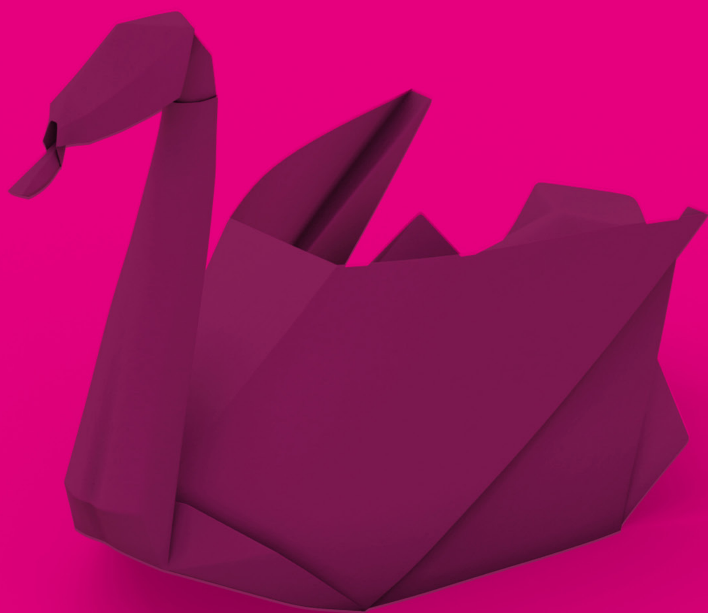
Your Quarterly Pensions Update

Dalriada Trustees – Industry Changes

Quarter Three 2022



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Contents

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 of which you should be aware.

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.

NOTES

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.

1 Investment update

Market Review

The cost of living crisis (driven by continued heightened inflation), coupled with political discord in the UK (particularly impacting bond yields and the value of Sterling) led to a negative quarter in the UK (-3.4% and -7.9% year to date, FTSE All Share Index). Investors remain worried about high inflation, slowing growth and the potential for continued monetary policy (of increasing interest rates) resulting in a recession.

As the quarter drew to a close, following the emergency budget announced by the now former UK Chancellor, Kwasi Kwarteng, the market had processed the Government's spending plans. The fact those spending plans were unfunded and not backed-up by independent projections, mixed with reduced market confidence, sent the value of government issued bonds into freefall and the value of Sterling to fell to historically low levels, relative to other developed market currencies.

The fiscal action by the UK Government led to an unusual public rebuke from the International Monetary Fund. The Bank of England also reacted to the market by announcing that it would purchase government debt (having backtracked on their original plan to sell government bonds purchased as part of the Quantitative Easing programme), but only for a timebound period until 14 October 2022.

Despite the focus on UK dynamics, global equities remained volatile over the period (a continuing trend throughout 2022) with all regions posting losses. The FTSE All World returned -5.3% over the quarter and -22.6% over the year to date, in local currency terms. Due to the depreciation of Sterling over the period, unhedged UK investors, investing in overseas markets saw their returns boosted. An unhedged UK investor would have seen a return of 3.2% over the quarter, but those investors hedging back to Sterling would have seen a return of -5.3%, such was the strength of the US Dollar (against global currencies) and the fall in Sterling.

All regions suffered during the quarter. In local currency terms, US equities fell 4.9% during the quarter (-23.9% year to date). Eurozone equities experienced a further slump, driven by the ongoing energy crisis, rising inflation, and concerns over economic growth, finishing the quarter down 4.5% (-21.0% year to date). Despite a positive start to the quarter, Japanese equities sold off in September to end the quarter down 0.8% (-5.5% year to date). The Yen, like Sterling, posted weakness against the US dollar and fell to levels not seen since the 1990s. Emerging markets continued to struggle, albeit to a lesser degree than in previous quarters, posting a loss of 3.8%.

Long-term inflation rates increased by 0.64% driven by the rising energy prices and global recovery from COVID-19. All else being equal, this will increase the value placed on pension schemes' liabilities.

In an attempt to control inflation concerns, the US Federal Reserve raised interest rates on two occasions (July and September) by 0.75% on each occasion. The Bank of England followed suit by twice raising rates by 0.5% (August and September), reaching 2.25% by the quarter end. The rise in rates caused losses in fixed income assets as prices declined (i.e. yields increased). Investment grade credit, which is more exposed to rising rates, underperformed riskier high yield credit.

Long-dated credit spreads increased from 1.22% to 1.34%, which was mainly driven by a rise in corporate bond yields, as investors became risk averse with rising interest rates.

Long-term UK gilt yields (25 year) increased by 0.65% to 4.10%, driven by the UK Government's now ill-fated mini-budget (rates spiking to 5.1% at one point) prior to the Bank of England intervention. Yields also climbed consistently over the quarter as the Bank raised interest rates in an attempt to reduce inflation, with a further 0.75% increase announced in November and future rises expected in the coming months. All else being equal, the move in gilt yields acts to decrease the value placed on pension schemes' liabilities.

2 Consultation on draft funding and investment regulations

Although we are unlikely to know the final position with regards to the revised The Pensions Regulator (TPR) Funding Code until next year, DWP's recent consultation sets the scene with a key focus on the introduction of a compulsory strategy regime based on low dependency on the sponsoring employer.

The consultation considers the concept of low dependency in terms of a scheme's investment allocation, funding basis and covenant strength whilst exploring relevant dates, actuarial methods, consistency of assumptions and minimum requirements, with a central focus on appropriate risk management.

The purpose of the new TPR funding code is to achieve clarity and improve funding standards whilst giving TPR more power to intervene where appropriate. The consultation sets out a range of requirements for trustees.

DWP's consultation flags that whilst the intention is to ensure maturing schemes are managing their risks carefully over time, the regulations also take account of open immature schemes where excessive de-risking may not be appropriate, provided that ongoing sponsor support exists.

Once introduced - in conjunction with the scheme's actuarial valuation - the code will require trustees to determine a funding and investment strategy to ensure that pensions and other benefits can be provided by the scheme over the long term, whilst referring to the scheme's target funding level and expected investment allocation at the relevant date.

The relevant date is defined as no later than the end of the scheme year in which the scheme is estimated to, or has reached, "significant maturity" (although that has yet to be clearly defined). The relevant date should be periodically reviewed and if necessary revised.

A statement of strategy should be prepared and submitted to TPR along with the valuation certificates. The statement of strategy will consider the following:

- Key scheme risks - along with risk management and migration policies.
- Scheme maturity – estimate to be provided by the actuary. For immature schemes, details of how the scheme's maturity is expected to evolve over time should be provided.
- Investment risk – details of how the investment allocation is expected to evolve as the scheme progresses through its journey plan with due consideration given to employer covenant strength, with a plan documented on how the trustees will achieve compliance such that on or after the relevant date, the scheme's assets should be invested on a low dependency basis where further employer contributions should not be required.
- Liquidity – trustees must provide evidence-based explanations as to how the scheme's assets will be equipped to meet both expected and unexpected cashflow calls, both as it progresses through its journey plan and beyond its relevant date.
- Funding level – an estimated low dependency funding level should be provided along with details of how this is expected to progress by the relevant date. An explanation of the assumptions used should be provided and if the relevant date has not yet been reached, comparisons should be drawn between the chosen assumptions and the Technical Provisions.
- Technical Provisions – details of the assumptions used along with how the trustees expect the discount rate(s) to evolve over time.
- Risks associated with liability valuations – trustees should provide evidence-based explanations as to the level of risk taken in determining the assumptions. This should be focussed only on the employer covenant strength and how close the scheme is to its relevant date.
- Employer covenant – reference should be made to the most recent covenant assessment and how long is considered reasonable to place reliance on the assessment with explanations of any changes since.
- Statement of appropriateness, confirmation that employer consultations and employer comments should be provided.

The government's consultation ran for a period of 12 weeks, from 26 July 2022 to 17 October 2022 and we look forward to seeing the outcome of the consultation, including the industry's responses to the 25 questions it raised.

Actions

While the new regulations are not yet finalised and are not expected to come into effect for around another year, trustees and sponsoring employers should keep up to date with developments and commence discussions in relation to these concepts. This should include engaging with their advisers early to devise a plan as to how they will deal with the new funding and investment requirements. TPR has made it clear in its 2021 and 2022 annual funding statements that whilst they will be regulating based on existing legislation until such time as the funding aspects of the Pensions Act 2021 are enacted, it expects trustees to adopt some of the Act's principles during the valuation process, stating:

- "Trustees should take steps now, if they have not done so already to incorporate this approach into their thinking by adopting a Long-Term Funding Target, agreeing it with the employer, and setting their journey plan accordingly."
- "When setting their journey plan to the LTFT, trustees should consider the extent of their reliance on the employer covenant over time"

Separately, a Chair of Trustees should be appointed on any schemes where one does not already exist as once in force, the statement of strategy will need to be signed by the Chair.

Helpful Links

Draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023 - GOV.UK (www.gov.uk)

TPR's Annual Funding Statement 2022

3 Bulk annuity market update

What is the market like?

Extremely busy – with the recent market turmoil, it may be easy to overlook that increasing yields have a positive impact on funding levels for many schemes. Bulk annuity pricing continues to be attractive, partly due to competition in the market, leading to a very high demand for quotations.

How are insurers coping with this?

In reality the capacity crunch has not been around capital (yet), or availability of longevity reinsurance, but mostly in respect of human capital. Most insurers have been recruiting within the pricing and implementation teams. However there is a small pool of experienced candidates and so many teams remain stretched. A result of this is that they continue to be very selective in respect of the schemes they agree to quote for.

How do you make a scheme more attractive to an insurer?

The areas of preparation are well known – good data, legally reviewed specification, matching assets and good governance. The level of preparation should be evidenced to the market in the RfQ and preparatory insurer calls. Having good advisers in place (brokers and legal) is very important; also flexibility on timing, particularly for smaller transactions.

What levels of pricing are we seeing at the moment?

Very much dependent on scheme size and duration – for pensioners, the expectation is gilts +10 to gilts +60. Good pockets of deferred pricing (up to gilts flat).

What types of transactions are being completed?

Full scheme transactions; the appetite for partial buy-ins has decreased as many schemes have jumped through a number of de-risking triggers (and benefited if they were under-hedged on interest rates). While the average transaction size remains reasonably large (£100M+) the market continues to be open to well prepared smaller schemes. Smaller transactions are usually expected to follow a streamlined process (one-round only) and sub £30M schemes may only be able to have a quote in exclusivity.

Will this be a record year for bulk annuities?

Probably not, given that higher yields lead to lower premiums in money terms. Current guess is £35bn for the year, well below 2019 (driven mostly by a number of jumbo transactions) but in line with 2020 and 2021.

Any changes to the cost of longevity reinsurance post Covid?

Slight downward trend, but nothing significant. There would not seem to be a rationale to delay settlement activity because a scheme is waiting for longevity to become cheaper to insure.

Are bulk annuities safe?

This is a question that is now regularly coming up within trustee boards and, increasingly, from members. As a result, we are seeing increased demand for insurer due diligence ("DD") as part of the broking process. There are two levels of DD which insurers can seek – desktop information on the market and the financial regime (the earlier the better) and detailed DD on insurer selected for exclusivity. There are a number of providers in this space, with costs in the £15K-£30K range.

Any market trends to be aware of?

Nothing specific – insurer appetite to offer residual risk is variable/low, so schemes should only seek this if there is a specific reason for it. Also smaller schemes may be expected to simplify benefits where possible, or amend if there are aspects which would result in non standard administration processes. This is an extra element in the benefit specification preparation which can be overlooked if there isn't a settlement specialist involved early. We are aware of a number of third party data cleanse propositions in the market with a specific settlement angle.

4 Inflation and cost of living - What trustees, employers and members should be thinking about

High inflation poses a number of challenges to DB and DC pension schemes.

Defined benefit schemes

The two key issues for defined benefit schemes are investment and how to adjust member benefits to reflect high levels of inflation, both of which relate to typical "caps" on pension increases (typically 5%, 3% or 2.5%).

In a period of high inflation, particularly if it is persistent, the caps make the liabilities more fixed in nature, rather than being inflation-linked. Trustees should therefore review whether the inflation hedging strategy they have in place remains appropriate in the context of their wider investment strategy.

From a benefit perspective, trustees should ensure that scheme factors (e.g. early retirement and transfer values) reflect the higher rate of inflation. The Scheme Actuary will typically adjust the transfer value basis automatically but other factors will need more intervention from trustees.

Trustees and employers will also be faced with difficult decisions on discretionary pension increases as we go into the New Year, particularly in relation to pension increases that are capped. Failing to top up increases will result in pensioners' income falling in real terms but will protect the funding position of the scheme. The decision is particularly difficult for schemes that are close to full funding on a low risk measure such as buyout, because any increase could move them away from achieving their long-term objectives.

In the majority of schemes, the employer will have a veto over the decision on discretionary increases. They may find it challenging to agree to increases for former employees when wage increases for current employees are being tightly controlled.

Defined contribution schemes

For DC schemes, the main issue is the affordability of contributions for active members, which could lead to employees deciding to stop contributing to the scheme. Trustees will need to ensure that members understand the consequences of this decision, which would typically lead to a reduction in employer contributions and the loss of valuable life insurance protection.

From an employer perspective, the key decision will be whether to offer flexibility through this challenging period and, if so, how long this will be available to employees. Examples of flexibility could include the continuation of employer contributions even if the employee suspends their contributions for a short period, or the continued provision of life assurance benefits even in pension contributions stop for a period. Clearly, though, the employer will need to ensure that auto-enrolment obligations are met.

Members taking drawdown will also find it more difficult to keep pace with inflation, which could have a significant impact on their income in later life.

Regardless of the type of scheme, clear communications are needed to help members understand their options, the impact on their benefits and the way in which their decisions will affect their benefits for many years to come.

Helpful Links

Dalriada - Factoring in Inflation

5 Pension regulator corporate plan for the next three years

The Pension Regulator ("TPR") has recently published its Corporate Plan for 2022 to 2024. This represents an update to the 2021 to 2024 plan published last year and complements TPR's Corporate Strategy which put the saver at the heart of their work by enhancing and protecting pensions through the delivery of five strategic priorities:

Security: Savers' money is secure.

TPR will be implementing and embedding the packet of new enforcement measures afforded to them under The Pension Schemes Act 2021, and the long-awaited implementation of changes to the notifiable events regime will be finalised.

There will be a continued focus on education, with TPR concerned that the ongoing cost-of-living crisis has increased savers' vulnerability to pension scams. There will be several communications issued encouraging savers to seek readily available guidance and report concerns to Action Fraud.

Pension schemes will continue to be encouraged to sign up to the Pension Scams Pledge, which demonstrates a commitment to put processes in place to actively mitigate scam risk for their members. TPR will continue to engage with key areas of the market in relation to cyber risk and discuss steps that can be taken to assess risk and develop resilience.

Value for money: Savers get good value for their money

TPR holds the opinion that savers' money must be suitably invested, costs and charges must be reasonable and good quality services and administration provided to all.

Trustees of DC schemes with less than £100m in assets are now required to prepare a rigorous value for members assessment. If the trustees cannot demonstrate the scheme provides value, they must explain what improvements they will make or wind-up and transfer members to an alternative vehicle.

Scrutiny of decision-making: Decisions are made in savers' interests

TPR acknowledge that the decisions trustees and employers make are vitally important to all savers in all types of pension schemes. However, they recognise that it is equally important that savers are supported to make good decisions about their retirement.

The new code of practice, which is specifically designed to be easier for trustees, advisers and employers to understand and navigate, will be published shortly. An update to the FCA-TPR joint regulatory strategy (issued in 2018) will be published in the second half of 2022, outlining the shared strategic outcomes that will continue to draw focus in the years ahead.

TPR has acknowledged that there is a need to improve equality, diversity and inclusivity within the industry and will be setting out a plan to address this moving forwards. A regulatory initiative will be launched focusing on the ESG / investment regulations concerning the publication of compliant Statements on Investment Principles (SIPs) and Implementation Statements.

Embracing innovation: The market innovates to meet savers' needs

The PSA 2021 created the legislative framework for pension schemes to provide data to savers through pensions dashboards, so savers can see all their pension arrangements together in one place. Schemes' duties will be staged over time, with the largest schemes connecting to dashboards from April 2023.

TPR continue to engage with those preparing or considering developing innovative DB models and guidance has been published setting out the standards expected for any potential superfund seeking to enter the market until legislation is in place.

TPR remain committed to CDC schemes as a potential game-changer in the pensions landscape; offering a viable alternative option to traditional DB and DC pension schemes. Trustees have been able to apply from August 2022 and a code will shortly be published helping them plan ahead by setting out how the criteria in legislation will be assessed.

Bold and effective regulation: TPR is a bold and effective regulator.

TPR acknowledges that it is vital to adapt to change, however it is important to retain a commitment to taking action where a difference can be made and in particular where this benefits savers.

A significant programme of IT development is underway, and we will see evidence of this in updates to the DB and DC scheme return process in 2023.

Helpful Links

TPR Corporate Plan 2022 to 2024

TPR Corporate Strategy

6 Data Protection and Digital Information Bill

The Data Protection Act 1998 stood for some twenty years before it was replaced by the UK General Data Protection Directive (GDPR) and Data Protection Act 2018. Following Brexit, however, it appears that the current legislation will have a much shorter shelf life.

A new Data Protection and Digital Information Bill was introduced in the House of Commons on 18 July 2022. The Government has said that the Bill is intended to update and simplify the UK's data protection framework, to reduce burdens on organisations whilst maintaining high data protection standards. The governance structure and powers of the Information Commissioner's Office (the ICO) would be reformed and transferred to a new body, the Information Commission. The Bill would also:

- establish a framework for the provision of digital verification services to enable digital identities to be used with the same confidence as paper documents
- increase fines for nuisance calls and texts under the Privacy and Electronic Communications Regulations (PECR)
- update the PECR rules to cut down on 'user consent' pop-ups and banners
- allow for the sharing of customer data, through smart data schemes, to provide services such as personalised market comparisons and account management
- reform the way births and deaths are registered in England and Wales, enabling the move from a paper-based system to registration in an electronic register
- facilitate the flow and use of personal data for law enforcement and national security purposes
- create a clearer legal basis for political parties and elected representatives to process personal data for the purposes of democratic engagement.

As data protection is a reserved matter, the Bill's data protection reforms would extend to the whole of the UK - apart from one provision relating to the Information Commission's seal, which does not extend to Scotland. Other provisions in the Bill would require legislative consent motions from the devolved administrations.

The House of Commons Library has published a research briefing on the Bill. The briefing covers what the Bill intends to do with the UK's data protection framework, digital verification services, and customer and business data, and also provides further information about digital information and the regulation of the Bill.

In terms of the implications for pension scheme trustees, when enacted and brought into force, the Bill will mean that Privacy Notices will need updated along with other documents that refer to the ICO and legislation that is consequently repealed.

Note that, at the time of writing, the UK data protection framework reform has been delayed after the Government pulled the second reading of the Bill just hours before it was due to start in order to "allow ministers to further consider this legislation".

Helpful Links

[Data Protection Bill briefing paper]

7 CMA order transposed into regulations with TPR oversight

Summary

New regulations - The Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022, SI 2022/825 - have been made in order to transpose, into pensions legislation, Parts 3 and 7 (and related provisions of Parts 9-11) of the Investment Consultancy and Fiduciary Management Market Investigation Order 2019 made by the Competition and Markets Authority (CMA) on 10 June 2019 ('the CMA Order'). The new regulations came into force on 1 October 2022.

What you need to know

The CMA Order, which introduced a range of reforms to address issues of competition in the investment consultancy and fiduciary management sector, has been with us since 10 December 2019. It was always the intention for compliance to be transferred from the CMA to The Pensions Regulator (TPR). This has taken much longer than expected, partly because of the COVID-19 pandemic. Though the long-awaited regulations have finally been made and will take effect from the start of October.

The Regulations:

- require trustees of occupational pension schemes, subject to certain limited exceptions, to carry out a qualifying tender process for fiduciary management services (replacing 'Remedy One' of the CMA Order), set objectives for their investment consultants, and review performance against those objectives at least annually (replacing 'Remedy Seven');
- include as "registrable information" (for TPR's Exchange) information concerning persons who provide fiduciary management services or investment consultancy services to the trustees of a relevant trust scheme (see 'Registrable Information', below); and
- allow TPR to oversee the requirements.

In addition, certain information that is no longer required by TPR will be removed from the registrable information requirements.

The CMA Order requires trustees to submit an annual Compliance Statement. That obligation will continue after TPR takes over compliance from the CMA, but the process will change. When the Regulations are in force, information about compliance with the above duties will have to be submitted to TPR via the Scheme Return.

The scope of the Regulations is slightly greater than that of the CMA Order. Page 8 of the Impact Assessment estimates there are eight pension schemes that are in scope of the DWP requirements but not currently in scope of remedies 1 and 7 of the CMA Order.

Also notable is the clarification that the provision of high-level commentary provided by actuaries in actuarial valuations is not by itself the provision of investment consultancy services.

Other points worth highlighting are that:

- carrying out transition management services alone will not mean that a person is a fiduciary management provider for the purposes of the Regulations
- asset-backed contributions and buy-in policies are not to be taken into account when determining if the asset management threshold is or would be met and so are excluded from the calculation of 20% of a scheme's assets, which is used as a threshold for mandatory re-tendering
- the revised definition of 'fiduciary management services' ensures that where an asset manager and a provider of investment consulting services are connected via a joint venture, the asset manager can be a fiduciary management provider and the duty to tender for the provision of fiduciary management services can apply
- the requirement to review the objectives set for investment consultants is changed to at least every three years, and without delay after any significant change in investment policy, in order to ensure this issue does not become inadvertently prolonged.

Registrable Information

Trustees will be required to provide the name, address and appointment date of each of their fiduciary management ("FM") providers and whether the trustees carried out a qualifying tender process in relation to that provider. If they did not carry out such a process in relation to that FM provider, the trustees have to state why it was not carried out. Trustees will also be required to confirm the name, address and appointment date of each of their investment consultancy providers and whether the trustees have set and reviewed those objectives, and reviewed the performance of the provider, and if not, why that is the case.

TPR has guidance available to support compliance.

Helpful Links

Our detailed guide to the new requirements is available on request.

The Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022 (legislation.gov.uk)

Set objectives for your investment consultant | The Pensions Regulator

Choose an investment governance model | The Pensions Regulator

8 Pensions Ombudsman determinations

Lump sum death benefits and trustee discretion - Ombudsman refuses to remit flawed decision

In this determination (Mr Y, PO-24832), the Pensions Ombudsman upheld a complaint that the trustees of the pension scheme failed to consider the complainant as a possible beneficiary of a lump sum death benefit. However, even though the complaint was upheld, the Ombudsman did not remit the matter back to the trustees because he concluded that they would just make the same decision again.

The facts

Mr Y was, until his death, a member of the Pat Eddery Pension Fund. He was divorced and had a 23-year-old son, also Mr Y, who was a potential recipient of lump sum death benefits under the Fund. The divorce was intended to be a 'clean break', providing a final financial settlement for his family. Further, the deceased member nominated only Ms O (his new partner) in his letter of wishes and also left her his entire estate.

Ms O was a trustee of the Fund, and an additional trustee was also appointed to address conflicts of interest. The trustees decided to distribute the death benefits to Ms O, who planned to use them to pay off the debts of the late Mr Y's estate.

Mr Y complained to the Pensions Ombudsman, arguing that the trustees had not exercised their discretion properly.

The decision

The Pensions Ombudsman upheld the complaint.

The Ombudsman could only overturn the decision if the trustees had asked the wrong questions, considered irrelevant factors or reached a perverse decision. In this case, the trustees had correctly decided that Mr Y was a potential recipient of the lump sum death benefit. However, they were then wrong to proceed on the basis that the divorce settlement precluded Mr Y from benefitting. Also, they had not really exercised a discretion in that they had effectively decided that the nomination and the terms of the will precluded a payment being made to Mr Y. So, the trustees process was flawed.

All that said, on the facts of the case, the Ombudsman saw no point in remitting the decision to the trustees because the outcome would be the same. However, he awarded Mr Y £500 compensation for distress and inconvenience.

The lessons

The case is a reminder of trustee duties when exercising discretion over death benefits. Trustees should make reasonable enquiries as to potential beneficiaries, should not treat nomination forms as binding and need to manage conflicts. The case is also interesting because of the conclusion not to remit the flawed decision back to the trustees. Whilst the Ombudsman thought that the trustees decision would not change, even if they were asked to reconsider it, the Ombudsman should not effectively take decisions on behalf of trustees.

Trustee not liable for mis-statement where 'good faith' test not met

In this case (Mr R, CAS-50949-Z3M6), the Pensions Ombudsman partially upheld a complaint that a scheme provided incorrect information to a member who was assessing his retirement options. However, the Ombudsman found that it was unreasonable for the member to rely on incorrect statements and that he should have realised the figures provided would be subject to a caveat about reliance. Moreover, given the significant disparity in his pension from figures previously quoted, he should have queried the position. The member was though awarded £3000 for distress and inconvenience caused by material failings of both scheme and administrator.

The facts

Mr R was a member of the Jaguar Pension Scheme. In 2018 he was given his annual benefit statement (which included the usual caveats about not relying on it) showing a pension of £11,962. In 2019, he was offered voluntary early retirement and was told that his pension would be £19,904. Mr R retired and was subsequently informed that his pension would actually be £15,847. He complained to the Pensions Ombudsman.

The decision

The Ombudsman partially upheld the complaint, determining that:

- The member was only entitled to benefits under the Scheme rules. It was not reasonable to rely on the incorrect statements as Mr R should have realised that the figures he was given would have been subject to a caveat about reliance. Moreover, given the large increase / discrepancy in his pension from the figures quoted only a year earlier, he should have queried the position.
- There was no actionable 'estoppel'. Given the caveats on the statements, there had been no clear and unambiguous statement about his benefits and it was also not reasonable for him to rely on them.

The Ombudsman also found, however, that there had been a series of administration errors and a poor complaint handling process. He directed the Scheme and the Scheme Administrator to pay respectively £1,000 and £2,000 compensation for distress and inconvenience.

The lessons

A key issue in obtaining compensation for financial loss in incorrect information cases is that it must be reasonable to rely on the information and the member must be acting in good faith. In this case, given the caveats in the information and the large disparity in the quoted pension from a year earlier, neither test was met.

Helpful Links

PO-24832.pdf (pensions-ombudsman.org.uk)

CAS-50949-Z3M6.pdf (pensions-ombudsman.org.uk)

9 Update on Pensions Dashboards

As a reminder pensions dashboard services are an electronic communications service which will allow individuals to see their pensions information (including the State Pension) in one place online. Pensions dashboard services aim to help individuals to be reunited with lost pensions and support people in better planning for their retirement.

The DWP has recently published the government response to the second consultation on the creation of pensions dashboards. This considered the requirements that will have to be met by trustees of occupational pension schemes. It also updates TPR's initial guidance on dashboards for trustees to reflect the response. Amongst other things this includes an option for trustees to apply for a deferral of their staging deadline.

The final draft of the Pensions Dashboards Regulations 2022 was laid before Parliament on 17 October. Schedule 2 contains a staging profile that outlines when different types and sizes of schemes will have to connect to pensions dashboards. While the larger schemes (and schemes providing benefits of a money purchase nature) will be among those to stage first, the staging dates for smaller DB schemes that don't fall until the latter half of 2024, and throughout 2025, with the exact date depending on the number of members, (excluding pensioners).

Further details of the requirements relating to connection, the display of data, and the design of pensions dashboard services will be set out in standards (subject to approval by the Secretary of State), which are referred to in the regulations. A consultation on these standards was published in July. In any event TPR's guidance notes that there will be significant work involved in connecting to dashboards and that it could take 12-18 months to prepare. Trustees are strongly advised to start preparing as early as possible.

Action

Trustees should ensure that dashboard preparation is on their meeting agendas and action plans, to include issues such as connection, scheme data and matching. Where administration is outsourced the third party administrator should be asked to evidence what it is doing to meet the dashboard requirements, particularly around issues such as generation of Estimated Retirement Incomes (ERIs) and the way in which they propose connecting to the dashboard.

Helpful Links

The Pensions Dashboards Regulations 2022 (legislation.gov.uk)

Government response to the Pensions Dashboards: further consultation - GOV.UK (www.gov.uk)

10 DC Update

Supporting pension scheme members to make informed decisions: A call for evidence

The DWP recently launched a call for evidence seeking views on how it can support pension scheme members make informed decisions on using their savings. In the call for evidence, DWP sets out member expectations, the current position in the trust-based market and plans for the future.

The consultation could lead to the introduction of new measures to support trust-based scheme members, the extension of collective defined contribution (CDC) schemes to multi-employer schemes and master trust, and the National Employment Savings Trust (NEST) may also be developed to offer further decumulation (retirement income) options.

The call for evidence ended on 25 July 2022 and the DWP will now deliberate over what, if any, government action is required.

The conclusion to the consultation provides some insight into government thinking –

"Understanding the views of both pension savers and providers is key to DWP's assessment of what support may be needed by members of trust-based pension schemes to allow them to make informed decisions about their pension savings and ultimately achieve their desired outcomes. …

"In addition to this call for evidence, we will also be seeking further direct engagement with members. This will give more insight into their views on what support they need to help make informed decisions and achieve their desired pension outcomes. We will consider this alongside the formal responses to this call for evidence, as we develop our policy thinking."

Engagement with members and engaging members with their pension savings has been a challenge for employers, trustees and the industry, so it will be interesting to see the DWP's approach. The link to our blog on member engagement is below.

Simplified Benefit Statements from October 2022

From 1 October 2022, automatic enrolment schemes that only provide money purchase benefits must issue simpler annual benefit statements, having regard to statutory guidance and an illustrative template published by the DWP. By way of reminder –

- The simpler benefit statement must not exceed two sides of A4 (or equivalent if printed from an online version) and font and typeface must be easy to read
- The DWP's template is split into five sections and illustrates how the information should be ordered and presented to ensure consistency
- Schemes can use their own branding, as long as it does not obscure the flow or increase the length of the statement beyond that permitted
- Alternative formats may also be necessary to satisfy the Equality Act 2010.

There is no change to the statutory minimum content that must be included in the body of the statement or to the information that must be signposted. The new guidance does though suggest that other information may be included or signposted; e.g. it encourages schemes to include costs and charges information in the body of the statement.

If in paper format, the simpler statement must always feature at the front of any pack (or immediately after any covering letter) with additional information appearing after this.

Annual benefit statements issued after **1 October 2022** must follow the new simpler format.

Helpful Links

Helping savers understand their pension choices - GOV.UK (www.gov.uk)

How to provide simpler annual benefit statements - GOV.UK (www.gov.uk)

11 Case law update

High Court throws out RPI/CPIH judicial review case

On 1 September 2022, the High Court handed down judgment in the case of BT Pension Scheme Trustees v UK Statistics Authority. The well reported action concerned a claim for judicial review by the trustees of the BT Pension Scheme, Ford Pension Schemes and Marks & Spencer Pension Scheme against:

– the decision of the UK Statistics Authority (UKSA) in February 2019 to align the Retail Prices Index (RPI) with the Consumer Prices Index including owner occupiers' housing (CPIH) by bringing into the RPI the methods and data sources of the CPIH (the RPI decision)

– the decision of the Chancellor of the Exchequer in March 2020 to withhold his consent under section 21(3) of the Statistics and Registration Service Act 2007 (SRSA 2007) to the RPI decision being implemented before 2030, and

– the decision of the Chancellor in March 2020 that the Government would not pay compensation to the holders of UK index-linked gilts because of the UKSA's decision to align the RPI with the CPIH from 2030.

In short, the claim was dismissed but, that said, the decision contains useful background and insights around measures of price inflation used for pensions indexation.

The claim

In a bit more detail, the claimants relied upon the following grounds of challenge:

– The UKSA's RPI decision falls outside the scope of its power to amend the RPI.

– The UKSA failed to take into account the impact of its RPI decision on the holders of RPI index-linked gilts and bonds and persons entitled to index-linked pensions (legacy users), or wrongly decided that it was not entitled to take that impact into account. Consequently, the UKSA also failed to comply with its Public Sector Equality Duty (PSED). Also, in making his compensation decision, the Chancellor failed to have regard to the interests of legacy users and to comply with the PSED.

– The UKSA failed to consult the public on its RPI decision and to take into account their views when that proposal was at a "formative stage". Also, the Chancellor failed to consult with legacy users on the issue of compensation and to take into account properly their representations on compensation.

The claimants also brought a private law claim in the event of the court deciding that the RPI decision is lawful. They submitted that the effect of implementing the RPI decision in 2030 will be that the RPI will cease to be published and so the 'cessation clause' in gilts issued from 2005 onwards will be triggered. The Chancellor would, therefore, be obliged to select a replacement index for the RPI. The Chancellor submitted that the clause will not be triggered because, once the RPI decision is implemented, the RPI will still continue to be published.

The claimants failed on all grounds

– The court rejected ground 1 holding that: as a matter of law, the UKSA has the power to amend the RPI by bringing the methods and data sources of the CPIH into the RPI. That power includes the making of "fundamental changes" to the coverage or basic calculation of the RPI. The court also rejected the claimants' argument that the UKSA's RPI decision was simply an attempt to circumvent the need to repeal s. 21 of the SRSA so that the RPI need no longer be produced.

– The court rejected both of the claimants' contentions under ground 2 holding that: it is common ground that, because the RPI is used in so many different situations, the effect of leaving the RPI as it is, or changing it in accordance with the RPI decision, produces winners and losers in many parts of society and the economy. On the claimants' second point, the Chancellor received ample briefing from his officials on the effects of the RPI decision on legacy users and the PSED. That was taken into account in his decision that compensation should not be provided out of the public purse.

– The court consequently rejected both of the claimants' contentions under ground 3. In respect of the claimants' second point, the court decided that they failed to demonstrate any legal basis for their assertion that the Chancellor was legally obliged to consult on whether compensation should be paid to legacy users.

Finally, in relation to the 'cessation clause', the court explained why the RPI will not cease to be published when the RPI decision is implemented from 2030. Accordingly, there will be a declaration that that decision will not cause the cessation clause in index-linked gilts issued from 2005 to be triggered.

As things stand, the reform of RPI will go ahead as planned and HM Treasury has already updated its consultation outcome for the consultation on reform to the RPI methodology.

What does it all mean for pension scheme sponsors, members and trustees?

Well, that depends.

- For **members** who have benefits linked to CPI or do not receive increases, there will be no change. However, where members have all or part of their benefits either in deferment or payment linked to RPI then they will see a change in how their pension increases in future (from 2030). Many members may feel like this is a reduction in their pension promise and telling members that the current calculation in RPI is overstated, due to an error in the formula, will provide little comfort!
- For pension scheme **sponsors** the impact will also depend on what measure of inflation is used when calculating pension increases and how much inflation hedging is in place. Most assets that hedge inflation are hedging RPI as there are very limited assets that are linked to CPI. In the same way that there has been a 'lottery' in whether pension scheme increases are linked to RPI or CPI under scheme rules, there will be a lottery in the impact of the change to the calculation to RPI for scheme sponsors.
- **Trustees** will be tasked with explaining the impact to members where their pension increases are affected and liaising with sponsors on the funding impact of any change on the pension scheme. When CPI-H replaces RPI, will some trustees feel moved to ask for discretionary increases or for changes to be made to scheme benefits to compensate pensioners?

Payments to employees for changes to pension scheme benefits were not 'from' employment for tax purposes

In E.ON UK plc v Revenue and Customs Commissioners, there was a successful appeal to the Upper Tribunal (UT) by an individual taxpayer from a decision of the First-tier Tribunal (FTT) which decided that payments made to employees in respect of alterations to their rights under a defined benefit pension scheme were 'from' the employment, within the meaning of section 9(2) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and section 3(1)(a) of the Social Security Contributions and Benefits Act 1992. The UT held that the payments were not from the employment, applying the decision in Tilley v Wales and Kuehne + Nagel Drinks Logistics Ltd v HMRC. This is a classic case of whether or not a payment by an employer is 'from' the employment or is something else—in this case compensation for giving up certain pension rights.

Employer not liable to pay pension arrears on proper construction of pension scheme forfeiture rule

In Re CMG UK Pension Scheme, sub nom CMG Pension Trustees Ltd v CGI IT UK Ltd, the High Court held that an IT company does not have to compensate its pensioners for unpaid benefits that were due for payment more than six years before the pension scheme's trustees raised issues over the scheme's benefit structure in 2019. The court ruled that a forfeiture clause meant that the employer, CGI UK Ltd, does not have to make good the arrears.

It was found that the scheme had a forfeiture clause where 'any benefit or instalment of a benefit which has not been claimed within six years of the date on which it fell due for payment is forfeited and the entitlement to that benefit or instalment is extinguished'. This is not limited to missing beneficiaries and rather applies to all unclaimed benefits once the six-year period has expired. The clause is *'a forfeiture rule and takes effect whenever a benefit or instalment has not been claimed for more than six years after it fell due and, in particular, whether or not the beneficiary is missing or is aware that the benefit or instalment remains unpaid'.*

The sole trustee, CMG Pension, had argued that the clause at issue was not a matter of forfeiture and that its purpose was only to deal with missing beneficiaries even though the clause made no distinction between benefits unclaimed because the beneficiary is missing and those unclaimed because the beneficiary is unaware of the entitlement. The court held that *'If the purpose of the rule was to draw such a distinction, one would have expected the drafter to use clear language to that effect'.*

Even though the clause did not use the word 'forfeit' or 'forfeiture', setting a time limitation for claiming benefits in all circumstances was still found to be its aim.

Helpful Links

BT Pension Scheme Trustees -v- UK Statistics Authority | Courts and Tribunals Judiciary

E._ON_UK_PLC_v_HMRC_UT-2021-000161_Final_decision.pdf (publishing.service.gov.uk)

CMG forfeiture case

12 Coming up Next...

Another quarter, another period of volatility and, at the time of writing, another two Prime Ministers. When it comes to producing our Quarterly Update, we often lament that it just feels like yesterday that we were sitting down to discuss the previous quarter's report. This time, it almost feels like 12 months were in the last quarter, considering the upheaval of events that have transpired – political and economic. It feels like the world is turning more swiftly on its axis by the day, like a spinning top… hopefully not to topple over after the recent wobbles!

As shaken and stirred as we may be, we must resolve to settle ourselves, look to the future with a steady eye and a calm mind, be ready to take action and continue planning for our schemes. To that end, here are some of the topics that we do know about, which may be impacting your pension schemes in the coming months.

Pensions Dashboard

- The DWP has published the government response to the second consultation on the creation of pensions dashboards, and draft Pensions Dashboards Regulations, which have now been laid before Parliament. DWP also published draft guidance for trustees and their advisers regarding the issues trustees need to consider if they are applying for a deferral of their staging deadline (the deadline for the scheme to be connected to a dashboard of digital architecture).
- The article earlier in the report provides a more detailed update on the pensions dashboard, but it is worth reiterating the importance of trustees preparing now for their staging deadline. As mentioned, time is passing by so quickly and it is so easy for months to be eaten up by unforeseen events. So, while the staging dates may feel distant and like a problem for tomorrow, schemes need to be treating it as a(nother) priority, now.
- We have produced a guide covering everything you need to know about dashboards which, if not already provided to you, is available on request.

TPR Codes of Practice

- Repeatedly asking for things, over and over again, is a tactic that seems to work quite well for this writer's children. So, perhaps if I keep mentioning TPR's long-awaited Single Code of Practice and the new DB funding code in the Coming Up Next article, it will come to pass!
- The industry has been busy over the past months, putting out various fires, so it is entirely understandable that these codes have yet to be published. However, we do expect TPR to publish the code of practice within the next six months (before TPR's financial year end of 31 March 2023), combining at least 10 of the 15 current codes of practice into the single, "super-code". While the DB funding code is expected before the end of this calendar year. The new regimes are unlikely to take effect until later in 2023, but trustees and sponsoring employers should get familiar with the proposed changes now, so that their schemes are ready to go with the revised requirements.
- In the meantime, TPR has just published its enforcement strategy, which sets out TPR's approach to its enforcement work (excluding 'auto-enrolment') and aims to provide insight into the framework applied when selecting cases for enforcement action. Following a consultation earlier this year, TPR has also published its consolidated enforcement policy, updated prosecution policy and consultation response.

Building on those selected topics, here are some key dates to keep in your diary as we approach the end of 2022 and look to the New Year:

- **31 October 2022** – Next deadline for applications to become a signatory of the 2020 UK Stewardship Code.
- **Before 2023** – Government consultation on multi-employer collective defined contribution (CDC) pensions expected to be launched.
- **Before 2023** – TPR, DWP and the FCA plan to issue a consultation setting out proposals relating to the measurement of Value for Money in DC schemes.
- **From 2023** – More information on assets to be collected by TPR in scheme returns for DB pension schemes.
- **16 January 2023** – Dominic Harris due to take up his role as the new Pensions Ombudsman.
- **April 2023** – Start of the phased compulsory on-boarding of schemes to the pensions dashboard.

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Birmingham

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Birmingham
B3 3AS

Bristol

Castlemead
Lower Castle Street
Bristol
BS1 3AG

Glasgow

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Glasgow
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