Baker McKenzie.

Pensions Update

June 2017

In This Issue

Pensions Disputes News

Stop Press

General Election 2017 and the Queen's Speech

Following the General Election, it has been announced that David Guake, who was previously Chief Secretary to the Treasury, has become the new Secretary of State for Work and Pensions. He replaces Damian Green who has been promoted to First Secretary of State. Richard Harrington has also been replaced by Guy Opperman as the Minister for Pensions.

While a number of proposed pensions provisions that were dropped from the Finance Bill are likely to be swiftly restored following the election, it is unclear to what extent the Government will commit to further pensions reform, particularly in relation to the replacement of the pension triple-lock with a double-lock, and the bolstering of the Pension Regulator's powers (both of which were set out in the Conservative Manifesto 2017).

Indeed, the Queen's Speech on 21 June was dominated by Brexit Bills and was the quietest on pensions for many years. **One notable announcement, however, was the Financial Guidance and Claims Bill which will combine three financial advice bodies (the Money Advice Service, The**

Pensions Advisory Service and Pension Wise). This new statutory body, accountable to Parliament, will have responsibility for coordinating the provision of debt advice, money guidance, and pension guidance.

DB Green Paper Survey: shaping the pensions debate

The Pensions Regulator (the "Regulator") has published its response to the Green Paper on the security and sustainability of defined benefit pensions. In its response, the Regulator comments that extending its influence over scheme funding (for example, by giving it the power to set out clearer definitions and parameters in relation to funding strategies and recovery plans), and an enhancement of its information gathering powers, would be beneficial and aid the implementation of its 2017 Corporate Plan.

The Regulator has also said that it is "*open to proposals*" that would strengthen its anti-avoidance powers in certain circumstances (such as where the Regulator feels a corporate transaction may have a negative impact on a scheme), and that it thinks there may be value in in exploring the Green Paper's suggestion of a tougher fining system.

More generally, the Regulator has said that there could "be a case for treating schemes whose sponsoring employer can afford to make higher contributions differently to those where the employer is under financial constraint".

The Regulator's full response can be found here.

The House of Commons Library has published a briefing paper which reviews the Regulator's powers, and specifically looks at the rationale for the introduction of new anti-avoidance powers, how existing powers have been used in practice, and whether changes are needed. The paper summarises a number of cases where the Regulator has used its powers, but also notes that some have argued that the Regulator is not making enough use of the powers it already has.

The briefing paper is available here.

Baker McKenzie has also surveyed pension professionals on some of the key questions which were asked in the Green Paper consultation, to ensure that we can best represent the views of trustees, intermediaries and other pensions stakeholders. These results helped shape our own response to the Department for Work and Pensions.

Click here to see our infographic showing the results.

Ongoing Brexit Uncertainty - Employment Survey Says…

Throughout May, colleagues in our Employment team surveyed 250 people, educated at degree level or higher. They asked how the referendum result is affecting their lives and what impact that may have on the employer community. The results were striking and offer some valuable insight for employers who rely on EU workers in the UK. Click here to see the infographic and here for a more detailed summary of the findings.

Pension Protection Fund publishes Strategic Plan

On 15 June, the Pension Protection Fund (the "PPF") published its Strategic Plan setting out its vision for 2017 to 2020.

The Strategic Plan provides details of the projected future position of the PPF. It notes that membership of the PPF is expected to grow from 225,000 to 300,000 by 2020, and that its assets are likely to increase to £32 billion over the same time period to enable it to pay appropriate levels of compensation to its members.

While acknowledging that there remains a great deal of uncertainty in its operating environment, given "*a number of major uncertainties facing world markets*", the PPF says that it is "*confident*" its funding position and investment strategy put it in a "*good position to confront future challenges*".

The Strategic Plan also discusses the PPF's responsibility for the Fraud Compensation Fund which protects pension scheme members who have suffered loss to their work-based pensions as a result of dishonesty. Our May 2017 Update reported on the PPF's decision to raise a fraud compensation levy in 2017/18.

To access a copy of the Strategic Plan please click here.

Pensions Regulator approves deal on Hoover restructuring

The Regulator has approved a proposal by Hoover Limited, the sponsoring employer of the Hoover Pension Scheme, to carry out a restructuring of the Scheme known as a Regulated Apportionment Arrangement ("RAA").

The RAA, which is only available where a scheme's employer would otherwise have become insolvent within 12 months, required a £60 million payment into the Scheme, a 33% shareholding for the Scheme in Hoover Limited and full payment of the trustees' expenses in negotiating the RAA. In exchange, the Scheme was allowed pass into the PPF, and Hoover Limited was able to continue trading. As part of the deal, Candy Group (which owns Hoover Limited, but has no legal obligation to provide support to the Scheme) agreed to write off debt owed to it by Hoover Limited.

The deal was important for another reason, because it is the first ever time that the Regulator has appointed a relevant "skilled person" under Section 71 of the Pensions Act 2004. Hoover Limited and the Scheme trustees had previously become deadlocked in funding negotiations and it was only after the appointment of a skilled person, to provide a report on the level of funding that the employer could afford, that negotiations were resumed and the RAA terms agreed.

Such restructurings are rare, and the Regulator has commented that it will "*rigorously scrutinise any RAA proposal*", only providing its approval where published criteria are met, and the Regulator deems it "*reasonable to do so*".

Companies with significant pension liabilities relative to their own size should be aware of the circumstances in which an RAA might be agreed, so that this option can explored with trustees prior to any potential insolvency.

The Regulator has issued a press release, and a Regulatory Intervention Report, in relation to the RAA.

Pensions Regulator publishes review of DB Pension Schemes

The Regulator has published an analysis of the expected position of DB pensions schemes with valuation dates between September 2016 to September 2017. The Regulator has commented that "*the majority of defined benefit pension schemes remain affordable but many should do more to tackle increased deficits and reduce risk to pensioners*".

The Regulator has identified that, for the majority of schemes, the value of their liabilities is likely to have grown by more than their assets since their last valuation, as a result of "*challenging market conditions*". This is despite the fact that most major asset classes have performed well since these schemes' last valuation dates.

The Regulator found that around 50% of the scheme employers assessed have the strength to maintain their current pace of funding, with many also able to increase their contributions if circumstances require it. An additional 37% have an employer covenant which the Regulator considers adequate to support the scheme. However "*their current contribution and/or risk strategies pose unnecessary longer term risks*". The Regulator has advised such companies that these risks could be addressed by increased funding at an early stage.

A press release has been issued on the Regulator's analysis which can be accessed by clicking here.

Pensions Regulator carries out spot checks in Manchester

The Regulator has carried out dozens of spot checks on businesses in the Greater Manchester area to ensure that qualifying staff are being adequately auto-enrolled. The spot checks are a continuation of an effort, begun in London, that will expand in other locations across the UK in the coming weeks.

In a Press Release, the Regulator has said that the checks have the additional benefit of helping it "*understand whether employers are facing any unnecessary challenges that we can help them with, such as by improving our guidance*".

Darren Ryder, TPR's Acting Director of Automatic Enrolment, has also commented that "*the vast majority of employers become compliant ahead of their deadline but visits help us to identify why some have not, so we can take action where we need to*".

Breakfast Briefing: 5 July 2017

Our next Breakfast Briefing on developments in pensions law is taking place on 5 July (from 8:30 to 10:00 am). Topics covered in this session will include:

- RPI/CPI - the latest developments
- The BA case and trustees' powers

If you would like to come along and have not yet registered to attend, please contact karis.berthier@bakermckenzie.com.

Pensions Disputes News

High Court to rebrand

From 4 July 2017, a number of the specialist jurisdictions of the High Court will collectively become known as the Business and Property Courts of England and Wales (the "B&PCs"). The specialist courts and lists affected by the rebranding are as follows:

- the Commercial Court (including the Admiralty Court and Mercantile Court);
- the Technology and Construction Court; and
- the courts of the Chancery Division.

While little will change in terms of practicality, it should be noted that pensions cases will, going forward, be assigned to the newly established Business List (not the Trusts and Probate List).

In a statement, the Chancellor of the High Court and the President of the Queen's Bench Division explained that this rebranding will allow legal service providers to "*convey to international and domestic clients an all-encompassing picture of the courts' offering*", and will facilitate flexible cross-deployment of judges with suitable expertise and experience. Another advantage is that the umbrella term, B&PCs, will be "*intelligible and user-friendly*".

Our Pensions Disputes Group previously reported on changes to the High Court Chancery Guide, which were summarised in the January 2017 Update.

Pensions Ombudsman finds no wrongdoing in decision not to offer a Pension Increase Exchange option to certain members

In the case of Mr. S (PO-14680), the Pensions Ombudsman ("PO") did not uphold a member complaint that British American Tobacco ("BAT") had discriminated against a member by not offering him a Pension Increase Exchange ("PIE") option.

A PIE option, which was set up so that certain members of the British American Tobacco UK Pension Fund (the "BAT Fund") could benefit from an initial increase in their pension in exchange for a reduction in future pension increases, was not made available to the member in question. The reasons this option was not available to the member included the fact that the potential uplift to the member's benefits would have been insufficient, and that some of the member's pension was derived from a Lichtenstein based pension fund.

The member said it was "unethical" to only offer the PIE option to pensioners with higher pensions, and that people with the smaller pensions should be treated the same. The member also questioned why members of the Lichtenstein fund were not receiving the PIE option.

The PO determined that, having sought independent financial advice which concluded that it would not be beneficial to offer a PIE option to UK scheme members with a lower income, BAT was having regard to its own financial interests, which it was entitled to do. Furthermore, the member had not been caused any financial injustice since other options were available to him (indeed, BAT had previously informed the member that he had the opportunity to take his benefits as a one off lump sum under the trivial commutation rules).

Finally, the PO noted that the Lichtenstein based pension fund was not governed by UK law and regulations, and therefore does not fall within his remit.

While this will be a reassuring decision for companies seeking to reduce pension risk by offering a PIE option to members, it highlights the importance of the company taking a considered approach, backed up by sound financial advice.

The full determination can be accessed here.

British Airways granted leave to appeal to Court of Appeal

Having lost its High Court challenge against the Trustee's decision to grant discretionary pension increases (reported in our May 2017 Update), British Airways ("BA") has been granted leave to appeal. BA was also granted an injunction to block the Trustee from paying the proposed 0.2% pension increase until after the appeal.

Buckinghamshire v. Barnardo's granted leave to appeal to Supreme Court

Buckinghamshire v Barnardo's, another case concerning pension increases (which we reported on in our November 2016 Update), will be appealed to the Supreme Court.

As this case concerns whether the trustees have the power under their rules to choose the index by which pensions in payment are increased and deferred pensions revalued, it will be of relevance to both trustees and employers.

Stop Press

New money laundering legislation comes into force

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force on 26 June 2017 (the "2017 Regulations").

The 2017 Regulations replace the Money Laundering Regulations 2007 and the Transfer of Funds (Information on the Payer) Regulations 2007 (together the "2007 Regulations") with updated provisions that implement the Fourth Money Laundering Directive. Many of the provisions of the 2007 Regulations are retained in the 2017 Regulations. There are also some additional provisions, some of which will be relevant to trustees of occupational pension schemes. We will report on this in more detail in a future update. The Regulations can be viewed here.

Contact us

If you wish to discuss any of these issues further, please contact your usual Baker McKenzie lawyer.

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