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Trustees - are you ready for the GDPR?

Our data protection team has published an article setting out some key steps that trustees should be taking to prepare for compliance with the General Data Protection Regulation. You can find this by clicking [here](#).

Advice on transfers of safeguarded benefits to DC

With effect from 6 April 2018, new regulations will amend the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 *to simplify the calculation of a member's safeguarded benefits for the purpose of establishing whether the member requires independent financial advice before transferring safeguarded benefits to a DC pension arrangement.*

A member will not be required to obtain advice where the "transfer value" of the member's safeguarded benefits under the scheme is £30,000 or less. Further information can be found [here](#).

DWP consulting on regulations to ease the transfer of contracted-out benefits on a without consent transfer

Currently, it is not possible to undertake a without consent transfer of contracted-out benefits to a scheme which has never been contracted-out. This has caused problems for some schemes seeking to transfer benefits since the abolition of contracting-out in 2016.

The DWP published a consultation on 21 December 2017 relating to the introduction of new regulations to amend the current legislation to permit a without consent transfer of guaranteed minimum pensions and section 9(2B) rights to schemes that have never been contracted-out, subject to certain requirements being met.

The draft Regulations are due to come into force on 6 April 2018. The consultation can be read [here](#).

PPF publishes new template contingent asset agreements and guidance

Following the end of its consultation last year, the PPF has now published new standard forms and guidance for any new guarantees or other contingent assets arrangements agreed after 18 January 2018.

One new requirement introduced by the changes is that in cases where the contingent asset results in a levy reduction of £100,000 or more, the scheme will need to submit a guarantor strength report from 2018/19 before certification and re-certification of a Type A contingent asset.

As set out in the consultation, any existing arrangements can be recertified for the 2018/19 levy year without moving to the new template forms. However, it is expected that some existing arrangements (including Type A and B contingent assets with a fixed cap) will need to be moved to the new templates for recertification for the year 2019/20 onwards.

The PPF news release (with links to the new template forms and guidance) can be found [here](#).

Interim response to Law Commission's report on social investment has been published

Last Summer, the Law Commission published a report considering whether pension funds could be used for social impact investment. The Law Commission concluded that there were no substantive regulatory barriers to making social impact investments.

The Government has now published an interim response to the Law Commission's report, in which it welcomes the Law Commission's findings and outlines its intention to consult on some of the recommendations put forward in the report, including the following:

- the introduction of a requirement for trustees to provide a statement (potentially in the Statement of Investment Principles ("**SIP**") of their policy on evaluating long-term risks and consideration of members' ethical and other non-financial concerns; and
- the introduction of a requirement for trustees to include in the SIP the trustees' policy on stewardship.

The interim response confirms that the Financial Conduct Authority ("**FCA**") is also considering some of the recommendations made which impact contract based pension arrangements, including the consideration of further guidance for pension providers on financial and non-financial factors.

The interim response can be read [here](#).

Consultation on mandatory standards for professional trustees has been launched

The Professional Trustee Standards Working Group ("PTSWG"), an industry body, is consulting on draft standards prepared for professional trustees of occupational pension schemes. The draft standards are intended to improve the quality of professional trustees and will apply to anyone falling within the Pension Regulator's description of a professional trustee as set out in its policy document published in August 2017.

The standards cover areas such as fitness and propriety, integrity and impartiality/conflicts of interest, and can be read in full [here](#). The standards would apply on a "comply or explain" basis and professional trustees would be expected to explain how each standard is met and why any particular standard has not been met. The standards would not have legislative backing, but it is understood that the Pensions Regulator may take them into account as an indicator of the fitness and propriety of a trustee (for example, in the context of DC asset trusts).

The consultation is due to close on 2 March 2018 with the standards expected to come into force from April /May 2018. The consultation paper can be read [here](#).

Pensions Disputes News

ICO rules that Pensions Regulator entitled to withhold information following a freedom of information request

The ICO has published its decision in response to a complaint that the Pensions Regulator has refused to provide information under a freedom of information request.

The complainant had requested information regarding any proceedings or actions taken by the Regulator against a certain hotel relating to failures to comply with auto-enrolment requirements. The Regulator maintained that it could not confirm or deny whether it held the requested information, relying on an exemption under the Freedom of Information Act 2000 ("FOIA") which exempts the disclosure of information where disclosure is prohibited under any enactment. Under the Pensions Act 2004, the Regulator is not permitted to disclose "restricted information", which is any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person.

The ICO agreed with the Regulator that the exemption under the FOIA applied due to the prohibition under the Pensions Act 2004. The ICO's decision can be read [here](#).

Dominic Chappell found guilty of failing to comply with requests for information by the Pensions Regulator

Following the high profile administration of BHS, the Pensions Regulator has successfully prosecuted the former BHS owner Dominic Chappell for failure to respond to three Section 72 information notices from the Regulator.

The Regulator issued three separate notices to Mr Chappell on 26 April 2016, 13 May 2016 and 20 February 2017. The first two notices sought information relating to the purchase of BHS by Retail Acquisitions Ltd (of which Mr Chappell was a majority shareholder) and the third notice related to Mr Chappell's comments that the Regulator had made unauthorised disclosures of information.

Despite a number of reasons put forward as to why Mr Chappell failed to comply with the requests, the magistrate concluded that Mr Chappell had refused to provide the requested information in respect of all three notices and found him guilty of all charges.

The judgment can be read [here](#).

High Court finds that BT cannot switch from RPI

The High Court has handed down its judgment in the case of *British Telecommunications Plc v BT Pension Scheme Trustees Limited and Linda Bruce-Watt (Representative Beneficiary)*, finding that **the**

power for BT to switch the basis for increasing pensions in payment from RPI had not been triggered under the rules.

The trust deed and rules for Section C members of the BT Pension Scheme provide that, following consultation with the trustees, BT (as principal company) may substitute such other index or appropriate basis of comparison as it determined where the current index ceases to be published, or is so amended as to invalidate it (in the view of the principal company) as a continuous basis for the purposes of calculating increases.

The case turned on whether RPI had become "inappropriate" such that BT could switch away from RPI. BT argued that a number of factors (including the decision by UKSA in January 2013 to freeze RPI and the statement by the National Statistician in July 2017 that RPI is a flawed measure of inflation) supported its conclusion that RPI had become an inappropriate measure. However, the Court concluded that RPI had not at the current time become inappropriate for the purposes of uprating pensions, noting that RPI continued to be widely used for legacy purposes and that there are reasonable grounds to conclude that switching from RPI would lead to a material risk that increases in pensions would not keep pace with increases in the cost of living likely to be experienced by the relevant pensioners.

The judgment can be read [here](#).

£13.7m payout ordered in pensions liberation case

For the first time, the High Court has granted the Pensions Regulator a restitution order requiring individuals involved in the misuse and appropriation of pension scheme assets to compensate the members of the scheme.

The relevant events took place between November 2012 and September 2014 and involved the transfer of approximately 245 members' pension benefits. The members were led to believe that they would be paid an upfront cash lump sum and that their remaining pension pot would be reinvested in the receiving schemes to achieve a target return of 5% a year.

The four trustees have been ordered to repay the money taken from the pension scheme members, which the Pensions Regulator has reported amounts to £13.7m.

See [here](#) for the Pension Regulator's press release.

Contact us

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

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