cases"). In this situation, there is no covenant, so superfunds would seem to be a natural destination for these schemes. The key barrier in these situations is the inability to implement a bulk transfer if the destination scheme cannot provide full scheme benefits, which most cannot. This feels like a missed opportunity to help members of these schemes and an area where Government support (in the form of new legislation) would be very welcome.

12 Coming Up Next

"Wisdom oft times consists of knowing what to do next."

The words of Herbert Hoover. A man who could have sympathised with our current government, in terms of the struggles that the Covid-19 pandemic has thrust upon the country's finances. As 31st president of the United States, he was in the Oval Office only a matter of months before the US stock market crashed, bringing about the onset of the Great Depression of 1929, which dominated his one term in office.

While we would not be so bold as to claim wisdom, Hoover's words do hold a truth that preparing for what we are to do next is inherently wise. With so many factors out of our control, taking the time to examine what we know lies ahead of us in the coming weeks and months can only serve to enhance our preparedness, and ideally, help us to make some wise decisions.

Working as a trustee across multiple pension schemes, we have identified topics which we would like all pension schemes to be considering over the coming months.

- **Data Protection and Cyber Security:** In the current pandemic where scammers are preying on the vulnerable, trustees need to be more vigilant than ever to protect against the multitude of risks that scammers present. Whether that be members transferring to a scam arrangement, pensions being paid fraudulently, identities being stolen (scammers have been obtaining copies of trustees' signatures from documents that have been published on line) or third-party administrators' systems being hacked. Trustees should review their policies and procedures (including their data protection policy, cyber security policy, insurance cover and business continuity plan) and ensure that they have a robust plan in place to deal with any breaches.
- **GMP Equalisation – next steps:** It is now two years since the High Court judgment in the Lloyds case confirmed the need to equalise GMPs for men and women. In the months following the judgement, GMP equalisation was typically noted on trustee agendas as a 'watching brief' item, pending industry guidance. We now have guidance from PASA and HMRC, so trustees can, and should, be taking steps to equalise benefits. Whilst research shows that the impact of GMP equalisation is less than 1% of liabilities for the majority of schemes, it can represent a significant amount for individual pensioners, particularly in back-payments. First steps trustees can take include assessing how members are impacted, understanding the data items that will be needed and agreeing the method of equalisation.
- **Investment Reporting:** Whilst many trustees will have been busy updating their SIPs to take account of the October 2020 updates, trustees need to get ready for the next set of changes which will involve reporting on how the policies in their SIP have been followed, particularly in the area of voting rights and engagement activities. This is a non-trivial activity as it involves gathering data from each investment manager, collating that data and comparing it with policies and then creating commentary to explain the analysis. Trustees need to plan ahead and engage early.
- **PPF levy:** On 24 November the PPF's consultation on its draft **PPF levy determination for 2021/22** (published on 29 September here) is due to close. As discussed earlier, the changes to the levy determination are modest in terms of the overall impact on the levy, with a focus on only making necessary changes. However, it still makes sense to take advice and ensure that your scheme's risk-based levy is no more than it must be.

- The government's **Coronavirus Job Retention Scheme** will close on 31 October, with the Chancellor's Job Support Scheme ("JSS") to take its place for the next six months. For eligible employees (i.e. who work and are paid for at least a third of their normal hours), the JSS will result in them receiving at least 77% of their normal pay (unless a cap in relation to the government grant comes into effect). The JSS will be available to all small and medium sized businesses, with only larger firms that have seen their turnover fall during the pandemic being eligible. Employers should be preparing with their administrators for these changes. Under the JSS, pension contributions will remain the responsibility of the employer.
- While the **Pensions Schemes Bill 2019-21** continues to make its way through the Commons (see below), the Minister for Pensions and Financial Inclusion has surprised some by stating that he expects another pensions bill to be introduced in this parliamentary session, after the Pension Schemes Bill 2019-21 has received royal assent (probably, towards the end of 2020). The focus of this second bill would be a legislative regime for DB superfunds, which the minister stated was too substantial an issue to include in the 2019-21 Bill and that he hoped to be proceeding with the new bill "relatively quickly". Guidance for trustees on superfunds, from The Pensions Regulator, is expected in the next few weeks.

Trustees and sponsoring employers alike should also be aware of the following key dates in 2020 and beyond:

- **28 and 29 October 2020** – the latest Lloyd's Bank GMP equalisation hearing, covering past transfers-out from pension schemes, will take place, following on from proceedings left part-heard in May.
- **30 October 2020** – DWP consultation on improving the outcome for members of DC schemes (including consolidation proposals) closes.
- **31 October 2020** – The UK government's Coronavirus Job Retention scheme closes, with the Job Support Scheme to come into effect the following day, for six months.
- **3 November 2020** – The Commons Committee stage to commence for the Pensions Schemes Bill 2019-21 (with the Committee to report by 5 November 2020).
- **November/December 2020** – TPR consultation on implementation of a single code of practice for trusteeship, governance and administration standards is expected.
- **31 December 2020** – At 11:00pm the Implementation Period under the UK-EU Withdrawal agreement will end, unless an extension is sought (which seems unlikely).
- **1 January 2021** – The TPR requirement to report contribution payment failures shall revert to those failures that are 90 days outstanding, as opposed to the current 150 days currently in place.
- **7th January 2021** – deadline for trustees to submit their compliance statement to the CMA confirming compliance with the CMA Order (which covers setting objectives for investment consultants and running competitive tender processes for fiduciary manager appointments)
- **Early 2021** – A consultation is expected regarding an update of the TPR's code of practice on trustee knowledge and understanding.
- **Early 2021** – The Pensions Regulator due to consult on contents of new DB funding Code.

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