Pensions monthly update – keeping you on track

October 2012

Pension briefing

HIGHLIGHTS

Hogan Lovells pension group is delighted to send you our news Alerter for October, setting out developments over the last month.

Our Pension Planner gives a comprehensive overview of legal developments in the previous 12 months and expected future changes. For the October issue, please click on the link in the email Alerter.

RECORD-KEEPING – UPCOMING DEADLINE

The Pensions Regulator's deadline of 31 December 2012 for trustees and administrators to meet its record-keeping targets is fast approaching. It expects all schemes to have 100% of new common data (created from June 2010) and 95% of legacy common data (created prior to June 2010) in place by the end of this year. (Common data is information such as National Insurance number, date of birth and address which all schemes are expected to have in place in respect of all members.) The Regulator has issued a reminder, making clear that schemes which anticipate significant difficulties in meeting the targets are expected to approach the Regulator.

DATES FOR YOUR DIARY

23 January 2013 – Recent developments in pensions

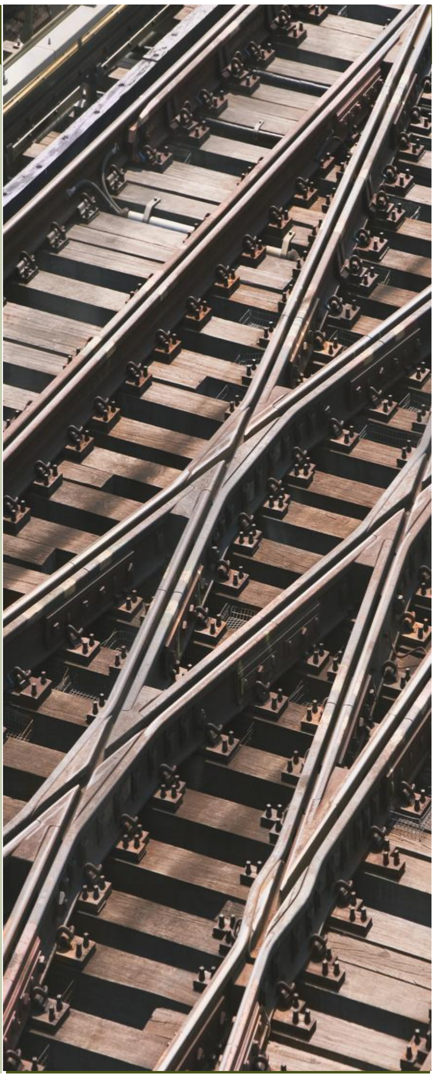
Our regular informal breakfast seminar aimed at trustees and sponsors of occupational pension schemes and their advisers. Speakers from the Hogan Lovells pension team will review legal developments over the past six months and will explain the practical implications for pension schemes. To pre-book a place please click on the link in the email Alerter.

Please note that this seminar was originally planned for 9 November 2012 and has been postponed.

20 March 2013 - Trustee training

A half-day seminar aimed at trustees with some experience or who have attended our one day introductory course (or similar training). Focusing on the trustee's perspective, we will consider developments in the past year and will look ahead at what we can expect in the coming year. To pre-book a place please click on the link in the email Alerter.

For our programme of pension seminars planned for the first half of 2013, please click on the link in the email Alerter.



FROM THE PENSIONS REGULATOR

Defined benefit funding regime

The Pensions Regulator has published a report examining how some of the flexibilities in the defined benefit funding regime have been used by schemes and employers. Schemes that have gone through two scheme specific funding valuation cycles have on average extended recovery plans by 4.2 years from the original end date. Recovery plans for schemes in the current valuation round are expected to increase by an average of three years.

Reporting late payment of contributions

The Pensions Regulator is consulting on amendments to its Codes of Practice on reporting late payment of contributions to occupational defined contribution and personal pension schemes. In particular, trustees or managers will be expected to report material payment failures:

- to the Regulator where contributions have been outstanding for 120 days (increased from 90 days in the current Codes);
- to members at the same time as they report to the Regulator.

Common data FAQs

The Pensions Regulator has issued frequently asked questions in relation to common data. The FAQs clarify that "new data" created after June 2010 is taken to mean any new records made after that date, regardless of whether the member joined the scheme before or after June 2010.

FROM THE DWP

Bridging pensions: modification power

The DWP has issued draft regulations to address some issues with bridging pensions arising from the increase in State pension age. Trustees will have power, subject to the employer's consent, to:

- extend the period for which a bridging pension may be paid to the date the member becomes entitled to State pension; or
- reduce the period for which a bridging pension is payable to reaching age 65 (men) or 60 (women).

Tax changes in relation to bridging pensions are expected in the Finance Bill 2013.

Stakeholder pensions: abolition of designation requirement

The requirement on employers to designate a stakeholder scheme for their employees in certain circumstances was abolished on 1 October 2012. Transitional protections require that, where an employer is already deducting contributions from an employee's pay and paying them to a stakeholder scheme, the employer must continue to do so.

CPI/RPI

Office for National Statistics: RPI calculation change

The Office for National Statistics (ONS) is consulting on possible changes to the calculation of RPI, aimed at addressing the differences between RPI and CPI. In particular, the ONS is concerned with different formulae used to calculate average prices where there is no information about precise expenditure (the "formula effect"). Four options are being considered, including making no change.

Pension sharing on divorce

The DWP has issued draft regulations to make various consequential amendments following the switch from RPI to CPI as the Government's preferred measure of price inflation. The regulations will align the requirements for increasing pension credit benefits (which can arise following pension sharing on divorce) in payment with indexation requirements for mainstream benefits.

FROM THE PENSION PROTECTION FUND

2013/14 Levy

The PPF is consulting on the 2013/14 Pension Protection Levy. Points to note include:

- The levy estimate for 2013/14 has been set at £630 million (compared to £550 million for 2012/13).
- The Levy Scaling Factor will be reduced from 0.89 to 0.73, meaning that fewer schemes will have their levy capped.

In relation to contingent assets:

- For Type C contingent assets (letters of credit or bank guarantees), the requirement for the credit rating of the institution granting the credit or guarantee will be reduced.
- The impact of the new requirement in respect of Type A contingent assets (group company guarantees) that trustees certify that they have no reason to believe that each certified guarantor could not meet its obligation under the contingent asset has been greater than expected. The PPF plans to revise its contingent assets guidance to clarify further what is expected of trustees in certifying a contingent asset.

Funding determination statement

The PPF has issued a statement giving guidance on how it will make funding determinations in relation to schemes in an assessment period as an alternative to seeking a full valuation under section 143 Pensions Act 2004.

- Where the PPF considers that a scheme is significantly overfunded or underfunded, it will seek to make a funding determination rather than seek a section 143 valuation. A funding determination is intended to establish whether the scheme has sufficient funds, at the relevant time, to pay at least PPF levels of compensation.
- Where the PPF decides to make a funding determination, the trustees must provide an estimate of the scheme's assets and protected liabilities, signed off by a Fellow of the Institute and Faculty of Actuaries.

FROM THE TAXMAN

US Tax – Foreign Account Tax Compliance Act (FATCA)

Following concerns about a new US withholding tax expected to apply from 1 January 2013 to payments from US companies to overseas entities, the UK and US governments have signed the "International Agreement to Improve Tax Compliance and to Implement FATCA". Under the Agreement, affected UK financial institutions will have to report information to HMRC, rather than to the US authorities as had previously been proposed.

HMRC has issued a consultation paper on the implementation of the Agreement. There had been concern that UK pension schemes would be adversely affected by the FATCA requirements. However, various exemptions mean that registered pension schemes and certain investments held by UK pension schemes will fall outside the scope of FATCA.

Flexible drawdown and temporary non-residence

HMRC has updated the Employment Income Manual to cover the tax treatment of income from flexible drawdown while the individual is temporarily non-resident in the UK. Individuals who receive benefits from a flexible drawdown arrangement while non-resident in the UK for tax purposes will be subject to income tax on those benefits in the year in which they return to the UK, if they have been non-tax resident for fewer than five years and certain other conditions apply.

PUBLIC SECTOR PENSIONS

Public Service Pensions Bill

The Public Service Pensions Bill has been issued, intended to implement reforms agreed with the Local Government Association and trade unions following the Hutton Report into public sector pensions issued in March 2011. The Bill will:

- enable the creation of new career average public service pension schemes;
- close various existing public sector schemes to future accrual;
- link normal pension age for new public sector schemes to State pension age or 65, if higher, except for firefighters, the police and armed forces.

FROM THE COURTS

Equalisation of retirement ages

The High Court has considered the meaning of a contractual promise relating to the equalisation of the scheme's normal retirement date, contained in a letter from the employer to each of a group of female members ("Special Members") stating that:

> " *… should [name] still elect to retire at her previous retirement age of 60, the Company shall provide a pension at age 60 equivalent to that which would have been available prior to the Pension Scheme changes …*"

The Court held that:

- The enhanced benefits provided for in the letter were only available to a Special Member who retires on or after her 60th birthday but before her 61st birthday.
- The words "elect to retire" meant that the enhanced benefits were available only to a Special Member

who leaves service with the relevant group company and takes an immediate pension.

(*In the matter of Sea Containers Services Limited (in liquidation) and others*)

FROM THE PENSIONS OMBUDSMAN

Member liable for overpayments for failing to notify scheme of re-employment

The member was awarded an early retirement pension from the Teachers' Pension Scheme (TPS). Any subsequent teaching employment could result in his pension being reduced and he was required to submit an annual certificate of re-employment to the scheme.

The member did not submit all the certificates as agreed and subsequently argued that he should not be required to repay ten years of pension overpayments because the scheme should have been aware of his re-employment. The Ombudsman dismissed this argument and held that it was the member's responsibility to inform TPS in the proper manner of his re-employment and, as this was the main cause of the build-up of overpayments, he would remain liable. (*Fitzgerald*)

Trustees not required to improve benefit option chosen by fully informed member

A member argued that the terms of a bridging pension option, which he had chosen on his retirement at age 55, had not been properly explained to him prior to his election and should have been reviewed at a later date. The bridging pension provided the member with an uplift to his pension of £1,170 pa until State pension age (SPA), followed by a reduction of £2,734 pa.

The Ombudsman dismissed the complaint. On more than one occasion before the member made his election, it had been made clear to him that the reduction after SPA would be permanent. Although, at age 76, the member had lost a far greater amount in pension reductions than he had gained from the uplift prior to SPA, there was nothing that said that the bridging pension option would be cost neutral to the individual member. (*Squibbs*)

RPI/CPI switch – no maladministration

The Pensions Ombudsman has dismissed the complaint of a member who stated that, in volunteering for the employer's early leaver scheme, he had relied to his detriment upon the belief that his pension would be revalued in line with RPI. The Ombudsman did not accept that the member's decision would have been different had he known that revaluation would not always be linked to RPI. His redundancy payment was significant and was likely to have been far more influential on his decision. (*Stradwick*)

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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