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What's happening in

Pensions

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DC charges and governance

Regulations containing charges restrictions and governance requirements for schemes providing money purchase benefits have been laid before Parliament. The regulations will come into force on 6 April 2015. Several amendments have been made since the October 2014 command paper (see **WHiP Issue 49**), including to remedy drafting problems that we highlighted in our reply to the consultation. Trustees will need to act quickly to comply with these new requirements from 6 April 2015.

The key requirements are:

Charges restrictions for default arrangements in qualifying schemes (used for automatic enrolment) which provide money purchase benefits (other than just DC AVCs – see below). Member-borne administration charges can only have certain kinds of structure and are capped at 0.75% pa (or the equivalent) of a member's funds under management. The restrictions do not apply to "transaction costs". Default arrangements include default funds for new contributions (after 6 April 2015) as well as arrangements to which 80% or more of members choose to contribute. Active member discounts will be prohibited for qualifying schemes from 6 April 2016.

Governance requirements will apply to any occupational pension scheme that provides money purchase benefits (unless the only such benefits are AVCs). Briefly, these include:

- an overriding provision that scheme rules cannot require the appointment of a particular service provider or restrict the trustees' choice;
- a requirement for all trustee boards to appoint a chair (for all purposes of the scheme);
- a requirement for a governance statement signed by the chair in the scheme's annual report (including information about default investment options, the processing of financial transactions, charges and transaction costs, and compliance with trustee knowledge and understanding);
- a requirement for trustees to process core financial transactions relating to money purchase benefits promptly and accurately;

Regulations:
http://www.legislation.gov.uk/ukdsi/2015/9780111128329

Consultation response:
https://www.gov.uk/government/consultations/better-workplace-pensions-putting-savers-interests-first

Minister's statement:
http://www.parliament.uk/documents/commons-vote-office/February%202015/4th%20February%202015/5.DWP-Pensions.pdf

- a requirement to assess charges and transaction costs for money purchase benefits (including whether they represent good value for members);
- a requirement to provide a statement of investment principles specific to default funds;
- a duty to invest default funds in the best interests of members (where this duty did not already apply – ie, for schemes with fewer than 100 members); and
- certain additional requirements for master trusts (excluding NEST).

Changes following consultation
The most notable amendments since the command paper are that:

- As originally drafted, the charges cap could apply to DC AVCs in otherwise DB qualifying schemes. The Government has stated that this was not its intention and has revised the regulations accordingly. In addition, the 80% test for default arrangements only applies now to members who are accruing money purchase benefits and whose contributions are not solely DC AVCs.
- The regulations now confirm that employer-appointed trustee chairs need not be replaced by trustee-appointed ones. This is the case even when the existing chair departs: provided that the employer appoints a replacement within three months. In addition, a professional trustee firm which is a director of a trustee company can now be appointed as chair.
- The previous draft regulations required a scheme's first annual governance statement to cover the period from 6 April 2015 to the end of its scheme year, which could have resulted in statements relating to only a few weeks of experience for some schemes. Trustees with scheme years ending three months or less after 6 April will not now need to prepare a statement until the end of the following scheme year (although that statement will need to cover the period starting 6 April 2015).
- Costs associated wholly with death benefits have been excluded from the charges restrictions.
- The Pensions Regulator must issue a penalty notice if trustees fail to prepare an annual governance statement. But, unlike the consultation draft, the Regulator will now have discretion whether or not to issue compliance, third party or penalty notices in other circumstances.

The Government has declined to clarify the definition of "transaction costs" (currently excluded from the charges cap) in the regulations but has amended its guidance about what is and is not caught, now set out in Annex A to its consultation response paper.

Pensions Regulator
The Pensions Regulator has published an "essential guide" providing an overview of the new requirements. The Regulator will update its code of practice and website guidance in due course. Areas of discrepancy remain between the code and the regulations, including that the code sets out governance standards for schemes where the only money purchase benefits are AVCs. Current Regulator guidance also sets out more prescriptive and wide-ranging expectations for annual governance statements.

Pensions Regulator guide:
http://tpr.gov.uk/docs/governance-standards-charge-controls-guide-april-2015.pdf

April 2015 decumulation changes

Taxation of Pensions Act 2014
The Taxation of Pensions Bill has received Royal Assent and is now the Taxation of Pensions Act 2014. See **WHiP Issue 48** for background. The Act does not cover the changes to the tax treatment of annuity payments made after death that were announced in the 2014 Autumn Statement (see WN Issue 49). These are expected to be included in the Finance Bill 2015.

HMRC has updated its tax information note "Pension Flexibility 2015". Full guidance is awaited.

Guidance
The Government has announced that the new three-pronged pension guidance service (online, by telephone and in person) being introduced alongside the April 2015 decumulation reforms will be branded "Pension wise".

The Pension wise online guidance website has also been launched.

The Government has also published an update on delivering the guidance service.

Taxation of Pensions Act 2014:
http://www.legislation.gov.uk/ukpga/2014/30/contents/enacted

HMRC tax note:
https://www.gov.uk/government/publications/pension-flexibility-2015

Government announcement:
https://www.gov.uk/government/news/pension-wise-unveiled

Pension wise web page:
https://www.pensionwise.gov.uk

Update:
https://www.gov.uk/government/publications/delivering-pensions-guidance-january-2015-update

Pension liberation: Pensions Ombudsman determinations

Statement (with links to determinations):
https://www.pensions-ombudsman.org.uk/2015/01/pension-liberation/

The Pensions Ombudsman has issued the first of many expected pension liberation determinations. The very first (Mr X, considered last below because it is of less practical relevance) was a complaint against the trustees of a suspected liberation scheme to which a member transferred. The next three were complaints against personal pension providers that had refused to make transfers to suspected liberation schemes. In all three cases, the set-up of the receiving arrangements was such that the Ombudsman found there was no statutory right to the proposed transfers. But the providers were nevertheless criticised for the approaches they took.

The same principles would apply to trustees of occupational pension schemes. The Ombudsman's determinations, whilst reassuring in some ways, place onerous expectations on trustees or providers faced with a possible attempt at pension liberation. Further determinations are awaited.

For more on pension liberation, see our briefing note "**Pension liberation: issues for trustees**".

Mrs Kenyon (Zurich), Mrs Jerrard (Aviva) and Mr Stobie (Standard Life)
In the cases of Mrs Kenyon and Mrs Jerrard, the Ombudsman found that there was no statutory right to transfer. The main reason was that the intended receiving schemes were not “occupational pension schemes” within the meaning of the relevant legislation. The schemes did not identify a clear class or “description” of employments of the people for whom they were to provide benefits. Also, the transfers would not have been authorised payments because the scheme operators would have taken a sizeable proportion of the transfer value in fees, rather than using the transfer to provide benefits for the individuals.

In Mr Stobie’s case, although the intended receiving scheme was an occupational pension scheme within the statutory definition, Mr Stobie was not an “earner” in relation to it and so he had no right to take a transfer to it under the relevant legislation. Under the rules of the Standard Life SIPP, however, Standard Life had discretion to transfer when there was no statutory right. The Ombudsman found that the provider had not considered its discretion properly and directed it to do so (whilst hinting to Mr Stobie that he might be wise to withdraw his request).

Zurich and Aviva, and to a lesser extent Standard Life, were criticised for two things. First, the Ombudsman said that they should have reviewed the receiving scheme documentation and properly considered whether there was a statutory transfer right. The onus was placed on them to do this, and to tell the member why there was no transfer right (even though this might help pension liberation organisations to hone their offerings); it was not the individual's responsibility to prove that the scheme fell within the transfer legislation. Second, the Ombudsman said that the providers should have followed all the steps in the Pensions Regulator's February 2013 action pack (see **WHiP Issue 38**), even if the only anticipated benefit was to make the member think twice about the transfer request.

Mr X (Capita Oak Pension Scheme)
This determination concerned a transfer by Mr X of almost £370,000 from the NHS Scotland Pension Scheme to the Capita Oak Pension Scheme. Mr X was not employed by a company connected to the Capita Oak Scheme; he was still employed by the NHS and opted out of its scheme in order to transfer. After the transfer had been made, Mr X became concerned about his decision and asked to transfer out of the Capita Oak scheme. The trustee of that scheme did not respond to his many attempts to communicate with them.

The Ombudsman decided that Mr X would have been entitled to transfer out of the Capita Oak scheme if he had made a formal request and the only reason he did not make such a request was that the trustee did not reply to him. He therefore directed the trustee to pay a transfer value of at least the original amount, plus interest. Mr X can enforce the direction in the courts but the Ombudsman noted that even if the trustee engaged with enforcement, Mr X might find that some or all of the money had disappeared.

Pension protection levy 2015/16

Pension protection levy web page:
http://www.pensionprotectionfund.org.uk/News/Pages/details.aspx?itemID=386

PPF note:
http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/CA_Guarantor_strength_jan15.pdf

The Pension Protection Fund has published its 2015/16 levy determination and numerous associated documents. A policy statement outlines what the PPF has been considering since it published draft documentation in October 2014 (see **WHiP Issue 49**) and its final position on those matters. Please see our briefing note "**Changes to the pension protection levy for 2015/16**" for details.

The PPF later published a note, "*Contingent Assets – Guarantor strength*", reflecting its experience of the contingent asset review process and answering some queries raised by stakeholders.

Automatic transfers

Policy document:
https://www.gov.uk/government/publications/automatic-pension-transfers

The Government has published a policy paper giving more details on its intended system for automatic transfers of small DC pots. The system will be for transfers between DC pots in charge-capped default arrangements (see above) under trust or contract based workplace pension schemes.

The Pensions Minister hopes to introduce this regime from October 2016, on a limited and opt-in basis at first, a year after the statutory vesting period requirement for occupational pension schemes is reduced to 30 days. Further details and a consultation on draft legislation are expected later in the year. There is cross-party approval of a system for automatic transfers.

A "federated" network of registers will store and match standard format information about eligible DC pots. Schemes and providers may either run their own register in house or contract with an external register provider.

Implementation will be in at least two phases. Phase 1 will require transfers only when the member opts in. The schemes covered by Phase 1 will be announced later in the year but they will be the biggest personal pension providers and apparently some very large trust based schemes. For an automatic transfer to be made during Phase 1, both the transferring and receiving schemes must be schemes on the Phase 1 list.

Phase 1 will be used to test the processes and Phase 2 will be introduced "as soon as is practicable". Phase 2 introduces the opt-out process. The Government will decide whether to bring in more schemes and providers at this stage, or at a later date. It appears that when Phase 2 is implemented, existing eligible dormant pots will need to be added the scheme's register. Schemes are told that they should already start recording information.

In both phases, there will be four key stages:

- **Pot flagging**: A DC pot in a charge-capped default arrangement must be placed on a scheme's register for possible automatic transfer if it meets all of the following criteria:
    - the first contributions were received on or after 1 July 2012;
    - the pot is worth £10,000 or less (this cap is to be reviewed every five years); and
    - the individual (or, presumably, the employer) has not contributed to the pot in the 12 months following the last annual statement.
- **Pot matching**: When an individual joins a workplace scheme, that scheme must ask its register provider to search for eligible pots relating to the same individual that have been flagged by previous schemes.
- **Contacting the individual**: If there is a match, the scheme that initiated the search must contact the individual and give certain key pieces of information.
- **Pot transfer**: If the individual has opted in (Phase 1) or has not opted out (Phase 2), the new scheme must contact the old scheme to request the transfer. The transfer must be made electronically (not by cheque) "within a matter of days not months".

Abolition of contracting-out: employer power to amend

Commencement order:
http://www.legislation.gov.uk/uksi/2015/134/contents/made

The statutory employer power to amend a contracted-out DB scheme to offset the additional employer National Insurance contributions payable when contracting-out ends will apply from 23 February 2015. This power may be useful if there are difficulties in using the scheme amendment power. Please see our briefing note "**State pension reform and the end of contracting-out**" for more details.

Review of UK consumer price statistics

Press release:
http://www.statisticsauthority.gov.uk/news/news-release---uk-consumer-price-statistics--a-review.pdf

The UK Statistics Authority (UKSA) has published an independent report on UK price inflation indices. The report recommends that:

- CPIH, which (unlike CPI) includes owner occupiers' housing costs, should become the Office for National Statistics' (ONS) main measure of price inflation;
- the Government and regulators should move towards ending the use of RPI, which the report says is not a good measure of inflation, as soon as practicable or set out clearly their reasons for continuing to use it (with exceptions where existing contracts, require it, eg, index-linked gilts); and
- the Authority and the ONS should publish annually significantly more information about what is happening to prices and costs faced by particular groups of households.

The Authority will undertake a full public consultation this summer.

Incentive exercises: small/trivial pension commutation exercises

Q&A:
http://incentiveexercises.org.uk/qa

The Incentive Exercises Monitoring Board has published a new Q&A on one-off small and/or trivial pension commutation exercises, to accompany its Code of Good Practice (see **WHiP Issue 34**). This says that the Code does apply to such exercises, except where members are not given a choice or where the commutation payments are winding-up lump sums. They should be treated as a "modification exercise" rather than a "transfer exercise", meaning that guidance rather than advice can be given if the deal is at least "100% balanced".

This is a surprising interpretation of the Code and it seems likely that employers or trustees who previously took a different view could not be fairly criticised. The Board's Q&A adds that "*We recognise that the 2014 Budget announcements are likely to have a significant impact on incentive exercises and are planning a major review of the Code in 2015 once government policy, legislation and market developments have become clearer*".

Bankruptcy: benefits not yet in payment

Case report:
http://www.bailii.org/ew/cases/EWHC/Ch/2014/4209.html

In *Horton v Henry*, the High Court refused to allow a trustee in bankruptcy to claim a bankrupt's pension scheme benefits that were not yet in payment. In reaching his decision, the deputy judge declined to follow the same court's decision in *Raithatha v Williamson* (see **WHiP Issue 33**), despite considering the facts of it to be materially indistinguishable, finding that it had been wrongly decided.

Mr Henry had a SIPP and three personal pensions. He was aged 58 and so entitled to draw benefits under all of them but had not yet done so. His trustee in bankruptcy applied to court for an income payments order seeking payment of the full pension commencement lump sum and three years' pension instalments from the SIPP, and three years' capitalised income from the personal pensions. The trustee in bankruptcy also intended to make a further application after April 2015, when the decumulation tax legislation changes will entitle Mr Henry to take all his benefits (presuming that the schemes will allow that).

The deputy judge agreed with Mr Henry that benefits not yet in payment could not be said to be payments to which he was "entitled" for the purposes of the bankruptcy legislation. That referred only to benefits already in payment. Until Mr Henry had made the necessary decisions and elections, payments were not certain or contractually payable. The trustee in bankruptcy had no right to make decisions and elections on Mr Henry's behalf because the rights to do so, like the benefits themselves, are not part of the bankrupt's estate. The trustee could not, therefore, claim benefits unless Mr Henry elected for them to be paid.

If this decision is right, it will avoid the heightening of the issue when the April 2015 decumulation flexibilities are introduced and individuals can, where the scheme permits, take all their benefits in one payment. The deputy judge acknowledged that the issues raised by the two conflicting judgments need to be considered urgently by the Court of Appeal and readily granted leave to appeal.

Deputy Pensions Ombudsman determinations

Failure to inform about new late retirement factors

Determination:
https://www.pensions-ombudsman.org.uk/determinations/2014/po-5018/emi-group-pension-fund/

Mr Atkinson complained, partially successfully, about the change to the method and actuarial factors used to calculate his late retirement pension under the EMI Group Pension Fund and that he was not informed of the change before or after it occurred.

Mr Atkinson had received quotations of his late retirement pension at specific times after his normal retirement date but, following a revision to the calculation method for late retirement pensions, the new quotation he received in November 2013 was lower than before. He claimed that he had been misled and that the previous basis upon which he decided to defer his pension should be continued.

The Deputy Pensions Ombudsman determined that the complaint should be partially upheld against the trustee. The benefits had been calculated in accordance with the rules (which provided that the trustee decided the increase for any member after consulting the actuary) and there was no legal requirement under the disclosure of information regulations to inform members of a change to method for calculating the late retirement increase or factors, either before or after the change occurred. Mr Atkinson was, however, misled over how the pension would increase in late retirement and as a result he suffered a loss of expectation for which he should be compensated. The trustee was therefore directed to pay Mr Atkinson £500 for this loss of expectation and the distress and inconvenience he had suffered.

Member communications

Determination:
https://www.pensions-ombudsman.org.uk/determinations/2014/po-3750/royal-bank-of-scotland-group-pension-fund/

The Deputy Pensions Ombudsman found in favour of Mrs Perrett in her complaint against Royal Bank of Scotland (RBS) and its pension scheme trustee. This was a complaint about inadequate or misleading information being supplied about scheme benefits.

Mrs Perrett's position with RBS was under threat of redundancy. She decided to opt out of the DB pension scheme. By doing so, she became entitled to a 15% salary supplement of which she could choose to contribute any part (or none at all) to a DC arrangement. Unfortunately, her opting-out meant that she was not entitled to enhanced early retirement terms when she was later made redundant under age 55, under non-standard terms applicable to her.

When she had first enquired about opting out, she was referred by RBS to written learning modules. RBS told her that "*they will give you all the information you have asked for plus more so that you can be sure you have thought of everything before making choices*". This inaccurate statement was key to the Deputy Ombudsman's decision.

The modules included a section on opting out but this did not mention the loss of redundancy enhancements. The section on redundancy only referred to the standard early retirement enhancement possibility for those aged 55 or over. It also said that "*Some people may have slightly different benefits, such as a different NPA or redundancy terms. If these apply to you, you will have been told separately.*" In the opt-out form that Mrs Perrett signed, she acknowledged that she would be giving up special early retirement terms "*if I retire at the request of the Group*".

When Mrs Perrett found out what she had lost, she asked to be reinstated in the scheme but this was refused. The Deputy Pensions Ombudsman determined as follows:

- The statement that the learning modules "*will give you all the information you have asked for plus more so that you can be sure you have thought of everything before making choices*" was unambiguous and would have given Mrs Perrett confidence that the information contained there was comprehensive. That was therefore a reasonable belief for her to have held. She had not been told that any special benefits applied to her, so the qualifying statement in the modules was of no relevance. The fact that relevant information was provided elsewhere, on the RBS intranet, was not important. It was reasonable for Mrs Perrett not to have looked at it because she reasonably believed that she already had all the information she needed.
- It was not unreasonable for Mrs Perrett not to have understood, when signing the opt-out form, that "*retirement at the request of the Group*", which was not explained, would include redundancy.
- Mrs Perrett should therefore be reinstated in the DB scheme and provided with an unreduced early retirement pension, with interest on the arrears payments. She must pay the required member contributions and (it seems) give back part of her redundancy payment.

Automatic enrolment thresholds

The Government has announced that the automatic enrolment threshold figures for 2015/16 will be as follows:

- The earnings threshold for triggering the automatic enrolment duty will remain at £10,000. So it will no longer be the same as the income tax personal allowance (which will be £10,600).
- The qualifying earnings band figures, which set the pay on which contributions or benefits should normally be based, will remain the same as the lower and upper earnings limit figures used for National Insurance contributions. So they will rise to £5,824 and £42,385 respectively.

Announcement:
https://www.gov.uk/government/consultations/workplace-pensions-automatic-enrolment-review-of-earnings-threshold

Draft regulations:
http://www.legislation.gov.uk/ukdsi/2015/9780111127124/pdfs/ukdsi_9780111127124_en.pdf

NEST contribution and transfer restrictions

The Government has confirmed the removal of NEST's contribution and transfer restrictions with effect from 1 April 2017. (See **WHiP Issue 49** for the consultation.) The Government had previously suggested removing the restriction on individual transfers earlier, perhaps October 2015, but there is no news on this.

Consultation response:
https://www.gov.uk/government/consultations/national-employment-savings-trust-removal-of-the-annual-contribution-limit-and-transfer-restrictions

Statutory money purchase illustrations

The Financial Reporting Council has confirmed further changes to Actuarial Standard Technical Memorandum 1 (TM1) on statutory money purchase illustrations, with effect from 6 April 2015. The new version reflects automatic enrolment minimum contribution increases; provides for age difference assumptions for same sex spouses; and enables pension providers more effectively to take account of the impact of guaranteed annuity rates.

Press release:
https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2014/December/FRC-updates-pension-communications-standard.aspx

Revised SORP for pension scheme accounts

The Pensions Research Accountants Group has published its revised statement of recommended practice (SORP) for pension scheme accounts. This gives guidance on FRS 102 (see **WHiP Issue 39**) and is effective for accounting periods beginning on or after 1 January 2015.

Press release:
http://www.prag.org.uk/27/

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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: Paul Stannard, Peter Esam, Philip Stear, Susie Daykin and Daniel Gerring.

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