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What's happening in Pensions

Issue 48 *September 2014*

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April 2015 decumulation changes

The Government has announced more details of the DC decumulation relaxations and related pensions tax changes that will take effect from 6 April 2015. These reforms were originally announced in the March 2014 Budget.

The documents now published include the draft Taxation of Pensions Bill and draft HMRC guidance. The Bill will be introduced to Parliament shortly and will make the changes required to the pensions tax legislation to implement the April 2015 reforms. Provisions concerning member guidance and transferring benefits will be included in the current Pension Schemes Bill, by amendments to be proposed soon by the Government.

See the **Appendix** to this note for details of what we now know about all of the April 2015 reforms. Some of this was previously covered in our recent briefing note "**DC decumulation changes**" but we now have more detail. See our briefing note "**Budget 2014: Decumulation changes**" and **WHiP Issues 45**, **46** and **47** for details of the transitional relaxations.

Government announcements:
https://www.gov.uk/government/consultations/freedom-and-choice-in-pensions

Draft Bill and guidance:
https://www.gov.uk/government/publications/draft-legislation-the-taxation-of-pensions-bill

FCA press release:
http://www.fca.org.uk/news/cp14-11-retirement-reforms-and-the-guidance-guarantee

"Money purchase benefits": new definition

New definition now in force

The legislation redefining "money purchase benefits" in pensions legislation and limiting its retrospective impact came into force on 24 July 2014. See our briefing note "**Redefining 'money purchase benefits'**" for details of the impact of the new definition.

Regulations:
http://www.legislation.gov.uk/uksi/2014/1954/made

PPF consultation response on valuations

The PPF has responded to its consultation (see **WHiP Issue 47**) on proposals for requiring out-of-cycle valuations for schemes that are already required to file valuations but which are affected by the new definition of "money purchase benefits". The PPF will, as proposed, require out-of-cycle valuations to be submitted by 5pm on 31 March 2015. These will be required where (a) the valuation that would otherwise be on the Pensions Regulator's Exchange system at that time does not take account of the new definition in relation to scheme benefits and (b) the impact of doing so is material.

The impact is material if as at the date of the last valuation, the new definition results in a decrease in the scheme's surplus or increase of the scheme's deficit that (in either case) is more than 10% in relative terms and more than £5 million in absolute terms.

Press release:
http://www.pensionprotectionfund.org.uk/news/pages/details.aspx?itemID=374

Individual protection

HMRC guidance:
https://www.gov.uk/government/publications/pensions-individual-protection-2014

Applications are now open for individual protection in relation to the April 2014 reduction of the lifetime allowance (see **WHiP Issue 40**). The deadline for applications is 5 April 2017. Trustees can therefore expect requests for valuations of benefits as at 5 April 2014 to be made at any time until April 2017. HMRC has updated its December 2013 guidance note on the subject.

Pension liberation

Please see our briefing note "**Pension liberation: issues for trustees**" for background in this area.

Pensions Regulator literature

Press release:
http://www.thepensionsregulator.gov.uk/press/pn14-23.aspx

The Pensions Regulator and HMRC now refer to pension liberation as "pension scams". Materials, including the "scorpion leaflet", have been updated accordingly.

Pensions Ombudsman complaints

Announcement:
http://www.pensions-ombudsman.org.uk/News/

The Pensions Ombudsman has issued a third update on the progress of the pension liberation complaints that he is considering:

> *"The pension liberation cases that we are looking at need very careful consideration - in particular of the detail of the transferring and receiving schemes. We have needed to ask for extra information in most cases – and we need to give the parties the facts and the opportunity to make their own submissions and comment on our possible findings. We recognise that the pensions industry is highly interested to know what the outcomes will be. Unfortunately we are not yet in a position to publish our decisions on any of the cases. We expect to be able to do so in the Autumn."*

Annual report:
http://www.pensions-ombudsman.org.uk/Publications/docs/PO_AnnualReportAndAccounts_2013-14.pdf#zoom=100

The Ombudsman's annual report for 2013/14 had earlier included some information on these cases. 52 complaints were accepted for investigation. (This has reportedly subsequently risen to 84.) All are against personal pension providers and the great majority concern declined transfer requests. The numbers include multiple group complaints brought by representatives. A handful of complaints concern transfers that were made but the funds could not then be accessed by the members.

Lehman Brothers financial support direction case settled

Press release:
http://www.thepensionsregulator.gov.uk/press/pn1429.aspx

The Pensions Regulator has published a short report on its involvement in the settlement of the Lehman Brothers financial support direction (FSD) litigation. Under the settlement, funding will be provided by one of the Lehmans group companies which should mean that the scheme will avoid the PPF and members will receive their full benefits.

The settlement of the litigation means that the following decisions are how the law currently stands.

- Court of Appeal: Trustees are "directly affected" persons entitled to refer a determination about an FSD to the Upper Tribunal (see **WHiP Issue 40**).
- Supreme Court: If the Pensions Regulator issues an FSD against an insolvent company based on circumstances that pre-dated the insolvency, the pension scheme trustees and/or PPF may enforce claims for liabilities arising from the FSD, and do so as unsecured creditors (see **WHiP Issue 41**).
- High Court: The Pensions Regulator may issue contribution notices following non-compliance with an FSD to more than one target which in aggregate specify a sum in excess of the maximum shortfall sum defined in the Pensions Act 2004 (see **WHiP Issue 44**).

Travers Smith has advised the trustees of the Lehman Brothers Pension Scheme throughout.

Deputy pensions ombudsman determination: withdrawal of discretionary increases

Determination:
http://www.pensions-ombudsman.org.uk/determinations/docs/2014/jul/po-1203.doc

The Deputy Pensions Ombudsman rejected a complaint by Mr W Thomson against GE and the trustee of the GE Pension Plan and GE Supplementary Pension Scheme following the withdrawal of discretionary pension increases.

Since 2010, the trustee (which was the same for both schemes) declined to grant discretionary increases on pension accrued before April 1997. Before 2010, they had consistently been granted. The schemes' rules required GE to review pensions in payment. Then, if GE so agreed, the trustee of the main plan could make increases. In the supplementary plan, the roles were reversed. Mr Thomson and others complained, citing the *IBM* case (see **WHiP Issue 46**), that they had reasonable expectations of increases engendered by GE and that the decisions were procedurally defective.

The Deputy Pensions Ombudsman determined as follows.

- There was no breach of GE's implied contractual duty of good faith. The power to award pension increases was not fiduciary. GE was therefore entitled to have regard to its own interests. It had provided valid financial reasons for declining to fund increases (based on funding deficits), so the decision was not irrational or perverse.
- With reference to the *IBM* case, Mr Thomson had not provided sufficient evidence of information that would reasonably lead members to believe that the increases would continue. He had only referred to his recollection of a meeting in 2002. It could not be established whether any statement was a promise or a statement of intention and in any case any such statement could not be expected to continue to apply eight years later.
- It did not matter that the trustee had made its decision before GE did, when the rules of the supplementary plan provided for the trustee to agree to a GE proposal, since in practice both needed to agree. It would be nonsense to have two separate processes when the trustee and principal employer are the same and the spirit of the two rules is essentially identical.
- It also did not matter that there had been no negotiations or discussions between the trustee and GE, which had occurred in previous years, since the rules did not require it.

CPI for RPI

Case report:
http://www.bailii.org/ew/cases/EWHC/Ch/2014/2683.html

The High Court has ruled that two schemes' indexation and revaluation rules allowed a switch from RPI to CPI, that the decision to switch had to be a joint one between the employer and trustees, and that section 67 Pensions Act 1995 did not prevent the switch.

In *Arcadia Group Limited v Arcadia Group Pension Trust Limited and another*, the High Court considered the indexation rules in two pension schemes and the revaluation rule in one of them. All these rules required increases by reference to the "Retail Prices Index" but this was defined as the Retail Prices Index "*or any similar index satisfactory for the purposes of*" HMRC. The employer and trustee asked the Court whether or not they could switch from RPI to CPI.

The High Court held as follows.

- There was a power to select an index other than RPI. RPI did not have to have been discontinued or replaced by the Government in order for the power to apply.
- That power was vested in the employer and the trustee jointly. (It was not argued – "sensibly", said the judge, for reasons that he did not explain – that the power was exercisable unilaterally by the trustees).
- CPI is a "similar index" to RPI for the purposes of the definition. It must be satisfactory for HMRC's purposes if there are no grounds on which HMRC could properly or reasonably consider it other than satisfactory, which was the case here. (HMRC had confirmed by email that it was satisfactory for indexation purposes but had not responded to an enquiry about revaluation.)
- The much debated decision in *Danks v QinetiQ Holdings Ltd* (see **WHiP Issue 33**) was correct: benefits had accrued on the basis that an index other than RPI might be used to increase them. Those were the members' subsisting rights for the purposes of section 67, which therefore did not prevent the switch being made.

FCA report on incentivised transfers

Press release:
http://www.fca.org.uk/news/results-of-thematic-reviews-into-enhanced-transfer-values-and-sipp-operators

The FCA has reported on the findings of a review of financial advice given to individuals offered incentivised transfers from DB pension schemes.

The review looked at advisers' files relating to nearly 300 cases between 2008 and 2012. In 34% of cases, the advice was not suitable for the customer (but the cases of failure were not equally spread between advisers). In 74% of cases, the way in which the adviser communicated with the customer was not acceptable. The FCA will follow this up with specific firms and ask them to offer redress where appropriate. All firms offering such advice are urged to review how they approach this work.

We note that the Government's proposals for decumulation flexibility (see above and the **Appendix** to this note) include a requirement for independent financial advice for DB to DC transfers.

Annual allowance: draft miscellaneous amendment regulations

HMRC has published a draft order which would make a number of amendments to regulations concerning the annual allowance. It has also published a draft explanatory note and draft updated Registered Pension Schemes Manual pages.

The draft order intends to correct various issues and anomalies in the existing legislation that result in pension input for annual allowance purposes when none ought to arise and in peculiar applications of the "scheme pays" legislation. It is also intended to ensure that there is no new pension input by reason of a DB and/or cash balance block transfer from an underfunded scheme where the value of a member's benefits is the same (or "virtually" the same) before and after the transfer.

Draft regulations:
https://www.gov.uk/government/publications/draft-legislation-the-finance-act-2004-registered-pension-schemes-and-annual-allowance-charge-amendment-order-20xx

GMP equalisation and reconciliation

HMRC's Countdown Bulletin Issue 02 (relating to the end of contracting-out) includes the following update on GMP equalisation.

> *"Our view remains that pension schemes must ensure that equal pension benefits are paid to men and women, including equalising for the effect of the GMP.*
>
> *We are working closely with industry representatives on this issue, and we want to work through the complex issues in play in detail, so that we can develop proposals that meet the Government's objectives and address the concerns of stakeholders.*
>
> *We do understand that schemes are waiting for GMP conversion guidance. But we think it is important that we develop fully considered proposals, and we will publish guidance when this critical work is completed."*

It also notes that HMRC's GMP reconciliation service is now available. Individuals with contracted-out rights will be issued with statements from December 2018, so it is important that reconciliation exercises are completed by then. Requests should be made before April 2016.

Countdown Bulletin:
http://www.hmrc.gov.uk/nic/count-bull-contract2.pdf

NEST restrictions to be removed

The Government has announced that it intends to remove the annual contribution limit and restrictions on bulk transfers into NEST from 1 April 2017. It is considering removing the restrictions on individual transfers from 1 October 2015 (later than originally intended).

Press release:
https://www.gov.uk/government/news/victory-for-consumers-as-pension-saving-limits-to-be-scrapped

Accounting for pensions

UK: FRS 102

The Financial Reporting Council has issued an exposure draft: *"FRED 55 Draft Amendments to FRS 102 – Pension obligations"*, to clarify issues relating to accounting for DB pension schemes in advance of new UK and Irish GAAP becoming mandatory from 1 January 2015. The proposed amendments would clarify that:

- UK and Irish GAAP does not include all the complexities of IFRS; no additional liabilities need be recognised in respect of a schedule of contributions that has been agreed in order to address a deficit in the plan; and
- consistent with current practice, the effect of restricting the recognition of a surplus in a DB plan, where the surplus is not recoverable, is recognised in other comprehensive income, rather than profit or loss.

Comments are invited by 21 November 2014. The FRC expects to issue the final amendments to FRS 102 early in 2015. This will apply to accounting periods beginning on or after 1 January 2015.

Press release:
https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2014/August/FRC-proposes-amendments-to-FRS-102-relating-to-pen.aspx

International: IAS 19 and IFRIC 14

The International Accounting Standards Board is considering amending the IFRIC 14 guidance on IAS 19. This allows pension scheme surpluses to be booked as assets on companies' balance sheets. Amendments being considered would disallow this practice except where there is a real chance of the company eventually having access to the surplus (including on a winding-up). The IASB is concerned about circumstances where trustees can unilaterally augment benefits before paying surplus to employers and about trustees' ability to buy out benefits and use up the surplus.

IASB website:
http://www.ifrs.org/Current-Projects/IFRIC-Projects/IFRIC-14-IAS-19%E2%80%94The-Limit-on-a-Defined-Benefit-Asset-Minimum-Funding-Requirements-and-their-Interact/Pages/IFRIC-14-IAS-19%E2%80%94The-Limit-on-a-Defined-Benefit-Asset-Minimum-Funding-Requirements-and-their-Interact.aspx

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Appendix

April 2015 decumulation changes

This Appendix sets out how the Government's proposals for flexible decumulation options and related pensions tax changes will work, if enacted in their current form. The following all applies from 6 April 2015.

DC and cash balance benefits

Members will be able to use their DC or cash balance benefits from normal minimum pension age (currently 55 but set to rise – see below) in one or more of the following ways, but only to the extent their scheme permits. All these options except small pension commutation will be permitted before normal minimum pension age if the ill health condition in the Finance Act 2004 is met. Benefit choices will normally be irreversible but different choices can be made for different tranches of the pension pot.

There is no requirement for schemes to offer any of the new flexibilities, and schemes may require members to transfer out in order to access them. But the Bill includes an overriding power enabling trustees or managers to offer them without having to amend scheme rules. As currently drafted, employer consent will not be needed but it would not be surprising if that changed.

- **Buying a lifetime annuity with an insurer**
  This is the same option that currently exists but with new relaxations. For annuities bought after 5 April 2015, payments can go down as well as up (eg, at state pension age); individuals need not have been offered the open market option (though doubtless the Pensions Regulator will continue to expect it to be offered)[1]; and annuities can be guaranteed for a specified period such that payments may continue after the member's death.

  A tax free pension commencement lump sum is available of 25% of the funds designated for the annuity purchase (or, to put it another way, 1/3rd of the annuity price). The regular annuity payments are taxed at the individual's marginal rate.

- **Taking a scheme pension**
  This is the same option as at present, with no changes. In contrast to lifetime annuities, payments cannot go down and payments to the member cannot continue after his or her death (or, if later, for longer than a ten year guarantee period).

  A tax free pension commencement lump sum of 25% of the DC pot is still available and the pension is still taxed at the individual's marginal rate.

- **Setting up a "flexi-access drawdown fund" (FADF)**
  These are funds within a scheme allowing unlimited flexible drawdown. FADFs can pay out income withdrawal sums of any amount directly to the member (these need not be regular payments) and/or can be used to buy a short-term annuity (on a one-off or sequential basis) with an insurance company or, possibly, a lifetime annuity (although the HMRC guidance is unclear on this point).

  Short-term annuities are payable for periods up to five years and payments must be made at least annually. In the same way as for lifetime annuities, payments can go down as well as up and there is no longer a requirement that the open market option must have been offered.

  FADFs are "drawdown pension" arrangements under the Finance Act 2004, so designating one is a benefit crystallisation event (BCE1). They replace flexible drawdown and can replace capped drawdown, as noted below.

  A tax free pension commencement lump sum is available (if not already taken) of 25% of funds designated to the FADF. Income withdrawals and short-term annuity payments are all taxed at the individual's marginal rate.

  Individuals who already have a designated **flexible drawdown** (£12,000 pa minimum income requirement) or **capped drawdown** (150% of equivalent annuity pa) fund on 6 April 2015 are affected as follows.

  - Flexible drawdown funds are automatically converted into FADFs. Any further designations of funds for drawdown under the same arrangement will go into the same FADF.
  - Individuals with a capped drawdown fund can choose to convert it to a FADF by notice to the scheme. Unless or until that is done, they continue with capped drawdown under current tax rules and additional funds can be designated to the same capped drawdown arrangement. If funds in excess of the cap are drawn down then the fund is automatically converted to a FADF.

- **Taking an "uncrystallised funds pension lump sum" (UFPLS)**
  This is a lump sum withdrawal made by a member directly from a scheme. It is only available for uncrystallised rights (so, for example, funds in a FADF cannot be applied this way). The member must have more lifetime allowance remaining than the amount of the lump sum or (if aged 75 or over) some lifetime allowance remaining. It is not available to members with rights to protected lump sums associated with primary or enhanced protection, nor to those with certain enhanced lifetime allowance factors.

  Any number of UFPLSs may be taken but a tax-free pension commencement lump sum is not available. Instead, 25% of each UFPLS taken is tax free; the rest is taxed at the individual's marginal rate. This means that members with protected lump sums of more than 25% would lose the benefit of the protection if they use this option (or if they have to take an individual transfer in order to access the flexible option that they want).

- **Small pension commutation**
  As at present, if the value of a member's DC pot(s) in a single scheme is £10,000 or less, and certain other criteria are met, the benefit rights may be commuted entirely for a lump sum (regardless of any benefits elsewhere). The member must have reached

[1] The reason for removing the open market option requirement from the tax legislation is to avoid individuals being subject to tax charges through no fault of their own if their scheme failed to offer them the option.

normal minimum pension age: currently 55 but set to rise (see below). Prior to 6 April 2015, the member must be at least age 60 to receive small pension commutation.

The tax treatment is unchanged: 25% can be paid tax free (if a pension commencement lump sum has not already been taken) and the rest is taxed at the individual's marginal rate.

Trivial commutation will now apply only to DB benefits (see below), not DC: members can use a UFPLS instead to commute DC rights.

Other proposals affecting **DC and cash balance benefits** only are as follows:

- Legislation will be amended to extend the time **limit on the statutory right to transfer** from a DC scheme to another DC scheme up to the "scheme's normal retirement age" (currently the right expires one year before the member's normal pension age, though the Government's consultation response seemed to misunderstand what that term means). There will still be no statutory right to transfer thereafter. This change is designed to enable DC members to transfer immediately before retirement to an arrangement that offers the flexibility they want.
- The Government has concluded that the **55% tax charges** on funds (a) remaining in a drawdown arrangement at death and (b) uncrystallised after age 75, are too high. It will consider the options for altering the rate, whilst avoiding any unintended consequences, and will confirm its intention in the 2014 Autumn Statement.

DB benefits

Small and trivial pension commutation
Small pension commutation (as described in the DC section above) is also available for DB rights (or combined DB and DC rights in a single scheme) worth £10,000 or less.

For DB rights only, **trivial commutation** is permitted in the same way as at present (ie, if crystallised and uncrystallised benefits under all registered pension schemes are worth less than £30,000). It will now be permitted if the member has reached normal minimum pension age (currently age 55) rather than age 60. The tax treatment is unchanged. As at present, all benefit rights under the registered pension scheme must be extinguished. Since DC benefit rights cannot be extinguished in this way, they would first have to be dealt with using one of the other available decumulation options.

Transfers out
At least initially, DB members will need to transfer to a DC arrangement in order to access the new flexible options. There will be a consultation on allowing flexible options directly from DB schemes.

Transfers from private sector DB schemes to DC arrangements will still be permitted. But independent financial advice will be needed unless the benefits are worth less than £30,000. That advice is to be paid for by the member, except if the transfer is within the same scheme or results from an "employer led incentive exercise" in which case the employer must pay. Schemes will have to check that the member has taken advice from a proper person.

Transfers from funded DB public service schemes to DC arrangements will also be permitted (but, as previously announced, not from unfunded public service schemes). Safeguards "*akin to those in the private sector*" will be introduced.

New Government guidance will tell trustees that they are entitled to:

- ask the Pensions Regulator to allow them to delay transfers where the interests of members or the scheme generally would be prejudiced; and
- reduce transfer values if the scheme is underfunded.

Annual allowance and pension recycling

New **money purchase annual allowance** (AA) rules are being introduced to ensure that individuals cannot exploit tax legislation by diverting salary into a DC pension arrangement, benefiting from tax relief on that contribution, and then withdrawing benefits as a lump sum with 25% tax free.

These rules are triggered if one of the following occurs in respect of the individual (ie, generally where there has been flexible access):

- funds are drawn down from a FADF or from a short-term annuity provided from a FADF (but there is no trigger if a FADF is merely designated, even if a pension commencement lump sum is taken);
- a UFPLS is paid;
- a pre-April 2015 capped drawdown fund is converted to a FADF and drawdown is taken;
- drawdown taken from an unconverted pre-April 2015 capped drawdown fund exceeds the cap;
- a drawdown payment has already been paid from a flexible drawdown fund before 6 April 2015 (NB these members currently have a nil AA but this is being increased to the standard £40,000 (with carry forward restricted)); or
- a stand-alone lump sum is paid and the member is not entitled to enhanced protection.

The rules are not triggered by, for example, payment of a pension commencement lump sum, trivial commutation lump sum or de minimis lump sum; or by payments under a scheme pension or lifetime annuity.

Individuals who trigger the new rules will have a £10,000 AA for DC pension input (which cannot be increased by any carry-forward). If this is not exceeded then the standard £40,000 AA applies to all pension input (DC and DB) in the normal way; if it is exceeded, the £10,000 AA applies to DC input and a reduced £30,000 AA applies to DB pension input (with carry-forward still allowed). In other words, the AA charge applies to DC pension input above £10,000 and if there is at least that much DC input then it applies to DB pension input above £30,000 (plus any carried forward AA). The draft HMRC guidance includes worked examples of how this will operate.

"Scheme pays" is an option for the AA charge regardless of how it has been triggered. But in order for members to have a right to use it, they will still need to have made £40,000 pension input to the scheme in question and the AA charge must be more than £2,000. It is not yet clear whether regulations will be amended to require trustees to issue pension savings statements when the £10,000 money purchase AA is exceeded by pension input to the scheme, but this would be surprising since trustees would not necessarily know which members had triggered a reduced AA.

For similar reasons, the **pension recycling** legislation is amended so that it applies where the pension commencement lump sum (plus any other such lump sums taken in the previous 12 months) exceeds £10,000 – rather than the current 1% of the lifetime allowance.

Normal minimum pension age (DB and DC)

The normal minimum pension age (NMPA) will be raised from 55 to 57 by 2028, alongside the increase in state pension age to 67. From then on, it will be pegged at ten years earlier than state pension age. The Government will consider how to protect members with benefits built up by reference to earlier NMPAs. Legislation on this will not be put forward in the current Parliament (ie, not until after the May 2015 general election).

Protected NMPAs lower than 55 are lost on an individual transfer. They can be retained on a bulk transfer if conditions are met. Members with protected NMPAs may therefore find it difficult to access the new flexibilities, if their scheme does not offer what they want, without losing the benefit of the lower NMPA.

Member pre-retirement guidance (DC)

Schemes and providers will be required to signpost DC members towards providers of pre-retirement guidance. Independent organisations with no actual or potential conflict of interest, such as the Pensions Advisory Service and the Money Advice Service and perhaps Citizens Advice and Age UK, will provide the guidance. Guidance providers will be subject to a new FCA standards regime. The guidance service will have a single, strong, recognisable brand used by all guidance providers.

The FCA will set standards for guidance providers and will be responsible for monitoring compliance. An FCA consultation on these standards and the scope and content of the guidance has been published. The Treasury will retain overall responsibility until the service has reached maturity.

The cost of the guidance service will be funded by a levy on regulated financial services firms (not pension schemes). The FCA is also consulting on this at a high level, with more detail due in the autumn. The levy seems likely to be targeted at the types of firm most likely to benefit financially as a result of the guidance.

Individuals will be able to obtain guidance face-to-face, online and/or over the phone, using whatever "channels" they think best suit them. The guidance will be tailored and personalised but will not recommend specific products or providers. There is little other detail: the Government is still working on this and will report back shortly.

The Government will work with the FCA, the Pensions Regulator and others to consider how individuals can access information on multiple pension pots in an easily usable format.

This and previous issues of WHiP can be found on our website **here**.

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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.

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
T +44 (0)20 7295 3000
F +44 (0)20 7295 3500

www.traverssmith.com