

In This Issue

Market Investigation into Investment Consultancy and Fiduciary Management Services: Issues Statement published

Joint guide for employers and pension trustees on helping employees with financial matters

FCA publishes policy statement on standardising disclosure of transaction costs in workplace pensions

The Pensions Regulator's 21st Century Trusteeship campaign

Pensions Regulator to prosecute company for auto-enrolment failure

The Pension Protection Fund - Levy Estimate 2018/19 published with consultation on draft Levy rules

Change in VAT treatment for insurers' pension fund management

Pensions Disputes news

Court of Appeal rules on equalisation - Safeway Ltd v Newton

Market Investigation into Investment Consultancy and Fiduciary Management Services: Issues Statement published

The Competition and Markets Authority (the "CMA") published its Issues Statement in Market Investigation into Investment Consultancy and Fiduciary Management Services. This sets out the scope of the investigation and outlines initial theories on what might be adversely affecting competition and identifies possible remedies.

The Statement follows the decision by the Financial Conduct Authority (the "FCA") to refer the industry to the CMA as part of its ongoing investigation into investment consultancy market. We covered the decision to make the referral to the CMA in our September [Update](#).

The Statement can be found [here](#).

Joint guide for employers and pension trustees on helping employees with financial matters

The FCA and Pensions Regulator (the "Regulator") published a joint guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation.

The guide takes the form of a factsheet and provides a non-exhaustive explanation of the type of assistance that employers and pension trustees can provide without needing to be authorised by the FCA. It also outlines the type of advice an employer or trustee should not give, as well as the type of general information and support that would be acceptable. Helpful resources are signposted in the factsheet and practical examples are also given that consider the provision of information by trustees of an occupational pension scheme, and the provision of factual information at an employer-sponsored retirement seminar for employees.

For trustees or employers who would like to provide guidance to their employees in this important area, this guide provides a clear statement of what the FCA and Regulator view as being possible without the need to be authorised by the FCA.

The guide can be found [here](#).

FCA publishes policy statement on standardising disclosure of transaction costs in workplace pensions

The FCA's policy statement requires greater transaction cost disclosure for workplace pensions. From 3 January 2018, firms managing money on behalf of defined contribution workplace schemes will have to disclose, when requested, administration charges, transaction costs and appropriate contextual information to the governance bodies of those schemes using a standard approach.

Transaction costs will be calculated according to the 'slippage cost' methodology. This methodology accounts for the difference between the price of an asset when a trade is executed and the price at the time the trade order was placed. The methodology identifies the loss in value that occurs when a transaction takes place.

The FCA has said that *"the purpose of making these rules is to enable the governance bodies of certain pension schemes to obtain information about the transaction costs relevant to their scheme. This is because existing rules and regulations require them to assess transaction costs."*

The intention is to benefit members of defined contribution workplace pension schemes by enabling trustees and other governance bodies of these schemes to compare more easily the real costs of different investments with a view to ensuring that they are getting best value for money. *The policy should help governance bodies as they currently face challenges meeting their legal obligations in relation to the assessment of transaction costs.*

The statement can be found [here](#).

The Pensions Regulator's 21st Century Trusteeship campaign

The new 21st Century Trusteeship campaign has been launched by the Regulator which aims to raise governance standards across pension schemes. As part of this initiative the Regulator will send targeted emails to trustees and scheme managers, employers and advisers directing them to a new web page where specific governance standards are set out. The website will also contain supporting resources and guidance, including guidance within the Regulator's codes of practice, to help Trustees meet the governance standards.

The Regulator's statement on the launch can be found by clicking [here](#).

Pensions Regulator to prosecute company for auto-enrolment failure

The Regulator is prosecuting Stotts Tours, a bus company from Oldham, for not putting staff into a workplace pension. The business, as well as its director, Alan Stott, will be prosecuted. This is the Regulator's first prosecution which comes five years after the launch of auto-enrolment.

Stotts Tours has been accused of failing to comply with auto-enrolment obligations relating to 36 members of its staff. Alan Stott has been accused of consenting or conniving in the offence, or allowing the offence to be committed by neglect. They will face eight charges of wilfully failing to comply with the company's duties under the Pensions Act 2008.

This shows that the Regulator is prepared not only to issue fines in relation to failure to comply with auto-enrolment requirements but also to prosecute.

The Pension Protection Fund - Levy Estimate 2018/19 published with consultation on draft Levy rules

The Pension Protection Fund (PPF) has confirmed that it will proceed with changes to its levy calculations and aims to reduce the 2018/19 levy by over 10%, to £550 million. The PPF has stated that it expects one in five schemes to see an increase to their levy payments, with most schemes benefiting from a reduction.

Alongside this announcement, the PPF confirmed that it will implement the majority of proposals it consulted on in March 2017 for the third levy triennium with limited changes. It is now seeking views on some additional proposals, including improvements to its assessment of scheme underfunding.

The PPF is also considering changes which will be relevant to schemes that have guarantees in place which act as contingent assets and are currently taken into account by the PPF for levy reduction purposes. The PPF is proposing changes to its standard guarantee documents in order to address issues with the interpretation of fixed guarantee caps, and is likely to require existing guarantees to be amended or re-executed accordingly. Although the PPF has confirmed that there is no requirement to amend and re-execute existing contingent assets for the 2018/19 levy year it does seem that this will be implemented next year. As such, it is consulting further on amended standard forms for both new contingent asset arrangements entered into for 2018/19 and for existing contingent assets which are likely to need to meet the new requirements for 2019/20.

The consultation closes on 1 November 2017 and can be found [here](#). The PPF expects to publish the final levy rules for 2018/19 in December 2017.

Change in VAT treatment for insurers' pension fund management

A change in the VAT treatment of pension fund management by regulated insurance companies has been confirmed in a briefing issued by HMRC. *This is likely to cause a significant increase in fund management costs for affected defined benefit pension schemes.*

Until now, fund management services provided to pension schemes by regulated insurance companies have been exempt from VAT. However, the briefing announces that, with effect from 1 January 2018, this exemption will be discontinued, with the result that regulated insurance providers will be required to charge VAT on the pension fund management services that they provide.

Although it is clear that defined benefit pension schemes may be impacted by this, there is a separate VAT exemption for fund management services provided to "special investment funds" ("SIFs"). A case at the Court of Justice of the European Union, confirmed that DC pension schemes are SIFs. This means that fund management services provided to DC pension schemes are exempt from VAT, and this exemption will not be affected by the change of policy announced in the briefing.

The briefing can be found [here](#).

Pensions Disputes News

Court of Appeal rules on equalisation - Safeway Ltd v Newton

This case involves the analysis of the Safeway Pension Scheme's power of amendment and its impact on a historic equalisation exercise. The power stated that amendments had to be made by deed and written notice or the date of the amending deed.

Steps were taken in the 1990s to try to equalise the Scheme. An announcement from the employer and trustee was sent on 1 September 1991 and announced the introduction of an equal normal pension age of 65 for men and women with effect from 1 December 1991. The Scheme was then administered on this basis. A deed of amendment to recognise this approach formally was entered into on 2 May 1996.

The Court of Appeal ruled that equalisation could only be achieved by a deed of amendment - this followed the approach taken by the High Court. *This is a useful reminder that care must always be taken to comply with the exact mechanics of a pension scheme's power of amendment when making any changes.*

The Court of Appeal also looked at the separate issue of whether the 1996 deed of amendment was effective insofar as it purported to equalise retirement ages retrospectively from 1 December 1991. The High Court had followed a principle of European law which appeared to prevent retrospective levelling up of pension ages in order to equalise normal pension ages even where the Scheme's power of amendment expressly allowed changes to be made retrospectively. This question has been referred to the Court of Justice of the European Union as the Court of Appeal held that the law in this area was not sufficiently clear for them to rule on. We will have to wait and see what the Court of Justice of the European Union rules in this regard.

However, it is worth noting that the ability to amend a pension scheme retrospectively in a way which would or might affect accrued rights or entitlements has been restricted to a considerable degree since 6 April 1997 by the introduction of Section 67 of the Pensions Act 1997. *Given this restriction, the impact of the Court of Justice of the European Union's ruling in relation to this is likely to be restricted to pension schemes that have the ability to amend retrospectively and did so before 6 April 1997 in circumstances similar to the Safeway case. Nevertheless for schemes in this category, the outcome could be highly material.*

Contact us

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

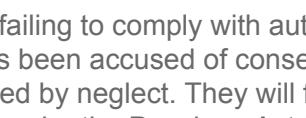
Jeanette Holland

Robert West

Arron Slocum

Chantal Thompson

Editor: Tracey Akerman



Disclaimer - This newsletter is for information purposes only. Its contents do not constitute legal advice and should not be regarded as a substitute for detailed advice in individual cases.

Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner or the equivalent in such a law firm. Similarly, reference to an "office" means an office of such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2017 Baker & McKenzie International. All rights reserved. Baker & McKenzie International is not a law firm.