HYMANS ROBERTSON

Current issues

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Articles this month:

Legislation paves way for transaction-cost disclosure

The Government has brought into force legislation that will lead, eventually, to the mandatory disclosure of money purchase transaction and administration costs for some pension schemes.[1]

The legislation in question was brought into effect on 18 September 2017. It obliges the Department for Work and Pensions (DWP) to make regulations requiring the disclosure of administration- and transaction-cost information about money purchase benefits provided by occupational pension schemes.[2] The DWP is expected to conduct a consultation exercise on the details of those implementing regulations. The new disclosure requirements, once they are in force, will not apply to some types of scheme, notably those for the public sector, for executives, or that provide money purchase benefits only by way of additional voluntary contributions (AVCs).

The legislation also requires the Financial Conduct Authority (FCA) to create analogous cost-disclosure rules for the providers of personal pension schemes.[3] The FCA expects to consult on its proposals in the second quarter of 2018.

In a related development, the FCA has announced that it is, from 3 January 2018, placing a duty on asset managers to disclose aggregate transaction costs to those responsible for the pension schemes that, directly or indirectly, invest in their funds.[4] It will also require asset managers to provide information, on request, about administration charges, and a breakdown of the transaction costs with the total broken down into categories of identifiable costs, such as taxes and securities lending costs.

[1] The *Pensions Act 2014 (Commencement No.11) and Pension Schemes Act 2015 (Commencement No. 2) Regulations 2017* (SI 2017 No. 916), activating section 44 of the *Pensions Act 2014* and section 38(1) & (4) of the *Pension Schemes Act 2015*.
[2] Section 113 of the *Pension Schemes Act 1993*, as amended.
[3] Section 137FA of the *Financial Services and Markets Act 2000*, as inserted.
[4] PS17/20: *Transaction cost disclosure in workplace pensions*, <www.fca.org.uk/publications/policy-statements/ps17-20-transaction-cost-disclosure-workplace-pensions>.

Regulator sets out plan to improve scheme governance

The Pensions Regulator has set out its plans for improving standards of governance in workplace pension schemes. [5] This is in response to the findings of two surveys commissioned by the Regulator into the extent that defined contribution (DC) schemes[6] and defined benefit (DB) schemes[7] are meeting its expectations.

The surveys found that the majority of scheme members are in relatively well-run schemes. Generally, the standards of governance in DC schemes have improved over recent years, as has compliance with Code of Practice No.3: Funding Defined Benefits principles. However, the Regulator is concerned that many trustee boards, especially those for small and medium-sized schemes[8], have failed to take the action required by its Codes and guidance.

The surveys found, among other things, that:

- small and medium-sized schemes are more likely to display poor governance standards (e.g. placing less focus on trustee training, effective internal controls and oversight of third parties);
- many small and medium-sized DC schemes and a significant number of DC schemes used for auto-enrolment are not meeting expectations in the areas of administration, investment and value-for-members; and
- for DB schemes, there are still substantial issues around compliance with the 'integrated risk management' guidance[9] and the 'fair-treatment principle'[10].

To help improve standards of scheme governance the Regulator is to focus on being clearer about what it expects, taking more enforcement action when schemes are not complying, and encouraging 'sub-standard' schemes to consolidate where appropriate.[11]

As part of making its expectations clearer, the Regulator has, as promised, launched a '21st Century Trusteeship' campaign.[12] It is sending targeted emails to trustees, scheme managers, employers and advisers to direct them to a new Web page that outlines how they can meet the Regulator's governance standards. It will also set out the action that the Regulator will take if the scheme fails to meet these expectations.

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[5] <www.thepensionsregulator.gov.uk/press/tpr-sets-out-action-to-tackle-gaps-in-scheme-governance.aspx>.
[6] <www.thepensionsregulator.gov.uk/docs/dc-research-summary-report-2017.PDF>.
[7] <www.thepensionsregulator.gov.uk/docs/db-research-summary-report-2017.PDF>.
[8] The survey defines with small schemes as being those with 12 and 99 members and medium schemes as those with 100 to 999 members.
[9] <www.thepensionsregulator.gov.uk/guidance/guidance-integrated-risk-management.aspx>.
[10] The fair treatment principle is set out in the Regulator's Code of Practice No.3: Funding Defined Benefits and refers to the principle that trustees should ensure that the scheme is fairly treated amongst the competing demands on the employer.
[11] <www.thepensionsregulator.gov.uk/docs/dc-db-research-response-september-2017.pdf>.
[12] <www.thepensionsregulator.gov.uk/press/tpr-steps-up-21st-century-trusteeship-campaign-to-deliver-good-governance.aspx>.

Finance Bills: pensions provisions

The Government has laid a new Finance Bill before Parliament, and also published some draft clauses that it intends to include in a future Bill.

Finance Bill 2017/19

A new Finance Bill (expected to become the Finance (No.2) Act 2017) has been published and is making its way through Parliament. The Bill contains two pensions-related provisions that were removed from the *previous* Finance Bill, earlier this year, to allow it to pass ahead of the general election.

The Bill contains clauses to provide for an income-tax exemption for employer-funded pensions advice of up to £500 a year, and a reduction in the money purchase annual allowance from £10,000 to £4,000. In both cases, those provisions will have effect from 6 April 2017.

The Bill had its second reading before Parliament on 12 September 2017 and will reach its Committee stage in the House of Commons on 11 October 2017.

Draft clauses

The Government has also published details of legislation that it intends to include in the next Finance Bill.[13] Notably, one part of the draft legislation would allow Her Majesty's Revenue and Customs (HMRC) to register or (de-register) certain pension schemes, as a measure to combat pensions scams. The circumstances in which HMRC can refuse to register pension schemes would be extended to cover master trusts that have not been authorised by the Pensions Regulator, and occupational pension schemes for which the sponsoring employer is a dormant company.

PPF: draft regulations take account of bridging pensions

The Department for Work and Pensions (DWP) has published draft regulations for consultation which would allow the Pension Protection Fund (PPF) to take account of bridging pensions.[14]

A bridging pension is a temporary pension paid by some occupational pension schemes to bridge the gap between retirement and commencement of the State pension, so that the pensioner's total (i.e. occupational plus State) pension income remains roughly level throughout retirement.

Currently, PPF compensation payments are based on a member's pension entitlement at the date that a pension scheme enters PPF assessment period. This means that members entitled to a bridging pension at the scheme assessment date have their PPF compensation fixed at that higher rate for life. In contrast, if the scheme had not entered a PPF assessment period, the member's pension would have decreased when the bridging pension ceased to apply under the scheme rules (usually when the member reached State pensionable age).

The draft regulations contain provisions that would take account of bridging pensions by smoothing the amount of PPF compensation over the member's lifetime. This is the Government's preferred option. An alternative method put forward in the consultation paper is to mirror existing scheme rules. This would involve the member receiving PPF compensation at the higher, bridging pension rate until the date specified in the scheme rules for reduction; after this date the compensation would be recalculated and paid at the lower rate. The DWP does not favour this option as it would involve a change in the way the PPF operates and would be complicated to administer.

The changes to the calculation of PPF compensation will only apply to members of pension schemes which enter a PPF assessment period on or after the date that the regulations come into force. Members with bridging pensions who are already in receipt of PPF compensation or whose scheme is already in a PPF assessment period will not be affected.

The consultation period ended on 1 October 2017 and a response from the DWP is expected within 12 weeks of this date.

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[13] <www.gov.uk/government/collections/finance-bill-2017-to-2018>.
[14] <www.gov.uk/government/consultations/pension-protection-fund-draft-regulations-to-take-account-of-bridging-pensions>.

Ability to recoup GMP overpayments uncovered during reconciliation

Excess pension payments, detected as a result of a guaranteed minimum pension (GMP) reconciliation exercise, were recoverable, said the Pensions Ombudsman recently.[15] However, the trustee of the scheme in question was unable to claim back all of the overpayments, because of the effect of *Limitation Act 1980*.

Facts

The case concerned a member whose pension had been in payment since 1996; he reached GMP payment age (65) in 2004. In 2015, the trustee instructed its then scheme administrator, the third organization to perform that role since the member retired, to undertake a GMP reconciliation exercise. It discovered that pension increases had, since the member reached age 65, been applied to his entire GMP, rather than just to the element accrued from 6 April 1998 onward, as was required. The incumbent administrator had relied on the details provided by its predecessor as to the components of the member's pension in payment, but had no records of how they had been calculated.

The trustee told the member that it planned to reduce his pension (£17,278.80 p.a.) to the correct level (£16,343.16 p.a.) with effect from September 2015. It also intended to recoup the total of the overpayments already made (£6,653.49), by applying a deduction (£55.49) to his monthly instalments of pension, until 2025.

The member objected to the reduction and repayment plan, on the grounds that the mistake was not his, but that of a previous administrator. The dispute eventually found its way to the Pensions Ombudsman.

The Limitation Act 1980

Broadly summarized, a claim must ordinarily be made within six years of the thing that gave rise to it—in this case, the overpayment of pension. If it arises from a mistake, however, that six-year limitation period does not begin to run until the error is noticed, or could '*with reasonable diligence*' have been discovered.

Determination

The member produced no evidence to suggest that he had changed his position in reliance upon the overpayment. The Ombudsman agreed that, subject to the limitation rules, the trustee was entitled to seek repayment. However, he was satisfied that all of the relevant information was available before the member reached age 65 in 2004, so that the overpayments would not have been made from that date if the trustee had been '*more diligent*'. He was not inclined to let the trustee off the hook on the basis of the shortcomings of previous administrators. Consequently, he did not think that the relaxation of the limitation rule in the case of mistakes should apply. In accordance with recent case-law, the six-year limitation period stopped running when the trustee confirmed to the Ombudsman that it would contest the member's complaint.[16] This meant that it could not recover any overpayments made prior to 25 May 2010.

This is not the first case in which the Ombudsman has applied the High Court's ruling about the application of limitation periods to overpayment complaints. However, it is, as far as we are aware, the first time that his office has tackled overpayments that were uncovered as a result of a GMP reconciliation exercise. Given that so many schemes are now involved in such projects, following the abolition of contracting out, it will surely not be the last. Trustees may wish to discuss the implications of this determination with their advisers before acting on their GMP-reconciliation results.

[15] *Mr D* (PO-1918).
[16] *Webber v Department of Education* [2016) EWHC 2519 (Ch). See *Current Issues* _ 2016

Administrator must reimburse fees incurred due to overstated transfer

The Pensions Ombudsman has told a pension scheme administrator to pay IFA fees incurred because a member was mistakenly told that his cash equivalent transfer value (CETV) exceeded £30,000.[17]

Background

Since 6 April 2015, pension scheme members have been obliged to obtain advice from a suitably qualified financial adviser before transferring the value of their defined benefit rights with a view to acquiring money purchase rights. Such advice is not mandatory when a member's defined benefits are valued at £30,000 or less. Members must be told about the advice requirement when they make enquiries about transferring.

Facts of the case

The member was supplied with a defined benefit transfer value statement, in January 2016, showing that he had rights valued at £30,485. The notes to the statement advised, rightly, that those with CETVs in excess of £30,000 would need to obtain financial advice in order to transfer to a money purchase arrangement. Reluctantly, the member appointed an independent financial adviser (IFA) and agreed to pay £950 for the required advice. He applied to have the quoted CETV paid into his chosen self-invested person pension (SIPP) arrangement.

It turned out that the member's CETV had been incorrectly calculated, and should have been only £25,071.

Ombudsman's determination

The Ombudsman agreed that the member was not entitled to the overstated CETV. However, he directed the administrator to pay the member's IFA fee (£950). The administrator objected that the chosen SIPP provider would only deal with those who had appointed IFAs, but the Ombudsman rejected that fact as irrelevant, noting that the member had selected that particular SIPP provider only after he had been informed (incorrectly) that financial advice was obligatory in his case, and had accepted that position somewhat grudgingly.

It is hard to argue with the Ombudsman's conclusions about this case. However, mistakes do happen, and the binary nature of the advice requirement, with its £30,000 hurdle, makes it almost inevitable that this unfortunate sequence of events will be repeated.

[17] *Mr K* (PO-13094).

Parliamentary inquiry into Freedom & Choice reforms

The Work and Pensions Committee has announced an inquiry into the effects of the Freedom and Choice reforms.[18]

The Committee invites evidence and any recommendations for improvements in eight areas, including what people are doing with their pension pots, the information and advice available and the way that the pension product market is working. The Committee is also interested to hear about people's experiences of pension scams and what could be done to prevent them.

Evidence should be submitted by 23 October 2017.

Although the removal of restrictions on how people can access their savings has generally been welcomed, it is concerning that people are withdrawing their pension savings at a much faster rate than they would have done if they had remained in a defined benefit pension scheme or were required to buy an annuity.

It is vital that savers get the right advice if they are to avoid poor financial outcomes when they retire. While it is unlikely that there will ever be a return to a situation of enforced annuitisation, it is imperative that savers are guided and supported to manage their pension pots over their lifetimes. This requires more and better advice frameworks throughout a person's working life, and not just at the point of retirement.

Pensions Schemes Newsletters

Her Majesty's Revenue and Customs (HMRC) has published *Pension Schemes Newsletter* 90 and 91. The 90th edition includes: [19]

- a reminder of the October deadline for annual allowance pension savings statements , and a request that members be advised to report any annual allowance charge on their Self-Assessment tax return by the end of January 2018;
- notice that trustees should ensure they are not using old forms to report transfers to qualifying recognised overseas pension schemes (QROPS), as these will be rejected by HMRC—penalties may be applied if the submission deadline is close and the correct forms cannot be submitted in time; and
- a request for '*scheme administrators*' (which for HMRC purposes are the trustees or managers of the scheme) to make sure that their Pension Schemes Online details are up to date, so that migration to the new system (see September's *Current Issues*[20]) goes smoothly.

Newsletter 91 contains reminders of several issues mentioned in Newsletter 90 and announces the launch of the lifetime allowance scheme administrator look-up service.[21] The look-up service will allow scheme administrators to check the lifetime allowance protection status of their members (provided that members have given them the relevant reference numbers).

Countdown Bulletins 27 and 28 have also been published.[22]

Trusts and Estates Newsletter

HMRC has published the September issue of its *Trusts and Estates Newsletter*.[23] The newsletter contains information on a new Trusts Registration Service, and about the tax formalities of paying lump sum death benefits to a trust.

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[18] <www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2017/pension-freedoms-17-19/>.
[19] <www.gov.uk/government/publications/pension-schemes-newsletter-90-august-2017/pension-schemes-newsletter-90-august-2017>.
[20] <www.hymans.co.uk/news-and-insights/research-and-publications/publication/current-issues-september-2017/>.
[21] <www.tax.service.gov.uk/protect-your-lifetime-allowance/psalookup/scheme-administrator-reference>.
[22] *Countdown Bulletin 27*, <www.gov.uk/government/publications/countdown-bulletin-27-september-2017/countdown-bulletin-27-september-2017> *Countdown Bulletin 28* <www.gov.uk/government/publications/countdown-bulletin-28-october-2017/countdown-bulletin-28-october-2017>.
[23] <www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters/hmrc-trusts-and-estates-newsletter-september-2017>.

Anti-money laundering legislation[24] now requires that '*taxable relevant trusts*' register online with HMRC and provide beneficial-ownership information.[25] Taxable relevant trusts are those that are liable for

- income tax,
- capital gains tax,
- inheritance tax,
- stamp duty land tax,
- land and buildings transaction tax or
- stamp duty reserve tax.

The Newsletter announces the creation of a new online Trusts Registration Service (TRS) through which trustees will have to provide information about the beneficial owners of the trust (likely to include sponsoring employers, as well as actual and potential scheme beneficiaries). The deadline for registration depends on whether the trustees are subject to self-assessment rules: it seems likely in most cases that the trustees of existing, trust-based, registered pension schemes will have to give HMRC details about the trust and its beneficiaries by 31 January 2018, but earlier deadlines are possible.

The newsletter also confirms that HMRC has published two new forms for trustees and pension scheme administrators to meet their information obligations when taxable lump sum death benefits are paid by pension schemes to trusts.

Registered pension schemes are generally exempt from income, capital gains and inheritance taxes. Whether they are liable to any of the other taxes will depend on whether they invest directly in property or equities, or whether they do so indirectly, for example through unit-linked funds. If trustees are unsure about whether their scheme incurs any of the taxes listed they should check with their investment advisers or managers.

Second attempt at AE technical changes for 'post-staging employers'

The Department for Work and Pension (DWP) has amended Regulations made in March 2017, regarding the triggering of auto-enrolment duties for 'post-staging employers', to ensure that they work as intended.[26]

In February 2017, the Department for Work and Pensions (DWP) published draft Amendment Regulations intended to alter the timing of auto-enrolment for 'post-staging employers' (i.e. businesses that are so new as to fall outside of the staged introduction of the auto-enrolment obligation).[27] Those Regulations came into force on 1 April 2017, and provided for new employers after 1 April 2017 to have their auto-enrolment duties triggered on the date the employer employs its first worker.[28]

The Regulations also introduced provisions to allow post-staging employers to have the option of postponing auto-enrolment for up to three months, in line with the postponement facility that was available to employers who were subject to the staging timetable.

The latest Amendment Regulations contain technical changes to ensure that the new provisions give effect to the original policy intentions.

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[24] *The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (SI 2017 No. 692).
[25] See *Current Issues July 2017* for more information, <www.hymans.co.uk/news-and-insights/research-and-publications/publication/current-issues-july-2017/>.
[26] *The Employers' Duties (Miscellaneous Amendments) Regulations 2017*, (SI 2017 No. 868).
[27] See *Current Issues March 2017* for more details, <www.hymans.co.uk/news-and-insights/research-and-publications/publication/current-issues-march-2017/>.
[28] *The Employers' Duties (Implementation) (Amendment) Regulations 2017*, (SI 2017 No. 347).

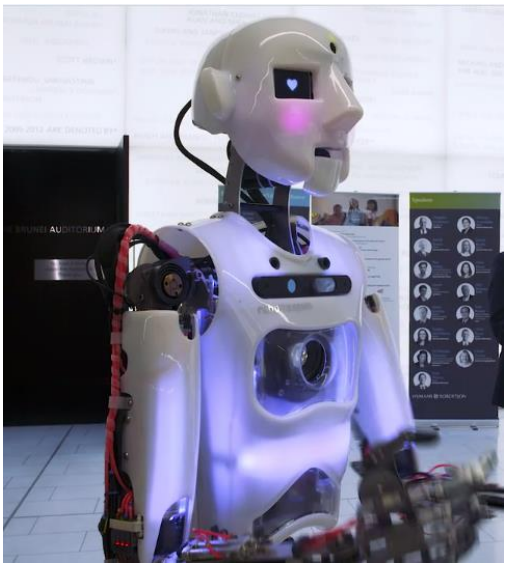
And Finally…

AF was highly amused to see one of his colleagues described thus at the end of a recent blog post:[29]

Barry McKay is a partner and actuary with Humans Robertson.

So far as we can tell, Barry is not a cybernetic organism.

Given the long-standing—entirely inaccurate—stereotypes about actuarial personality traits, it may have been a Freudian slip. On the other hand, maybe it had something to do with our *Better Futures* conference[30], which posed questions such as, '*Are robots really going to steal your job?*', and at which delegates were greeted by this chap:



This is Boris. Any resemblance to an actual living person is purely coincidental.

[29] <www.room151.co.uk/blogs/lgps-a-success-story/>.
[30] <https://vimeo.com/234843749>.