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What's Happening in Pensions

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- **Investment consultancy and fiduciary management:** The government has consulted on draft regulations in relation to the Competition and Markets Authority's new requirements for investment consultancy and fiduciary management arrangements. The Pensions Regulator is consulting on draft guidance.
- **GMP equalisation:** The trustee of the Lloyds Banking Group schemes involved in the GMP equalisation litigation has confirmed that the High Court will consider the extent (if any) of the trustee's obligation to revisit past unequal transfers out of the schemes. The GMP equalisation industry working group has published a "call to action" in advance of further guidance expected later this year.
- **Pensions Regulator codes of practice:** The Pensions Regulator has announced that it expects to combine the content of its 15 current codes of practice to form a single, shorter code. This will begin with the codes affected by recent changes to investment governance and disclosure requirements.
- **Stewardship code:** Publication of the revised UK stewardship code has been delayed until October 2019. It had been due in July.
- **Finance Bill:** Draft legislation for the next Finance Bill includes nothing on pensions tax but does include draft legislation to protect tax revenues on insolvencies, which may affect pension schemes. Broadly, HMRC would be given preferential creditor status in a corporate insolvency from April 2020.
- **Pensions Ombudsman:** The government has published its response to the consultation on changes to the Pensions Ombudsman's jurisdiction. It will proceed with proposals to allow the Ombudsman to operate a binding early resolution service, to mediate in disputes before an internal dispute resolution procedure has been used, and to allow employers to complain about a group personal pension provider.
- **DB transfer advice:** The FCA is proposing to ban, in most cases, contingent charging for DB pension transfer advice (ie, financial advisers charging only if the transfer they are asked to advise on goes ahead).
- **Survivors' pensions:** In the Court of Appeal, a woman has won the right to a survivor's pension from the RAF pension scheme following the death of her partner. The scheme denied her a pension, even though she had lived with the scheme member for 15 years, because she was still married to her previous partner and under the scheme rules this excluded her. This case does not, however, have direct application to private sector schemes.

Investment consultancy and fiduciary management

CMA order

As reported in **WHiP Issue 76**, the Competition and Markets Authority (CMA) has introduced new requirements in relation to pension scheme investment governance:

- Investment consultancy: By 10 December 2019, trustees must set strategic objectives for their investment consultants. This applies both when engaging new consultants and for existing appointments.
- Fiduciary management: Trustees who wish to delegate investment decisions for 20% or more of their scheme assets to a fiduciary manager must, from 10 December 2019 onwards, run a competitive tender with at least three unrelated firms. Trustees who had appointed such a fiduciary manager without a tender on or before 10 June 2019 must put the service out to tender, generally within five years from the commencement date of the existing arrangement.

Most occupational pension schemes will be affected, and where the requirements apply trustees may need to take action outside their normal meeting cycle in Q3 and Q4 2019 in order to stay legally compliant.

Our **briefing note** outlines matters that require trustee consideration, focusing on priority action points in the run up to 10 December.

Draft regulations

The government **has consulted** on draft regulations with similar effect to the CMA order. The reason for introducing regulations is to enable the requirements to be policed by the Pensions Regulator rather than by the CMA. There are, however, differences in scope between the order and the draft regulations. Please see the above briefing note for more on this.

The regulations will probably take effect from 6 April 2020, replacing the CMA order from then, but this is currently unclear.

Pensions Regulator guidance

The Pensions Regulator **is consulting** (until 11 September 2019) on four pieces of draft guidance for trustees. They are guides to:

- Tendering for fiduciary management services
- Tendering for investment consultancy services*
- Setting objectives for providers of investment consultancy services
- Choosing an investment governance model*

(* Neither the CMA order nor the draft regulations impose requirements on trustees in relation to these matters but one of the CMA's 'supporting remedies' in its final report was a recommendation for the Pensions Regulator to develop broader guidance on engaging with investment consultants and fiduciary managers.)

GMP equalisation

Further hearing in the Lloyds case

The trustee of the three Lloyds Banking Group schemes involved in the GMP equalisation litigation has confirmed that the High Court will consider the extent (if any) of the trustee's obligation to revisit past unequal transfers out of the schemes. Questions about this were referred to the Court in the original application but were deferred in the October 2018 judgment.

There had been some speculation that the Court would also be asked to rule on the need for the trustee to take action in cases where GMP equalisation uplifts are expected to be very small but there is no application in this regard.

The court hearing is expected to take place in April/May 2020.

Working group "call to action"

The industry GMP equalisation working group has published a short call to action, in advance of further guidance for trustees expected later this year.

The call to action covers:

- when trustees might adjust benefits following GMP reconciliation (ie, whether to rectify benefit entitlements now or combine this with GMP equalisation) – but with no steer given;
- getting scheme data into shape for equalisation; and
- initial thoughts on dealing with various types of benefit payment, transfer value requests, divorce transfer value quotations and buy-ins/outs.

Pensions Regulator codes of practice

The Pensions Regulator **has announced** that it expects to combine the content of its 15 current codes of practice to form a single, shorter code. This will begin with the codes affected by the recent changes to the investment governance and disclosure requirements (see **WHiP Issue 76**). Consultation is expected.

The statement says:

"Over the next year we will be reviewing our codes of practice to reflect the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018. We expect that this will involve combining the content of our 15 current codes of practice to form a single, shorter code. In doing so, we intend to make our codes of practice quicker to find, use and update, so that trustees and managers of all types of scheme can be more responsive to changes in regulation. Our current intention is to develop the new code in phases, and our early focus will be on the codes most affected by the regulations.

Our early focus will be on the codes most affected by the regulations. We will review Code of Practice 9 (internal controls) and 13 (defined contribution code) first, including content from Codes of Practice 14 (public service schemes) and 15 (master trusts), as we set out the features of effective governance that will apply to all types of pension scheme. Trustees will need to be able to demonstrate that they have an effective system of governance within 12 months of publication of the updated code.

We are planning to launch a formal consultation later in the year, but before that, we will engage with stakeholders for feedback on the proposed design and content."

Stewardship code

The Financial Reporting Council **has announced** that publication of the revised UK stewardship code has been delayed until October 2019. It had been due in July.

See **WHiP Issue 75** for details of the consultation.

Finance Bill

Draft legislation for the next Finance Bill includes nothing on pensions tax but does include **draft legislation (with an accompanying policy paper)** to protect tax revenues on insolvencies, which may affect pension schemes. Broadly, HMRC would be given preferential creditor status in a corporate insolvency from April 2020.

This will move HMRC ahead of pension scheme trustees and other unsecured creditors in the insolvency priority order. Subject to the changes coming into force, covenant advice to pension scheme trustees may need to change the way it assesses the effect of sums owed to HMRC by a scheme sponsor or guarantor in possible insolvency scenarios.

This was previously announced in the October 2018 Budget (see **WHiP Issue 73**).

Pensions Ombudsman

The government has published its **response** to the December 2018 consultation on changes to the Pensions Ombudsman's jurisdiction (see **WHiP Issue 74**).

The government and the Pensions Ombudsman (TPO) consulted on how to implement proposals to:

- allow TPO to operate a binding early resolution service (without a determination) and to mediate and resolve disputes (including before an internal dispute resolution decision, which the Pensions Advisory Service was able to do but TPO currently is not);
- allow employers who choose a group personal pension to complain to TPO about the provider; and
- make changes to provisions on signposting people to TPO.

The government will proceed to implement the proposals. An Act of Parliament is required in order to make some of the proposed changes, so this may take some time.

DB transfer advice

The FCA **is proposing** to ban, in most cases, contingent charging for DB pension transfer advice (ie, financial advisers charging only if the transfer they are asked to advise on goes ahead).

The FCA says it is concerned that too many advisers are delivering poor advice, much of it driven by conflicts of interest in the way they are remunerated. In particular, the practice of contingent charging creates an obvious conflict. It is consulting on the following proposals:

- To ban contingent charging, except for groups of consumers with certain identifiable circumstances that mean a transfer is likely to be in their best interests.
- Where contingent charging is permitted, advisers will have to charge the same amount, in monetary terms, for advice to transfer as they charge when the advice is non-contingent.
- To introduce a short form of 'abridged' advice that can result in a recommendation not to transfer based on a high-level assessment of a client's circumstances. This will fall outside the proposed ban on contingent charging and should help maintain initial access to advice.

The FCA is also proposing to strengthen its existing requirements that advisers giving pension transfer advice should consider an available workplace pension as a receiving scheme for a transfer where one is available. This is intended to address the conflicts of interest created by ongoing advice charges. It will also reduce the number of transfers involving unnecessarily complex and expensive solutions.

The FCA also has concerns about advisers' overall competence and their ability or willingness to give consumers information to understand the implications of a transfer. It is therefore also consulting on a package of proposals including:

- remedies intended to improve consumer engagement with the advice process (for example, improving charges disclosure);
- a requirement that pension transfer specialists complete 15 hours of continuing professional development (CPD) each year, on top of any other CPD they undertake;
- extending the range of data that the FCA currently collects from financial advisers, to improve its ability to regulate the sector; and
- technical amendments to its rules, which include changes to the definition of a pension transfer.

The consultation closes on 30 October 2019 and the FCA will publish its conclusions in the first quarter of 2020.

Survivors' pensions

In the **Court of Appeal**, a woman has won the right to a survivor's pension from the RAF pension scheme following the death of her partner. The scheme denied Mrs Langford a pension, even though she had lived with the scheme member for 15 years, because she was still married to her previous partner and under the scheme rules this excluded her.

The case was decided on the basis of the European Convention on Human Rights, so does not have direct application to private sector schemes (in the same way as the 2017 *Brewster* case on unmarried dependants' pensions, concerning a requirement for unmarried partners to have been nominated - see **WHiP Issue 63**).

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If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Susie Daykin, Daniel Gerring, David James, Andy Lewis, Dan Naylor and Paul Stannard.

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