Baker McKenzie.

Pensions Update

September 2017

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Finance Bill 2017-19 - Pensions advice allowance and reduction of money purchase annual allowance

The Finance Bill 2017-19 is progressing through the parliamentary process. From a pensions perspective, the provisions that were dropped ahead of the general election in June have been included in the Bill. These provisions include:

- **Pensions Advice Allowance** - there will be a new income tax exemption covering the first £500 of pensions advice provided to an employee (or former or prospective employee), which **will apply retrospectively from 6 April 2017**. Advice can cover pensions-related financial and tax advice as well as advice on pensions themselves. The Government's aim is to ensure that financial advice is affordable and accessible to consumers nearing retirement. The existing exemption of £150 per year, which is limited only to pensions advice, will be repealed when the Bill becomes law;

- **Money Purchase Annual Allowance** - the money purchase annual allowance will be reduced retrospectively from £10,000 to £4,000, **again from 6 April 2017**. This allowance applies to any future contributions by members who have already flexibly accessed their benefits in a registered pension scheme, and is designed to prevent "recycling" of benefits into further scheme contributions in order to obtain further tax relief.

The full text of the Bill can be found here, and explanatory notes can be found here.

Draft Finance Bill 2018 published

The draft Finance Bill 2018 has now been published. It contains provisions which would amend the

Finance Act 2004 in order to align tax registration of pension schemes (which is an HMRC function) with the Pensions Regulator's regime of authorising and supervising master trust schemes. It will also prevent pension schemes whose sponsoring employer is a dormant company being registered for tax purposes. The intention is to make the tax registration regime fairer and help to prevent fraud.

The full text of the draft Bill can be found here, and explanatory notes for the Bill can be found here.

Investment Consultants and Fiduciary Managers to be investigated

The FCA has confirmed that it will make a Market Investigation Reference to the Competition and Markets Authority in relation to investment consultancy and fiduciary management services. The FCA may make a reference such as this when it believes that it has reasonable grounds to suspect that features of a market prevent, restrict or distort competition. It has suggested that the investment consultancy and fiduciary management markets may have a weak demand side, as it believes that pension scheme trustees may have difficulty assessing the quality of the services provided, or comparing them with other options. This leads to low switching rates. The FCA also identified that the three largest firms (Aon Hewitt, Mercer and Willis Towers Watson) had a market share between 50 and 80%, and that barriers may exist which restrict new consultants from developing their business. "Vertical" business models were also identified as creating potential conflicts of interest.

The FCA declined to accept "undertakings in lieu" of a reference which were offered by the three largest firms in an attempt to address its concerns. The FCA decided that it could not be fully confident that the undertakings would be able to provide a comprehensive solution to the issues identified.

The FCA's final report, setting out its decision to make a Market Investigation Reference, can be found here.

Pensions Regulator announces results of DC and DB research

The Pensions Regulator has published a paper setting out its response to the results of two surveys it has commissioned, on DB and DC schemes, which took place in spring 2017. The surveys assessed how schemes were meeting expectations, and the Regulator reports that the majority of members are in well-run schemes. Generally, however, the larger schemes were found to have higher standards of governance and compliance, and the Regulator expressed disappointment at the "major gaps in the standards expected" which existed in small and medium sized schemes. The Regulator noted:

- these schemes tended to have poorer governance standards, and placed less focus on training, assessments, effective internal controls and oversight of third parties;
- many DC schemes did not meet standards for administration, investments and value for members; and
- risk issues remained for DB schemes, in particular around integrated risk management and fair treatment of the scheme.

The Regulator's response will be to make its expectations clearer to trustees, and to enforce against non-compliance. Anthony Raymond, Acting Executive Director for Regulatory Policy, said:

> ***"As part of our commitment to be a clearer, quicker and tougher regulator, we will be stepping up our regulatory action in cases where trustee boards fail to meet minimum legal standards, and we will publish the details of that action. We will also continue to examine whether sub-standard schemes should be consolidated with larger, well-run schemes."***

The Pensions Regulator's report can be found here.

DWP begins consultation on changes to PPF compensation for members with

bridging pensions

The DWP is consulting on new draft regulations which would change the PPF compensation level for members who have bridging pensions. **The regulations would enable the PPF to reflect the different rates payable to members who receive bridging pensions, or who would have been entitled to such pensions under their scheme's rules.**

The consultation document notes that there is currently an anomaly in relation to pensioner members which means that, where they are in receipt of a temporary bridging pension (a higher rate of pension than would normally apply after they reach State Pension Age) at the time their scheme enters the PPF, they remain entitled to that higher rate of pension for life. If their scheme had not entered the PPF, the bridging pension would have stopped at State Pension Age, so their overall pension would have fallen. The draft regulations would allow the PPF to reduce compensation payments for such members so that their compensation more closely reflects that to which they would have been entitled under the scheme rules. The consultation also notes that the Financial Assistance Scheme already takes this into account.

The consultation runs until 1 October 2017, and the consultation document can be found here, and the draft regulations can be found here.

Pension Scams - DWP issues consultation response

The DWP has published its response to its consultation on a number of measures aimed at addressing issues with pension scams. The response summarises the feedback which was received during the consultation, and sets out the next steps the government intends to take. These include:

- a ban on "cold calling", designed to restrict direct marketing activities relating to pensions so as to protect consumers from pension scams. The ban will include pension transfers and release of pension funds to be re-invested in inappropriate products. There will be exclusions for legitimate business. The ban will extend to all electronic communications about pensions, including texts and emails. The government intends to bring legislation forward when parliamentary time allows;

- action to help prevent transfers of money from occupational pension schemes to fraudulent schemes by limiting the statutory right to transfer. It is proposed that transfers would be limited to transfers to personal pension schemes operated by FCA authorised forms, transfers to authorised master trusts and transfers to occupational pension schemes where a genuine employment link to the receiving scheme could be evidenced. Transfers to QROPS may also be allowed. The government will finalise details of the proposed changes over the course of this year; and

- tightening HMRC rules to prevent fraudulent pension schemes being opened by ensuring that only active companies can register a pension scheme. This is intended to address issues with small self-administered schemes (SSAS). Legislation is being brought forward to implement this - see the item above on the draft Finance Bill 2018.

The response to consultation document can be found here.

Proposed merger of TPAS and the Pensions Ombudsman

The Pensions Advisory Service (TPAS) is to have its dispute resolution functions taken on by the Pensions Ombudsman, in an effort to improve customer experience and avoid duplication. The Pensions Ombudsman, Anthony Arter, said:

> *"We want to ensure there is minimal duplication so customers can have the most efficient and effective service possible. The customer journey must also be clear, with customers – applicants and respondents – knowing who to approach and when."*

The proposal is currently under consultation, and the move is expected to take place before the end of the year. Separately, TPAS will be merging with Pension Wise and the Money Advice Service in order to form a consolidated body for providing financial guidance.

Pensions Regulator issues Nortel case report

The Pensions Regulator has published a report on the use of anti-avoidance powers in relation to the Nortel Networks UK Pension Plan, which has nearly 31,000 deferred and pensioner members. Payments to that plan have now begun following a settlement agreement which became effective earlier this year, following a number of years of litigation over how funds raised from the sale of Nortel's assets following the group's insolvency in 2009 should be allocated.

The Regulator determined in 2010 that Financial Support Directions should be issued to Nortel group companies, and continued the case up until settlement was reached. The settlement involves more than £1 billion being paid into the UK Plan, which is expected to be sufficient for the trustees to provide benefits outside the Pension Protection Fund. Following the settlement agreement being reached, the Regulator concluded that it would no longer be reasonable to use its anti-avoidance powers, and the case has now ceased.

The Regulator commented that the agreement has ended a period of uncertainty for the members of the Plan, and also minimises the costs to the Pension Protection Fund, and that this was the best outcome in difficult circumstances. Mike Birch, the Regulator's Director of Case Management, noted:

> *"As well as highlighting the impact of Nortel's insolvency on the members of the UK pension scheme, this case also resulted in an important precedent from the UK Supreme Court that FSDs are effective when issued against insolvent companies."*

The full report can be found here.

PMI article on the General Data Protection Regulation (GDPR) : "*Data security – where should trustees begin?*"

Kate Atkinson, a Senior Associate in our Pensions team, has written an article for the September edition of PMI News. The article looks at data security in the context of the General Data Protection Regulation (GDPR), which comes into effect on 25 May 2018. There is a particular focus on the evolving cyber security challenges faced by pension scheme trustees. The road to compliance with the GDPR can seem challenging and Kate sets out some initial steps that will start the journey, and begin the process of securing member data in the best possible way.

The article can be viewed by clicking here.

Pensions Breakfast Briefing: 11 October 2017

Our next Breakfast Briefing on developments in pensions law is taking place on 11 October (from 8:30 to 10:00 am). The topics covered in this session will include two very recent Court of Appeal cases:

- Employer's obligations on changing benefits and the relevance of members' reasonable expectations - IBM succeeds on appeal
- Validity of pensionable pay caps - Bradbury v BBC

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

Contact us

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

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