BRIEFING

TRAVERS SMITH

What's Happening in Pensions

Issue 82 – June 2020

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GMP equalisation: The new Lloyds Banking Group case hearing on the need or otherwise for trustees to address past transfers-out has taken place. The government has joined the case to oppose some of the bank's arguments. The judgment is awaited.

GMP reconciliation: HMRC's latest Countdown Bulletin includes an update on GMP reconciliation matters.

Non-cash contributions: The Upper Tribunal has ruled that non-cash member contributions to a SIPP did not qualify for tax relief. This was notwithstanding HMRC's own guidance saying that it will allow tax relief claims for such contributions provided certain conditions are met.

NEW SUSTAINABILITY MATERIALS: Our new Sustainable Business Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors. Other content that may be of interest includes other ESG and sustainable finance topics; corporate governance and stewardship developments; and people and diversity and inclusion matters.

Pensions Regulator annual funding statement

The Pensions Regulator has published its 2020 annual funding statement.

This statement is particularly relevant to schemes with valuation dates between 22 September 2019 and 21 September 2020 and schemes undergoing significant changes that require a review of their funding and risk strategies. It sets out specific guidance on how to approach the valuation under the current difficult conditions. As the duration and impact of the economic uncertainty evolves, the Regulator will consider issuing further guidance in the autumn.

Following the extension to 2 September 2020 of the consultation period for responses to the Regulator's consultation on the new scheme funding framework, its second funding consultation (on a draft code of practice) will now not be until 2021. It does not expect the new code to come into force until late 2021 at the earliest. This will follow enactment of the Pension Schemes Bill, the Parliamentary progress of which has been held up by pressing COVID-19 business. In a separate blog post, the Regulator firmly rebuffed calls for the current consultation to be abandoned.

As expected, the statement is a continuation of the Regulator's approach to funding that we saw in last year's statement (see WHiP Issue 75), as qualified by recent coronavirus-related guidance (see WHiP Issue 81). Key points are as follows:

- Schemes with valuation dates around 30 December 2019 or earlier should consider taking account of **post-valuation experience** when preparing recovery plans, especially the impact on the scheme's assets and liabilities of the significant changes in market conditions since the effective date of the valuation and the potential impact on the employer covenant.

- Trustees of schemes with valuation dates around 31 March 2020 may be considering (or being asked to consider) **bringing forward the valuation date** to a date before the impact of COVID-19 affected markets. They should consider very carefully why they believe doing so would be in the interests of their members and the impact on their benefit security. If they decide to change the valuation date they should do so having obtained and considered legal and actuarial advice and should consider taking account of changes in market conditions and the employer's covenant since the new valuation date. Trustees who bring forward the valuation date can expect the Regulator to question their reasons for doing so.

- March and April 2020 valuations will be "challenging", in that it will be difficult to take a view on long-term investment returns and (in many cases) employer covenant and affordability. It is therefore reasonable to delay taking decisions about **technical provisions (TPs) assumptions**. Trustees should discuss this with their advisers. The Regulator expects schemes to proceed with as much of the preliminary valuation work as possible on preparing and validating the data, programming and the background analysis on the data.

- Trustees should carry out additional due diligence in accordance with the Regulator's COVID-19 guidance to form their own assessment of the **employer covenant**. Trustees should then deal with any changes in deficits alongside the assessment they have made of the employer's financial position and plan to recover deficits with a focus on the affordability to the employer while maintaining fair treatment and balancing of the sustainable growth of the employer.

  In current conditions, the frequency and intensity of covenant monitoring should be significantly increased until visibility and strength is restored. Trustees should identify the key aspects of the covenant to track and decide when action is required based on appropriate triggers or thresholds agreed (ideally) with the employer, informed by the level of change that could have a material impact on the covenant and therefore the funding or investment strategy. Trustees should be able to demonstrate that these interactions with the employer have taken place and the Regulator may ask trustees to share relevant documentation with it.

  Trustees and their covenant advisers should also consider the potential impact of Brexit and the possible trade agreement (or otherwise) outcomes.

  Trustees should only undertake their own covenant assessment where they have sufficient expertise. Where trustees do this, they should fully document their reasons for not taking professional advice, as well as their own assessment and conclusions reached (which the Regulator may ask to see). Trustees who also have roles within an employer may also find it difficult to exercise sufficient objectivity when assessing the employer's ability to support the scheme.

- Trustees should be vigilant about **employer covenant leakage**. As well as dividends paid to shareholders, other elements of an employer's relationship with its group and shareholders that could also result in covenant leakage include:
  - cash pooling and inter-company lending arrangements;
  - group trading arrangements;
  - management fees, royalties and similar charges;
  - transfers of business or assets at an undervalue;
  - excessive executive remuneration.

  Where trustees consider covenant leakage is not justified, the Regulator expects them to seek suitable protections to compensate their scheme for the resulting deterioration in covenant, particularly where there are weaker covenants and longer recovery plans. This includes, for example, security over employer assets, or 'upside sharing mechanisms' so that, in the event of employer performance improving in future, the scheme can receive increased contributions.
- Where employers recommence shareholder distributions, the Regulator expects liquidity and affordability to have been largely restored and recovery plans to reflect that position. Where significant **reductions in deficit repair contributions (DRCs)** are agreed to support the employer, trustees should:
  - ensure that this additional liquidity is not used by the employer to support associated companies unless this will benefit the ability of the employer to support the scheme;
  - agree contingent contributions to commence on the reintroduction of shareholder distributions and/or agree formal dividend blocks for the period of agreed reductions (this should be a properly documented, legally enforceable condition of the DRC reduction); and
  - understand how deferred contributions are to be repaid in line with any protections agreed.
- In addition to DRCs, where possible, the Regulator expects trustees to incorporate appropriate **incremental increases in contributions**, which track corporate health recovery, especially when the scheme has taken on additional funding risk while supporting the employer's recovery. Additional contributions should be based on appropriate triggers such as free cash flow and payments to other creditors. They could also be linked to investment performance. Where the investment return assumed in the recovery plan is more optimistic than the prudent view taken in the TPs, they should be mindful of the consequences for member security of this optimism not being borne out. They should therefore keep the matter under review and, if appropriate, consider underpinning the additional risk with contingent security or link additional DRCs to triggers based on investment performance.
- The Regulator reiterates, in advance of it being required by law, the recommendation that schemes have a **long-term funding target (LTFT)** with investment and funding strategies aligned with the LTFT under an integrated risk management journey plan.
- The Regulator's **integrated risk management tables** introduced last year identify the key risks the Regulator expects trustees to focus on, and the plans it expects them to develop, depending on their scheme and employer characteristics. The tables are unchanged from last year but of course a scheme's 'group' might have changed this year due to changes in covenant, funding level/TPs/recovery plan, and/or maturity.

Coronavirus – updated Pensions Regulator guidance

The Pensions Regulator has updated many of its COVID-19 guidance web pages. Significant points are noted below. Please see our updated web page for a list of the Regulator's COVID-19 guidance including updated brief summaries of the content.

DB schemes

The DB funding and investment guidance for trustees has been significantly rewritten. It now also includes and updates content previously in its guidance for DB scheme trustees whose sponsoring employers are in corporate distress (which has been withdrawn). Key points are as follows:

- Schemes should generally now be able to assess the employer's financial position and review in more detail the case for any new or continuing suspension or reduction of deficit repair contributions (DRCs) to ensure that it is appropriate and the scheme is being treated equitably. This guidance lists examples of possible protections or mitigations, which now also include:
  - a suggestion that on a refinancing, trustees could "seek the same recourse and access to security/valuable assets, for example, with the deferred sums being given the same protections as the new money lending"; and
  - a statement that, "as part of any agreement to concessions, trustees should ensure they will continue to receive appropriate and regular forward looking and actual financial information to identify changes in circumstances of the employer and the position of its funders".

  It also now says that trustees should consider requiring that dividends and other forms of shareholder distribution do not start again until the unpaid or suspended contributions have all been paid. Previously, it went no further than referring to payments not being made during the period of suspension or reduction.

  The Regulator acknowledges that DRC changes can be done either with a revised recovery plan or by reporting missed contributions. In either case it expects an explanation and lists other information it would like trustees to provide.

  The Regulator says that around 10% of DB schemes have sought to defer DRCs but notes that it is aware of others discussing doing so.

- If the covenant has worsened and is not expected to recover in a reasonably short timeframe, trustees should consider whether to update funding arrangements, eg, by calling a new valuation and/or revising the recovery plan.
- Reporting requirements generally apply as normal from 1 July (but see below for exceptions). The Regulator "will continue to regulate pragmatically and sympathetically".
- The Regulator will continue to take a reasonable approach to late submission of recovery plans caused by COVID-19 issues.
- The general regulatory easement on schemes reporting missed DB transfer deadlines has been withdrawn but the Regulator will take a pragmatic approach. The Regulator notes that few schemes have needed to delay transfers.

The DB funding guidance for employers now says that employers should keep trustees informed of discussions with other stakeholders, for example banks, which may impact on the position of the scheme. Employers under financial pressure can work together with trustees to identify how best to make use of professional advice and how it can be paid for.

The Regulator will now be "reasonable" (previously it said "pragmatic") in scenarios where trustees are being asked to agree to DRC reductions/suspensions or the employer granting security over assets, etc. This guidance no longer includes a 30 June end date.

DC schemes

The Pensions Regulator has also updated some of its COVID-19 guidance for DC schemes:

- Automatic enrolment and DC pension contributions: COVID-19 guidance for employers: More detailed content has been added on automatic enrolment and re-enrolment duties in relation to furloughed staff. The linked technical guidance for large employers says that the Regulator's easement on consultation with employees over reducing employer DC contribution rates is extended until 30 September 2020.
- DC scheme management and investment: COVID-19 guidance for trustees: This guidance's title has been expanded to cover scheme management and it has been amended to include guidance on dealing with employer proposals to reduce DC contribution rates and to state an expectation that trustees and administrators should prioritise DC transfers as core financial transactions.

  A section has also been added on how diverting DC contributions to a new investment fund option following the gating (temporary closure) of an investment fund (for example, a property fund) can create a new default fund. This can bring into play the charges cap and require the preparation and disclosure of a new default fund statement of investment principles.

Reporting and enforcement

The Regulator's update on reporting and enforcement again says that reporting requirements and enforcement activity revert to normal from 1 July but lists the exceptions:

- Providers should still hold off from reporting late contributions (other than DRCs) until 150, rather than 90, days have elapsed. (There is still no public announcement on this topic for trustees.)
- DC chair's statements sent to the Regulator will continue to be returned unread, until 30 September, and will not be reviewed.
- The Regulator will continue to take a pragmatic approach to late scheme accounts until 30 September.
- The Regulator does not expect to take regulatory action if a SIP or default SIP review is delayed, but again only until 30 September.

Communications

The Regulator has published a web page for trustees and administrators on communicating with members during the COVID-19 disruption. It focuses on addressing the increased prevalence of scams and the higher risk of hasty member decisions in consequence of, for example, adverse market movements, fears of employer insolvency and PPF entry, constrained personal finances and a desire to pass on pension savings in the event of early death. There is also an updated pension scams page.

Key new points for trustees are as follows:

- Trustees should tell members about the steps they are taking to continue running the scheme, any disrupted services (including current timescales), and how members can contact the scheme. This can be done via the scheme website, acknowledgment replies to emails and recorded call centre messages, and by post if necessary.
- Trustees should be alert to risks related to transfer requests and give members suitable warnings. Members requesting a transfer value quotation should be sent "for the foreseeable future" a TPR/FCA/MaPS letter about transfer risks. The Regulator also asks trustees to include messages from its separate template letter when responding to a transfer request. Trustees should actively monitor the number of requests for transfer quotations they receive and which advisers are involved. If they identify unusual or concerning patterns, they are asked to report these to the FCA. Please request our briefing note "Pension transfers in the time of coronavirus" for more on this.
- Where members ask to opt out, trustees should make them aware that they will lose future employer contributions; may lose any other benefits that scheme membership provides, such as death in service benefits; and can contact the Pensions Advisory Service for guidance. As the pandemic is brought under control, trustees may want to contact members who have left the scheme and remind them of any rights they may have to opt in or re-join.
- If trustees are contacting members over the next few months (for example, sending annual benefit statements), they should highlight:
  - what current market volatility might mean to members retiring over different future time periods;
  - the need to think carefully and consider getting investment advice before switching funds in the current market (to avoid crystallising losses);
  - the danger of scam activity (there is already a ScamSmart flyer that the Regulator asks trustees to include); and
  - free impartial guidance available from the Pensions Advisory Service.

Coronavirus Job Retention Scheme

The government has extended the length of the Coronavirus Job Retention Scheme (see WHiP Issue 81) but announced details of reduced support for employers from August 2020. It was also announced that employers will be able to bring furloughed workers back to work part-time from 1 July.

The Scheme had been due to end on 30 June 2020 (originally 31 May 2020) and is now due to end on 31 October 2020. Employers will not, however, be able to claim in respect of pension contributions or national insurance contributions for periods after the end of July 2020. The level of wage support provided to employers will reduce for September and again for October.

The Pensions Regulator's guidance has been updated to reflect these changes.

See our Employment department's briefing note for more detail of these changes and our briefing note on pensions aspects of the Scheme.

Furloughed trustees

A new Coronavirus Job Retention Scheme government direction explicitly allows explicitly allows a furloughed worker to continue to act as a pension scheme trustee (including directors of trustee companies but not professional independent trustees). This reinforces our reading of the law in this regard, as noted in our briefing note.

Corporate Insolvency and Governance Bill

The Corporate Insolvency and Governance Bill has been introduced. It will make changes to the insolvency legislation to help businesses affected by COVID-19 in their attempts at surviving the crisis. Some of these have implications for DB pension schemes.

The measures in the Bill include (see the this summary for more detail):

- a temporary prohibition on creditors filing statutory demands and winding-up petitions unless the grounds would have applied regardless of COVID-19;
- provisions allowing companies in certain circumstances to obtain a moratorium giving protections from creditors;
- a new restructuring option similar to a scheme of arrangement but where the court can declare non-consenting classes of creditors bound; and
- a temporary suspension of penalties for breach of wrongful trading legislation, to remove the threat of personal liability for company directors.

Concerns have been raised about possible adverse effects on DB pension scheme members' benefit security, including that:

- the moratorium provisions give "super-priority" to certain unsecured creditors, including banks, over DB pension schemes and other creditors, in the event of insolvency within 12 weeks of the moratorium ending; and
- the new restructuring option potentially allows DB pension scheme trustees to be "crammed down" by other creditors, such that their objections are dismissed, in a way that is not possible in practice under a company voluntary arrangement (CVA) – this can happen where (among other criteria) objecting creditors would receive no less than they would get if the restructuring were not to go ahead (as judged by the court but this seems likely to be administration or liquidation).

Under the Bill, neither a moratorium nor the new restructuring option would trigger a PPF assessment period, though regulations could change that. If an assessment period is not triggered then it would be for the trustees, not the PPF, to respond to the proposals.

There would still be a notifiable event where the employer is advised that it is trading wrongfully or where a director or former director knows that there is no reasonable prospect that the company will avoid going into insolvent liquidation.

The Bill has completed its House of Commons stages but there has been lobbying on the pension concerns and they have been raised in the House of Lords. Government amendments are now proposed: we will report on the final outcome. The Bill is expected to come in to force in late June or early July 2020.

DB consolidators

The Pensions Regulator has published detailed new guidance for DB consolidator "superfunds" and other new models, to apply in advance of legislation. The government is developing a permanent regime and will be introducing specific legislation.

The guidance comes into force immediately and sets out the Regulator's expectations as regards how DB consolidators and other new models must show in advance of transacting that they are well-governed, run by fit and proper people and are backed by adequate capital. It also explains how they will be assessed and regulated.

The Regulator will be providing more information for trustees and employers in the coming months but says that trustees should only consider using a superfund or new business model once the Regulator has completed its assessment.

The Regulator will require superfunds to hold sufficient assets to meet the promises to savers with a high degree of certainty. This will include the requirement for the scheme's "technical provisions" (ie, funding requirements) to be calculated using specific assumptions set out in the guidance and for additional assets to be held in a capital buffer. No capital can be withdrawn by investors in this interim period before there is legislation unless there is a full buy-out. There are also investment restrictions.

Consistent with the government's "gateway" proposals, the Regulator does not expect a superfund to accept a transfer from a scheme that has the ability to buy out or is on course to do so within the foreseeable future (for example, in the next five years).

Employer severance is still a "Type A event" under the Regulator's clearance guidance and its anti-avoidance powers are unaffected. The Regulator expects employers to apply for clearance before a transfer to a superfund.

The Regulator says that companies can expect it to request information about four criteria to ensure a smooth transition to the legislative framework once it is in place:

- The superfund is capable of being supervised.
- The superfund is run by fit and proper people and has effective governance arrangements in place.
- The superfund is financially sustainable and has adequate contingency plans in place to manage funding level triggers as well as to ensure an orderly exit from the market.
- The superfund has sufficient administrative systems and processes in place to ensure that it is run effectively.

The Regulator has also published a response to a non-public consultation it conducted in September 2019 and has updated its other relevant guidance to reflect the development.

Accounting for COVID-19

Accounting bodies have published new joint guidance on pension scheme reports and financial statements, and on related matters, in the context of the COVID-19 pandemic. The guide is for pension scheme auditors but trustees and others who prepare pension scheme accounts are also told that they will find the guidance helpful.

The guide is relevant to UK private sector DB and DC trust-based pension schemes applying "Financial reports of pension schemes: A statement of recommended practice" (the Pensions SORP), published by the Pensions Research Accountants Group (PRAG).

The announcement notes that to date the Pensions Regulator has announced easements in its approach towards the duties of trustees in certain areas, including obtaining audited financial statements and producing chair's statements. However, these easements do not currently apply to accounting periods ending on or after 31 December 2019.

Points of interest include the following:

- "a scheme with a period end date of 31 December 2019 may not have experienced any COVID-19-related impacts on its control environment in the period to that date. However, it may have done subsequently and this may be relevant to elements of its annual report, including the financial statements."
- "Trustees should reflect on the impact of COVID-19 from a governance perspective on the content of their trustees' report and other narrative elements of the annual report, such the Chair's statement."
- "The trustees are responsible for undertaking the going concern assessment and the assessment must meet the requirements of both the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) and the Pensions SORP. The specific circumstances which need to exist for pension scheme financial statements not to be prepared on a going concern basis remain unchanged. However, it is likely that more schemes may need to disclose a material uncertainty relating to going concern due to the impact of the COVID-19 pandemic."

- "Where reliable [asset] valuations cannot be obtained, trustees and the scheme's auditor should be discussing the implications for the scheme's financial statements early in the production process. In these circumstances, the auditor may need to consider alternative audit procedures."

DC chair's statements

In response to concerns about how some of the legislative requirements regarding the DC chair's statement are being applied in practice, the PLSA has worked with a number of advisory firms (including Travers Smith) to design a template statement. The template has been reviewed and supported by the Pensions Regulator.

The PLSA says that the template is appropriate for standard occupational DC pension schemes and has been designed to be used in conjunction with the Regulator's guidance and quick guide. It says that schemes should continue to consult their own advisers.

RPI/CPI cases

There have been two recent High Court cases on the interpretation of pension increase rules, in the context of a possible switch from RPI to CPI.

- In *Carr v Thales Pension Trustees Ltd*, the High Court upheld the Pensions Ombudsman's determination in relation to the interpretation of a scheme's indexation rule that had become ambiguous after the government changed the price inflation index from RPI to CPI for various purposes.

  The rule provided that pensions in payment would be increased on 1 April each year by:

  > *"[1] the percentage increase in the retail prices index over the year ending 30 September in the calendar year prior to that in which the increase is due to take place subject to a maximum of 5 per cent [2] as specified by order under Section 2 of Schedule 3 of the Pensions Schemes Act." (numbers in square brackets added to aid explanation)*

  When the rule was drafted in 2000, annual revaluation orders under the Pension Schemes Act 1993 used RPI but from 2011 they used CPI. This made the two limbs of the rule inconsistent. The Court was asked how the rule should now be interpreted.

  The judge held that a "natural and ordinary" reading of the rule gives primacy to Limb 1 (ie, the part that provides for increases to be in line with RPI subject to a maximum of 5 per cent. This meant that RPI remained the index to be applied and there was no switch to CPI. He commented that "it is not always easy to articulate with precision why one reading of a disputed phrase seems more natural and ordinary than another" but that this was done with "an accumulation of experience of how language is ordinarily used".

- In *Ove Arup and Partners International Ltd v Trustees of Arup UK Pension Scheme*, the scheme rules provided that the index for pension increase purposes was the Retail Prices Index (RPI) but that "*If the composition of the Index changes or the Index is replaced by another similar index, the Trustees, after obtaining the Actuary's advice, may make such adjustments to any calculations using the Index (or any replacement index) as they consider to be fair and reasonable*".

  The employer argued that RPI had been "functionally" replaced since RPI had ceased to be an official statistic and CPI and CPIH were now regarded as the main measures of price inflation.

  Applying the principles of interpretation set out by the Supreme Court in *Barnardo's v Buckinghamshire* (2018) (see WHiP Issue 73), the judge held as follows:

  - RPI was "replaced" only if it was discontinued and another similar index was introduced or declared by the responsible body to be in its place. The scheme rule does not contemplate any form of "functional" replacement.
  - A change in composition of RPI is not limited to a change in the items in the basket of prices but extends to any change in its data or methodology.
  - The change in 2010 in the way in which price data for clothing and footwear were collected and analysed was capable of being such a change in composition, but it was now too late for the trustees to act on it because it predated the adoption of the present Rules. The judge here noted that in his judgment *"each adoption of new*

Rules in effect resets the clock; the Index as defined is the RPI as it exists at the date of adoption of the new Rules … and the question whether its composition changes is considered by reference to changes made after that date".

- The "freeze" in development of RPI announced in March 2013 could never have amounted to such a change and in any event it would now be too late for the trustees to act on it.
- The change in 2017 in the way housing cost data were incorporated in RPI was a change in composition giving the trustees power in principle to make adjustments, and it is not too late, in principle, for them to do so. It would, however, be going too far to switch to another index. The nature of the adjustments the trustees may make consequential on a change in composition of RPI is such as the trustees in their discretion consider to be fair and reasonable for the purpose of counteracting, mitigating or allowing for the effect of that change on calculations using the Index. In principle they may take account of short term or long term effects and do so either by a one-off adjustment or on a recurring basis.

GMP equalisation

The follow-up *Lloyds* Banking Group case hearing on the need or otherwise for trustees to address past transfers-out has taken place by video conference. The government has joined the case to oppose some of the bank's arguments. Judgment is awaited.

GMP reconciliation

HMRC's Countdown Bulletin 53 includes the following on GMP reconciliation matters:

> *"HMRC has assessed the processes to be completed to allow the issue of the final data cuts and we now plan to complete the issue of the data cuts by the end of July 2020. This timeline is dependent on changing departmental priorities and any changes to this date will be communicated as soon as possible through the issue of another Countdown Bulletin.*
>
> *…*
>
> *We are aware of issues raised by pension scheme administrators, where differences have been noted between GMP amounts provided on final data cuts and GMP output by the online GMP checker service.*
>
> *We have analysed a range of sample cases submitted to us and we can see instances where GMP information differs. GMP data provided in your final data cut is a 'lift' of GMP held at a point in time, whereas the online GMP Checker service provides a real time GMP amount calculated at the point of request.*
>
> *We can confirm the online GMP checker service is accurately providing GMP figures, these figures will be specific to the date you select the GMP to be calculated."*

Non-cash contributions

In HMRC v Sippchoice Limited, the Upper Tribunal has overturned a decision of the First-Tier Tribunal and ruled that non-cash (a.k.a. *in specie*) member contributions do not qualify for tax relief. This was notwithstanding HMRC's own guidance (see Pensions Tax Manual PTM042100) saying (as, at the time of writing, it still does) that it will allow tax relief claims for such contributions provided certain conditions are met.

Sippchoice challenged HMRC's decision not to allow tax relief at source on four individuals' contributions made by a transfer of shares in 2016. HMRC's decision was originally on the basis that the transfer did not meet the conditions in its guidance. When the matter was litigated, HMRC also argued that non-cash contributions are not relievable "contributions paid" at all under section 188 of the Finance Act 2004.

The First-Tier Tribunal found in favour of Sippchoice but HMRC appealed. The Upper Tribunal has agreed with HMRC.

The Upper Tribunal held that the word "paid" in section 188 could refer to a transfer of a non-cash asset but that it must be considered in context. Another section, section 195, makes provision for the transfer of certain shares (acquired under a SAYE option scheme or share incentive plan) to be treated as payment of a contribution but imposes restrictions. This provision makes no sense, the Tribunal said, if section 188 allows shares to be contributions in any event.

Regarding HMRC's published guidance stating that non-cash contributions can be relievable, the Tribunal said:

> *"Nonetheless, the fact that HMRC's pensions tax manual contains passages that support Sippchoice's case carries little weight in this case. Sippchoice has not sought to make any argument that it relied on the passages or had a legitimate expectation that HMRC would not resile from them. Statements in HMRC's manuals are merely HMRC's interpretation of the law in their internal guidance and they do not have the force of law. We must interpret the legislation in accordance with the principles of construction described above and if we conclude, as we have, that the legislation bears a different meaning to that found in the HMRC manual, the legislation must be preferred."*

Note that this principle applies to everything in HMRC's Pensions Tax Manual for registered pension schemes and its other publications.

Sippchoice is reportedly considering whether to appeal. HMRC has not yet commented on its future approach or on whether it will seek to reclaim wrongly paid tax relief claims.

Many SIPP providers stopped accepting non-cash contributions in 2016 or 2017, following a number of instances of HMRC denying relief. Other cases have been on hold pending the outcome in this case.

FOR FURTHER INFORMATION, PLEASE CONTACT

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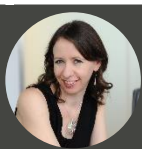

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