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Current issues

September 2017

Articles this month:

Measures to tackle pension scams

The Government has announced the action that it will take to protect pension savers from pension scams, following a December 2016 consultation exercise.[1] The measures will ban cold calling in relation to pensions; take action to help prevent benefits from being transferred from occupational pension scheme into fraudulent ones; and tighten the rules to stop fraudulent pension schemes being opened.

Features of a scam

The Government is concerned that the range of possible 'scam' activities is wider than gaining unauthorized access to registered pension scheme funds. It is targeting cases where the marketing of products and arrangements misleads the investor about the nature of the investment, the risks associated with it, or its suitability for that person. This will cover not only activities that result in unauthorized payments, but attempts to persuade members to access their funds in otherwise legitimate ways in order to make inappropriate investments.

Cold calls

The Government proposed banning unsolicited pensions-related communications, including those via email and text message. Respondents to the consultation overwhelmingly support such a ban.

Some think that it should cover all investment products, not just pensions, but the Government thinks that would be disproportionate.

Exceptions will be made for communication following an express request from a consumer or where there is an existing client relationship. The draft legislation will attempt to minimize fraudsters' ability to exploit the exemptions.

The Government intends to work on the '*final and complex details*' of the ban during 2017, and will introduce legislation when Parliamentary time allows. Once in place, the ban will be enforced by the Information Commissioner's Office, which already has the ability to fine offenders up to £500,000.

[1] <www.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf>.

Limiting statutory right to transfer

The statutory right to transfer is to be limited to cases in which the destination scheme is:

- a personal pension arrangement operated by a firm or entity authorized by the Financial Conduct Authority (FCA);
- an occupational pension scheme with a ‘genuine employment link’ to the transferring member; or
- an authorized master trust.

In light of consultation responses, Her Majesty’s Revenue and Customs (HRMC) will consider how best to include legitimate transfers to a qualifying overseas pension scheme (QROPS) in the list of statutory transfers.

The trustees or managers would still have discretion to allow other, extra-statutory transfers (subject to their scheme’s rules). Although the Government believes that the majority of transfers would meet the statutory criteria, ‘*it does not want to create the situation where legitimate non-statutory transfers are blocked because a scheme is not willing or able to carry out due diligence*’. The Government will look at whether the need for due diligence should be underlined in legislation. It will also consider whether trustees and managers should be given the power to amend their scheme rules to accommodate non-statutory transfers where no such power already exists.

The details of the transfer restriction, including the evidence required for a genuine employment link, will be worked out in collaboration with various interested parties. The changes will not be implemented until the authorization regime for master trusts is fully established. According to current plans, that may not be until 2019.

Registration of schemes

To avoid scammers setting up sham occupational schemes using shell companies, the Government plans to introduce legislation to prevent dormant companies (those that are not currently engaged with business activities or otherwise generating income) from registering a scheme with HMRC. Discretion is to be given to HRMC to register schemes with dormant employers in legitimate cases (e.g. when restructuring existing pension arrangements).

Other changes will be made HMRC’s process to prevent the registration of a scheme without the explicit consent of its sponsoring or principal employer.

The Government also plans to work with interested parties on ways to make small self-administered schemes (SSASs) less attractive as vehicles for scams. However, it will not resurrect the old requirement for such schemes to be overseen by independent ‘pensioneer’ trustees.

Provision will be made for the changes HMRC’s registration requirements in a Finance Bill, later in 2017.

The Government has received a great deal of criticism for the speed at which it is proceeding on this issue: the word ‘glacial’ has never before had such an airing outside of geological contexts. Some aspects of the proposals will need careful construction to minimize the risk of unintended consequences. The cold-calling ban, though, is largely a matter of signalling. It is not the embargo itself that is important. Fraudsters will not cease their activities because of it, although they may relocate to somewhere out of the ICO’s reach. Rather, the ban will allow the Government, financial-guidance and consumer-protection agencies to hammer home the point that anyone calling one out of the blue about one’s pension is very likely to be doing so for nefarious purposes.

Regulator's policies on monetary penalties & professional trustees

The Pensions Regulator has finalized its policy on monetary penalties and its definition of a 'professional trustee', following the publication of draft policies in March 2017.[2]

Penalties

The monetary penalty policy explains how the Regulator will use its powers to impose fines under pensions legislation (other than those for non-compliance connected with automatic enrolment). It mentions in particular its approach to penalties for breaches of the requirement for an annual governance ('chair's') statement in respect of money purchase benefits, and failure to submit a scheme return in time. No material changes have been made to the policy as a result of the consultation.

The Regulator will assign each breach to one of three penalty bands according to the nature and severity of the infringement: level one is for the least-severe breaches and level three for the worst cases. Each band has two suggested penalty ranges: one for individual trustees and one for corporates.

Band	Type of person	Range (£)
1	Individual	0 to 1,000
	Any other case	0 to 10,000
2	Individual	0 to 2,500
	Any other case	0 to 25,000
3	Individual	0 to 5,000
	Any other case	0 to 50,000

The Regulator states that in calculating the amount of penalty it will take into account factors such as the degree of cooperation and engagement of the person concerned, and how quickly the breach is reported. The policy gives the Regulator discretion to take into account whether a trustee is a professional trustee or not (see next section) when calculating the level of penalty. The Regulator notes that penalties for professional trustees will generally be higher than those for other trustees.

Appendices to the policy provide detail of how the penalties for failure to complete a chair's statement are calculated and provide more information on penalties for scheme return breaches.

Professional trustee description

Historically, the Regulator considered those trustees who charge for their services to be professional trustees. However, it has concluded that remuneration is not necessarily determinative, because of the increasingly common practice of paying trustees who do not provide their services commercially. In March, the Regulator proposed a revised professional trustee definition that would cover those who act as trustees of a scheme in the course of business; or promote themselves as experts in trustee matters generally.

As a result of responses received to the consultation, several changes have been made to the proposed definition to make it clearer and better reflect the Regulator's policy intentions. The final test is now based solely on whether a person is acting as a trustee of the scheme in the course of the business of being a trustee. However, the Regulator will still, generally, consider trustees to be acting in the course of a trustees business (and therefore 'professional') if they represent or promote themselves as having expertise in trustee matters generally.

A number of examples have been added to the policy to indicate the sorts of circumstances in which someone would be considered to be a professional trustee.The Regulator notes that the revised definition will assist the Professional Trustee Standards Working Group to develop higher standards for those who are in business as pensions trustees.[3]

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[2] <www.thepensionsregulator.gov.uk/doc-library/draft-monetary-penalties-policy-and-revised-professional-trustee-description-consultation-2017.aspx>.

[3] *Industry Groups come together to develop formal standards for professional trustees in the UK* <www.tact.uk.net/wp-content/uploads/2017/07/2017.07.06-Pensions-Professional-Trustee-Standards-Working-Group-Press-Release.pdf>.

Members' '*reasonable expectations*' did not block cost-control attempts

The Court of Appeal has said that companies in a corporate group did not breach 'good faith' duties by disappointing employees' '*reasonable expectations*' about the future of their defined benefit (DB) scheme. This overturns the High Court's ruling that those 'reasonable expectations' prevented the employer from implementing certain cost-control measures, including cessation of benefit accrual, making salary increases non-pensionable, and ending a generous early retirement policy.[4]

Implied Duties

Briefly put, employers and their employees are subject to implied contractual 'good faith' duties, not to act in such a way as to destroy or seriously damage the relationship of trust and confidence between them. Judicial development of that principle has led to recognition of a separate but related duty that is implied when a company exercises non-fiduciary powers in connection with a pension scheme: it is known as 'the *Imperial* duty', in reference to the court judgment in which it was established.[5]

Facts

The companies had between 2004 and 2006 conducted two earlier cost-control exercises. These had led, amongst other things, to increased employee-contribution rates; a funding agreement (with a parent-company guarantee) that was to remain in place until 2014; and a choice between (i) continued accrual of defined benefits, for those who agreed to limit the extent to which future salary increases would be pensionable, and (ii) fully pensionable salary increases for those who moved into a money-purchase arrangement for future service.

Then, influenced by a commitment to deliver targeted earnings-per-share growth to shareholders, and following the onset of the 2008 financial crisis, the companies took action in 2009 to make further savings on pension costs. In particular, they:

- planned to terminate accrual of defined benefits in 2011;
- prevailed upon members to agree that future salary increases would not be pensionable for the purposes of the DB schemes, by declaring that only those who acquiesced would be eligible for pay increases; and
- announced the end of a policy of consenting to early retirement from service on attractive terms, giving eligible employees a very brief opportunity to take advantage of that policy.

High Court ruling

The High Court ruled, in 2014, that the companies had breached their 'good faith' duties to employees and scheme members by imposing the changes announced in 2009. The Court concluded that the companies' conduct during the earlier cost-control exercises had engendered 'reasonable expectations' in the members: that DB accrual and the availability of attractive early retirement terms would continue for some time, in the absence of a significant change of circumstances.

The Court also decided that the window of opportunity to take advantage of the existing early retirement terms was unreasonably short, and was highly critical of the way in which the companies conducted a consultation exercise about the proposals, to the extent that they too were considered to have breached the duties of trust and confidence.

Court of Appeal decision

The Court of Appeal overturned most of the High Court judge's conclusions. Crucially, it decided that he had attached too much importance to scheme members' 'reasonable expectations'. He had decided the case as if those expectations could only be disappointed if no other course was open to the organization. The correct test was one of rationality, and it had two 'limbs':

- had the companies considered all of the relevant (and no irrelevant) matters?; and
- was the choice one that no reasonable decision-maker could have made?

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[4] *IBM United Kingdom Holdings Ltd & Anor v Dalgleish & Ors* [2014] EWHC 980 (Ch).
[5] *Imperial Group Pension Trust Ltd & Ors v Imperial Tobacco Ltd* [1991] 2 All ER 597.

The members' reasonable expectations (such as they were) were simply one relevant factor in the determination. In any event, the High Court judge ought to have (but had not) considered whether a significant change in circumstances—the 2008 financial crisis—had justified a change of policy.

The judge had been wrong to say that communications with members were 'disingenuous'. That was a serious allegation of bad faith. It had not been specifically raised in the litigation, so the companies had not had the opportunity to reply. Making such a finding in those circumstances was a '*serious procedural irregularity*'.

The judge was wrong to find that the employer had breached its implied contractual duty of trust and confidence by procuring non-pensionability agreements from the members. It may, in some circumstances, be a breach of the duty to refuse to offer a pay rise to which an employee has no contractual entitlement. However, those circumstances have to be extreme; and the correct test is of rationality, as described previously.

The judge had erred in finding that the employer had to forewarn members before a change to the early retirement policy became effective. There was no evidential or factual basis for that conclusion.

The judge had found flaws in the consultation process amounting to breaches of the implied contractual duty and the pensions legislation on consultation by employers. The companies did not appeal against those findings. The Court of Appeal concluded that it would be wrong to force them to begin consultation afresh. That would change the position of the companies and the scheme members far too radically, and would not restore the latter to the position that they would have been in had proper consultation taken place in 2009. However, the members will be entitled to claim damages for the breach of the contractual duty related to the conduct of the consultation.

There are many other facets and nuances to the Court of Appeal's judgment, but we will leave them for the legal experts: there is no shortage of lawyers' briefings on this important decision. The crux of the ruling seems to be that '*reasonable expectations*' do not have the '*paramount significance*' that the High Court judge had accorded to them. Nonetheless, the Court of Appeal was clear that they are a factor that must be taken under consideration: if that does not happen, a decision might trip over one limb of the rationality test.

It is notable that defects in a consultation process need not vitiate the entire exercise, even if they may lead to claims for damages. The judgment does not discuss the potential for regulatory intervention.

Regardless of this ruling, employers and others involved in making changes to pension schemes will recognize that setting up—however inadvertently—and then dashing expectations is not an approach that fosters good member relations, and will want to ensure that communications and consultation exercises are carefully and honestly managed.

Pensionable pay cap permissible

The Court of Appeal has ruled that an employer was entitled to determine whether a pay rise is pensionable.[6]

Background

The case was brought by a member of the BBC Pension Scheme. Until 2011, the Scheme had three sections, each with its own benefit structure.

To manage its pensionable liabilities, the BBC decided to impose a one per cent cap on the extent to which pay increases would be pensionable for members of the three sections of its defined benefit (DB) pension scheme that were closed to new entrants. Those affected were given the option, for a limited time, of staying in their existing section subject to only up to one per cent of future pay increases being pensionable; or of, joining a new section of the scheme; or they opting for membership of a group personal pension plan.

The ability to cap pensionable pay was not written into the rules of the scheme. Those rules defined '*Pensionable Salary*' by reference to '*Basic Salary*', which was defined as '*the amount determined by the BBC as being an Employee's basic salary or wages…*'. The BBC felt that that gave it the ability to limit the pensionable nature of any pay rise. In addition, pay

[6] *Bradbury v BBC* [2017] EWCA Civ 1144.

increases were made contingent upon agreement to the cap, using an extrinsic contractual variation (an agreement between the employer and employee that the latter will receive benefits different to those in the scheme rules)

The member complained to the Pensions Ombudsman, who rejected his arguments. He then appealed to the High Court which rejected the appeal, but the case was referred back to the Ombudsman to decide if the BBC's conduct amounted to a beach of its implied duty of trust and confidence.[7] The Ombudsman found it was not. The member appealed again to the High Court. Once again, the High Court rejected the appeal. The member then appealed to the Court of Appeal.

The Court of Appeal ruling

The Court of Appeal again upheld the High Court's decision. It found that the scheme rules permitted the BBC to decide whether an increase in pay, or how much of an increase, should form part of pensionable pay. The Court was also satisfied that the way the BBC implemented the pay cap was permissible under the scheme rules.

The judge also ruled that section 91 of the *Pensions Act 1995* (which provides that rights under an occupational pension cannot be surrendered of by the member except in limited circumstances) did not apply here, as the employees had no current entitlement to future pay rises

It was also found that the BBC had not breached its implied duty of trust and confidence, as the BBC's '*conduct had to be assessed against the reality of the background that the* [BBC] *was faced with a multi-billion pound deficit in the Scheme and…the trustees, the unions and the* [BBC] *all agreed something had to be done*'.

This decision will be welcomed by employers who have sought to reduce scheme liabilities by removing the link between remuneration and pensionable pay.

Retroactive effects of legal changes

The Supreme Court has referred to the European Court of Justice (ECJ) the question of whether a part-time worker's pension entitlement should be restricted to periods of service after the EU Part Time Workers Directive was required to be transposed into UK law. [8]

Background

The case concerned a part-time judge who worked for the Ministry of Justice from March 1978 until 31 March 2005. The Part Time Workers Directive[9] was required to be given effect by 7 April 2000, and so from this date the member became entitled to a pension.

The question at issue was whether the worker's pension entitlement should be calculated by reference to his full period of service (27 years), or only service that took place after the transposition deadline (5 years). In 2015, the Court of Appeal ruled that the employee was not entitled to claim pension rights retrospectively as a result of the change in EU law. The implication was that his pension entitlement should be calculated by reference only to service after April 2000. He appealed to the Supreme Court.

Supreme Court Ruling

The majority of the Supreme Court judges leaned towards the view that it is unlawful to discriminate against part-time workers by limiting pension rights to those attributable to service that took place after the Directive's entry into force. Their rationale was that the Directive applies to pensions that become due after it came into force, and that to the extent that some of the member's pensionable service was prior to that time, the Directive applies to the *future effects of that situation*. However, they concluded that there is an alternative line of argument that the ECJ has yet to consider. That unexplored line of reasoning would start from the dictum that occupational pensions are deferred pay, to which employees earn the right at the time when they perform the work, and argue that the general principle of 'non-retroactivity' should mean that the Directive had no effect upon rights acquired before it came into force. The judges suggested that a temporal limit of

[7] See our above article, '*Members' 'reasonable expectations' did not block cost-control attempts*'.
[8] *O'Brien v Ministry of Justice* [2017] UKSC 46.
[9] Directive 97/81/EC.

that sort might be confined, exceptionally, to judgments that would otherwise have '*dire financial consequences*' (the epitome being the *Barber* sex-equality case[10]). However, as the correct approach was not sufficiently clear, the Supreme Court felt that it was necessary to refer the question to the ECJ.

This case was heard alongside the Walker v Innospec appeal, in response to which the Supreme Court had little hesitation in finding that periods of service prior to a Directive must be taken into account when calculating a pension.[11] The ECJ's response to the O'Brien question may contribute to our understanding of the retroactive effects that emerged from Walker.

Supreme Court clarifies Scots pensions & divorce law

The Supreme Court has ruled that, when establishing how much of a person's pension rights are '*matrimonial property*' for the purposes of Scottish divorce proceedings, '*the period of membership*' is not confined to the period during which that person was an active, contributing member.[12] Its judgment settles a question that has gone unanswered for nearly two decades. The outcome (which does not affect divorces in other UK jurisdictions) will be considered to be unfair by some divorcees with pension rights—their former partners may, understandably, be less likely to complain—but they will need to look to legislators for a remedy.

Facts

The case concerned an application for a pension sharing order. One of the divorcing parties had been an active member of an occupational pension scheme for a little over six years when he married, but retired early on ill-health grounds around five months later. The couple separated after approximately twenty-five years of marriage.

Scots family law says that the '*matrimonial property*' should be shared fairly between the parties to the marriage, and generally assumes that a fair share means an equal share, unless a different ratio is justified by special circumstances. It specifies that the matrimonial property includes such part of either party's pension rights as is referable to the period of the marriage up to the '*relevant date*'. The relevant date is often, as in this case, the date on which the couple separated.

For the valuation of pension rights, the divorce legislation turns to the statutory transfer value rules. A simple apportionment formula is used to determine how much of a person's cash equivalent transfer value (CETV) is '*matrimonial property*': in simple terms, the CETV is multiplied by the ratio of

> the period of the person's membership whilst married
>
> to
>
> his or her total period of membership,

but only counting membership up to the relevant date.

The member's full (pre-apportionment) CETV, as at the relevant date, was close to £173,000.

The dispute

The argument between the parties was about what the legislation means when it talks about '*the period of membership*'. If the CETV was apportioned by reference only to the period of *active* membership, a little over £10,000 would count as matrimonial property. If *total* (i.e. active and pensioner) membership was used, the matrimonial property element would be over £138,000.

Judgment

At the earlier stages of the litigation, in both the Sheriff Court and Court of Session, '*the period of membership*' was taken to mean the period of *active* membership only. The Supreme Court disagreed with that interpretation, for four reasons:

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[10] *Barber v Guardian Royal Exchange Assurance Group* (Case C-262/88).
[11] See *Current Issues* August 2017 <www.hymans.co.uk/news-and-insights/research-and-publications/publication/current-issues-august-2017/>.
[12] *McDonald v Newton or McDonald* [2017] UKSC 52.

- it involves adding words that are not there (elsewhere in the same piece of legislation active, deferred and pensioner members are distinguished, so it is not as though the draughtsperson was unaware of the existence of such categories);
- interpolating the word 'active' in the appropriate place does not work for all of the kinds of pension rights that can be matrimonial property (e.g. those with personal pensions may contribute irregularly, as and when it suits, making it hard to determine whether they have ceased to be active contributors)
- in the lower courts much play had been made of the legislation's definition of '*matrimonial property*', generally, as comprising the assets acquired during the marriage; however, Parliament had clearly elected to treat pension rights differently by making specific provision for them outside of that general definition (besides, there was no unqualified principle that property had to be acquired during the marriage, because the legislation recognizes that couples will often buy and furnish their matrimonial home before they wed); and
- another argument raised during earlier stages was that it was necessary to interpret '*membership*' as meaning *active* membership in order to make sense of the decision to provide for the possibility that the period of married membership could be zero; but it was impossible to say what, exactly, the draughtsperson had in mind; and if it had been an attempt to confine 'membership' to active membership, it would be a case of '*egregious circumlocution*' (moreover, there was no hint of such an intention in the explanatory notes to the legislation).

The Supreme Court was persuaded that '*the period of membership*' in the apportionment rule is a reference to the whole period of the person's membership (up to the relevant date), regardless of status. It noted, though, that its conclusion '*does not mean… that the value of an interest in a pension arrangement must be shared equally.*'

The Court favoured a literal interpretation of the legislation, on the understandable grounds that if Parliament had intended something different it could and should have said so. The incongruous outcome would have been even more jarring had the member married in retirement, so that the ex-spouse got a share of rights built up entirely before the couple married.

The apportionment rule is rough-and-ready—a statutory back-of-the-envelope calculation, in a sense. The result is also likely to be 'unfair' if the member's cash equivalent transfer value incorporates transferred-in service attributable to periods prior to the period of marriage. The legislation does not adjust the statutory value of the pension rights to lessen the unfairness, but—as noted by the Supreme Court in the reported case—if the concern is identified and understood it can at least be taken into consideration when determining the division of assets.

It is far from being the only 'quirk' of the pensions-on-divorce legislation.

FCA retirement outcomes interim report

The Financial Conduct Authority (FCA) has published interim finding of its Retirement Outcomes Review.[13] The Review, launched in July 2016, examines how the retirement income market is working since the pension freedoms were introduced in April 2015. The Review has found that consumers have welcomed the increased freedom in how they can take their defined contribution (DC) savings, and have made use of them in practice:

- the majority of DC scheme members are accessing their pension pots early, with 72 per cent doing so under age 65;
- more than half (53 per cent) of the pots that have been accessed have been fully withdrawn;
- 94 per cent of those who fully withdrew their DC pension had other sources of income in addition to the State pension; and
- twice as many pension pots are moving to into drawdown as are being used to purchase annuities.

The interim report also identifies the following areas of concern:

- those who fully withdrew their pension pots did so, at least in part, because they do not trust pensions;
- most consumers who access their pension early choose the easiest route—taking income drawdown with their current pension provider—without shopping around;

[13] <www.fca.org.uk/publications/market-studies/retirement-outcomes-review>.

- many consumers (30 per cent) are taking drawdown without taking advice;
- annuity providers are leaving the open annuity market, which could make it less competitive; and
- product innovation has been limited.

To address the concerns raised, the FCA proposes to develop additional protection for consumers who purchase drawdown policy without taking advice, measures to promote competition for those who take drawdown without advice, and tools and services to help consumers to make informed choices.

The FCA invites feedback on its initial finding and recommendations by 15 September 2017. It intends to publish its final report in the first half of 2018.

Asset-backed funding arrangements & Scottish LLPs

Regulations that came into force on 24 July might have implications for pension scheme trustees and sponsors who have set up asset-backed funding arrangements.[14] Such arrangements often use Scottish limited partnerships (SLPs). In summary, the Regulations form part of the fight against money laundering and terrorist financing, and require SLPs to provide information about beneficial ownership, by identifying '*people with significant control*' and '*relevant legal entities*'. Similar provisions affecting corporations came into force in June 2016.[15]

Scheme trustees and sponsors that have set up asset-backed funding arrangements involving SLPs will want to ensure that whoever is responsible for their statutory filings is taking care of the new obligations (speaking to their lawyers if they need more information). Failure to comply can be a criminal offence.

HMRC Newsletters

Countdown Bulletins 25 & 26

Her Majesty's Revenue and Customs (HMRC) has published the latest editions of its Bulletin for scheme administrators dealing with the abolition of contracting-out on 6 April 2016. Both bulletins focus largely on issues being encountered by those carrying out day-to-day reconciliation work.

In addition Bulletin 25 includes[16]:

- updated information on the Scheme Reconciliation Service (SRS);
- details of new legislative provisions allowing extension of the notification and payment deadlines for contribution equivalent premiums (CEPs) when trustees are trying to agree records with HMRC—it is considering whether to develop an automated process for 'Not in Scheme' queries about deceased members and those over State pensionable age, and asks administrators for information about case numbers; and
- a summary of amendments made to the transfer legislation to enable some schemes that were contracted-out to make transfers in respect of pensioner members to schemes that have never been contracted out.

The 26th edition of the Countdown Bulletin, among other things, clarifies the procedure for raising scheme reconciliation queries with HMRC. It also announces that HMRC has relented somewhat and will now accept late expressions of interest in registering for the SRS '*in exceptional circumstances*'.[17]

HMRC Pension Schemes Newsletter 89

HMRC has also published the 89th edition of its Pension Schemes Newsletter.[18] The item that garnered most comment was the news that, from April to June 2017, HMRC had refunded nearly £27m of tax overpaid by people accessing funds early under the Freedom and Choice reforms.

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[14] *The Scottish Partnerships (Register of People with Significant Control) Regualtions 2017* (SI 2017 No. 694).
[15] See *Current Issues* April 2016 for further details.
[16] <www.gov.uk/government/publications/countdown-bulletin-25-july-2017>.
[17] <www.gov.uk/government/publications/countdown-bulletin-26-august-2017/countdown-bulletin-26-august-2017>.
[18] <www.gov.uk/government/publications/pension-schemes-newsletter-89-july-2017/pension-schemes-newsletter-89-july-2017>.

It also contains:

- publication of statistics on transfers to qualifying recognised overseas pension schemes (QROPS) for tax year 2016/17;
- confirmation that the proposed Lifetime Allowance Look Up Service for pension scheme administrators has been further delayed
- an indication that HMRC hopes to have an remedy in place by April 2018 for a previously announced problem with tax coding notices issued in error in connection with non-taxable death benefits; and
- details of the proposed new Pensions Online Digital Service for scheme administrators, which is to be rolled out in two phases, starting in April 2018 for new registrations—migration of existing schemes and scheme administrator IDs to the new service will occur during the second phase, beginning in April 2019.

The £27m of repaid during the second quarter of 2017 is not tax collected in error, as such. Yes, people are having too much tax deducted; but it is deliberate. The PAYE rules are set up so that it is inevitable that many scheme members who use the new flexible-access options will overpay and need to claim refunds.

And Finally…

The Pensions Ombudsman (TPO) recently ruled that an administrator's commercial decision to rely on the service standards set by the postal system, and send stuff second-class, wasn't unreasonable.[19] One might say that TPO looked at the PO (Post Office), and saw that it was good—or at least, good enough. Incidentally, although the case involved a complaint made by 'Mr M', it wasn't 007's boss (someone you probably don't want to PO): that's just the result of the Ombudsman's anonymization policy.

Have you seen *Postman Pat* recently? He's got virtually every conceivable form of transport available to him, from a motorcycle (with sidecar for Jess, obvs) to a helicopter. No explanation of how he got a pilot's licence with his eyesight, though…

[19] *Mr M (PO-17718)*.