SPENCE

Your Quarterly Pensions Update

Quarter 3 2021

October 2021

What's inside?

Welcome to your Quarterly Pensions Update

The purpose of this report is to update sponsors and trustees with recent pensions industry changes in the quarter.

For your convenience, Spence has summarised the key developments and highlighted the necessary actions sponsors and trustees may need to take.

The report combines brief written comment with links to any further relevant information and any deadlines you should be aware of. We trust you will find the update useful and informative. If you require further information about how any of the topics covered might impact on your scheme specifically, please get in touch with hugh_nolan@spenceandpartners.co.uk or your usual Spence contact.

ESG

ESG Consultations and Initiatives

Environmental, Social and Governance (ESG) factors are increasingly being recognised as material considerations for trustees and are appearing on all corporate agendas. We anticipate the ESG requirements on pension schemes, of all sizes, to only keep increasing. In Q3 there were several industry consultations and initiatives of interest, which we will continue to monitor as they evolve:

The Pension Regulator: Consultation on Draft guidance on governance and reporting of climate-related risks and opportunities

October marks the introduction of DWP climate change (TCFD) legislation impacting schemes with more than £5bn assets, while schemes with assets exceeding £1bn will need to adhere from October 2022. This legislation focuses on the depth of understanding of the risks, and opportunities, climate change poses to a scheme's funding position through scenario analysis, careful considerations of metrics, targets and disclosures. Over Q3, The Pensions Regulator launched a consultation on its TCFD reporting guidance. This guidance, closely linked to the DWP guide, provides examples and recommendations to aid schemes in fulfilling their new TCFD reporting obligations.

Pensions and Lifetime Savings Association: Responsive Investment Quality Mark

The Pensions and Lifetime Savings Association (PLSA) has launched a consultation on a new Responsible Investment Quality Mark, intended to recognise pension schemes that meet the highest standards for incorporating ESG factors across their operations. The proposed standards are relevant to schemes of all types and sizes, including schemes investing through pooled funds.

The assessment covers seven key areas: 1/ Focus on member interests, 2/ Scheme governance, 3/ Investment strategy, 4/ Oversight of stewardship, 5/ Risk management, 6/ The use of metrics and targets, 7/ Communication and engagement.

Taskforce on Pension Scheme Voting Implementation

The Taskforce on Pension Scheme Voting Implementation (TPSVI) was launched in December 2020, to address problems in the use by pension schemes of the voting powers afforded to them by the holding of equity shares in their portfolios. It reflects the importance of voting in broader stewardship.

The Taskforce has just published a report which makes recommendations on how to increase and improve the quality in the voting of equity shares by occupational pension schemes. TPSVI recommend that fund managers of pooled funds should voluntarily offer investors the opportunity to set "expressions of wishes". More generally, the report recommends increased transparency throughout the voting chain.

Implementation Statements

The new Implementation Statement reporting requirements for Trustees, became fully in force from 1 October 2021 for both DB and DC schemes. This document details changes and adherence to the Statement of Investment Principles (SIP) as well voting and engagement activities of a scheme over the year. After a year of observing this reporting develop, we have a few observations:

- **Statement of Investment Principles**
  Implementation Statements have been successful at clearly stating reviews of investment strategies, changes to the SIP and adherence to the SIP.
- **Engagement and Voting Reporting**
  Most Trustees have delegated voting and engagement to their investment managers and, as a result, the production of the Implementation Statement relies heavily on Investment Managers disclosures. The quality of these disclosures has been varied but we have seen a notable improvement over the year. High level voting statistics are the strongest reported areas, whilst we see less consistent reporting of significant votes and engagements.

  A common problem we have encountered is managers providing firm wide data rather than fund specific data.

We do believe that generic investment manager information is better than no information. However, this is still not sufficient for Trustees monitoring responsibilities so we are engaging with Investment Managers to improve their future disclosures.

Significant votes and engagements are used by Trustees to conclude if their Investment Managers have followed the ESG policy, or that there is not sufficient information to conclude whether they have or not. It is unlikely that managers will choose to divulge information that shows they did not comply with their own policy. Therefore, monitoring beyond the Implementation Statement is still required.

We often see that information provided is not in line with the scheme's reporting period. If a manager has a standard reporting cycle, then this can lead to out-of-date information relative to the scheme's year. We anticipate this will improve as Managers' reporting flexibility improves but, again, we are engaging with Investment Managers to improve future disclosures.

Next Steps

ESG integration and reporting is only going to be increasing on Trustee's agendas. Trustee Boards should be considering if additional training is required to ensure depth of ESG knowledge is available for their decision making.

Trustee Boards will find it a valuable use of time to clearly discuss and clarify their ESG expectations as this can simplify implementation and monitoring processes. It is worth engaging with sponsoring employers regarding their own corporate level ESG policies as there may be an interest in ensuring a scheme's ESG policies are aligned.

Trustees should engage with Investment Managers to improve the level of voting and engagement disclosure, where necessary. Additionally, where possible, Trustees should look to have open discussions with managers around their adherence to their ESG policies or delegate this monitoring to their investment consultants.

Helpful Links

Climate change governance consultation | The Pensions Regulator

Responsible Investment Quality Mark Consultation on Standards – PLSA.co.uk'

Taskforce on Pension Scheme Voting Implementation: recommendations to government, regulators and industry - GOV.UK (www.gov.uk)

DWP Changes coming into force from October 2021

1 October 2021 will see the introduction of several key provisions under the Pension Schemes Act 2021. These are all changes which we were already aware of, and many of which have been covered in earlier editions of this Quarterly Report. These include new pensions criminal offences and financial penalties, new contribution notice triggers and new governance and disclosure requirements for defined contribution (DC) schemes.

The following is a high level summary of some of these key changes and who they affect.

New criminal offences – companies and groups with defined benefit (DB) schemes, their trustees and advisers could all now be held accountable for criminal offences including avoidance of employer debt, causing a material detriment to a DB scheme and failure to comply with a contribution notice. The Pensions Regulator (TPR) has set out the factors it will take into account when determining whether to prosecute an individual or entity and whether a person has a "reasonable excuse" for their actions.

New financial penalties – TPR will be able to impose a financial penalty of up to £1m for things like failure to comply with a contribution notice, avoidance of an employer debt, provision of false or misleading information to TPR and failure to notify TPR about a notifiable event. Trustees and sponsors of DB schemes, along with their advisers, are all at risk of these penalties.

New contribution notice triggers – sponsors and connected persons of DB schemes should be mindful of two new triggers. The first of these is an employer insolvency test and the second is an employer resources test. There are regulations in place which set out how the triggers for both of these will be interpreted and applied in practice, and examples of the circumstances when these notices might be issued. They also set out how the resources of an employer should be calculated for the purposes of the employer resources test.

New information gathering powers – these apply to sponsors of both DB and DC schemes, their trustees, advisers and service providers. The powers extend to compelling a person to attend an interview and answer questions, and to inspection of premises. There are regulations setting out what TPR must include in a notice issued to a person required to attend an interview, how the new inspection powers apply and the penalties applicable where there is non-compliance.

Defined contribution schemes – there are changes which will affect the trustees of DC schemes, including a requirement to disclose the net investment returns for default and self select funds, and for DC schemes with assets of under £100m a requirement to assess and report more extensively on the value they offer members.

Helpful Links

New Enforcement Policies Consultation (TPR)

Value for Money Discussion Paper (TPR)

End of furlough, key concerns for pension schemes

At the end of the UK's furlough scheme, there were more than a million people whose wages were still being funded by government/taxpayers. While no-one knows the full future impact of the scheme ending, it is sensible for schemes to once again consider their contingency planning. It is always better to have a plan and not need to use it than vice versa.

The PPF has published a useful contingency guide for trustees and this article pulls out some of the straightforward steps schemes can take to mitigate some of the challenges a distressed or insolvent employer can present.

It is essential for schemes to understand all the ways their employer supports them, and what would happen if that support was suddenly removed. Clearly the financial support through the payment of contributions and the future covenant is the most important, but many schemes have interdependency on a practical level with their sponsor. For example, if the employer provides payroll services, what happens if the employer's cashflow dries up? If the employer has an in-house pensions department, what happens if those individuals are involved in a business sale or restructuring? The same applies where trustees are also employees of the firm - if they need to find other careers they are likely to lose the time needed to focus on running the pension scheme at a challenging time.

If the sponsor of a DB scheme fails, the PPF usually steps in and makes sure members receive PPF compensation going forward. The assessment period for entry to the PPF can be a worrying time for members, but with effective planning it can be shortened, and certainty for members achieved sooner. Effective knowledge stores for minutes, deeds and rules help establish eligibility. Regular member tracing and data audit work means that paying the right amount to the right members is more straightforward. Being able to identify insurance policies and annuities (including those which pay members directly) all helps contribute to a swifter and more cost-effective transfer to the PPF.

While the PPF provides a vital safety net for the majority of DB schemes, there is no equivalent for DC schemes. If a sponsor of a trust based DC scheme fails with no contingency plan in place, the costs of winding up the DC scheme have to be met from each member's pot. All authorised Master Trusts are required to have a plan to allow their schemes to wind up without needing to take a cut of member's savings and (with the appropriate preparation) similar plans can be put in place for schemes of any size.

ACTION

Have a contingency plan for DB and DC schemes that considers what would happen if the sponsor failed. Is it clear who would do what?

Review knowledge and document management policies. Is everything accessible when it is needed?

Continue open and effective dialogue with sponsors. The economic situation is continually evolving, and quarterly updates may not give schemes the most current picture

Helpful Links

How trustees can prepare for the unexpected | Pension Protection Fund (ppf.co.uk)

Protecting schemes from sponsoring employer distress | The Pensions Regulator

Health and Social Care Levy

On 7 September 2021 the Prime Minister, Boris Johnson, announced plans to provide an additional £12 billion per year for health and social care on average over the next three years. This is to be funded by a new, UK-wide 1.25% Health and Social Care Levy (the Levy) and introduced from April 2022. The Health and Social Care Levy Bill 2021-22 was brought before Parliament on 8 September 2021.

Details of the Levy are set out in HM Government, Build Back Better: Our Plan for Health and Social Care, CP 506, September 2021. This states that the Levy will apply to employees and employers liable for Class 1 NICs and self-employed individuals liable for Class 4 NICs. In 2022/23 the Levy will be collected by means of an increase in the current rates of NICs by 1.25%. In 2023/24 a formal legal surcharge of 1.25% will replace the increase in NICs rates and apply to those working above State Pension age, while the underlying NICs will return to their previous level. It is estimated that the new Levy will raise around £11.4 billion a year.

From a pension perspective, assuming there are no 'anti-avoidance' provisions (and none are suggested in the proposals), the increase in NICs makes salary sacrifice / exchange even more attractive in terms of the optimum way for employees to make contributions to their pensions.

It was also announced that, from April 2022, all rates of dividend tax will increase by 1.25%. This change will apply UK-wide and be legislated for in the next Finance Bill. The associated increase in the rates of income tax on dividends will raise around £0.6 billion a year.

Dividend tax is charged on taxable dividend income an individual receives that falls outside of the personal allowance (£12,570 in 2021-22) and the dividend allowance (£2,000 in 2021-22). Taxable dividend income excludes, for example, dividends on assets held in ISAs.

What was not clear from the statement on 7 September was the implications of the change to dividend tax on pension funds. Since the statement, however, it is now understood that the Treasury has confirmed the extra dividend tax will not apply to pension funds. This confirmation is also consistent with the revenue estimates that were published at the time of the statement.

ACTION
Keep watching brief on progress of / any changes to the Bill For employers, encourage salary sacrifice / exchange for payment of employee pension contributions where not already doing so

Helpful Links

Build Back Better – Plan for Health and Social Care (GOV.UK)

Normal Minimum Pension Age (NMPA) to be increased from 55 to 57 from 2028

Key points

- The government response to an earlier consultation, on proposals to raise the NMPA from 55 to 57 from 6 April 2028, has recently been published, alongside draft legislation, which confirms the change and will be included in the next Finance Bill.
- The legislation, as drafted, will introduce a window so that individuals have an opportunity to join a pension scheme, by 5 April 2023, where the scheme rules, on 11 February 2021, already confer an unqualified right to take pension benefits below age 57.
- There will also be some changes to the transfer rules for members to retain a protected pension age (PPA), below the new NMPA of 57, following block and individual transfers.

The detail

NMPA was last increased, from 50 to 55, in 2010. A protection regime allowed benefits to be taken before then, but only if certain conditions were met.

There will also be a protection regime for the latest increase in NMPA. This will apply to members who have pension savings in a scheme (occupational or personal) on 5 April 2023.

Under the new protection regime, unlike the 2010 regime, members will not need to cease work or become entitled to all benefits under their scheme on the same date in order to draw authorised benefits from age 55. Also, they will retain a PPA following a block or individual transfer to a new pension arrangement. However, in the case of individual transfers to a scheme where the member does not already have a PPA, only the transferred rights will benefit from the PPA (i.e. the PPA will not apply to new savings).

Under the draft legislation for the new protection regime, which will be included in the next Finance Bill, scheme rules must, as at 11 February 2021 (when the original NMPA consultation was published), confer a right to draw benefits before age 57, and that right must be unconditional (not dependent on the consent of anybody).

Provided this unconditional right exists in a scheme's rules on 11 February 2021 then a member's right to draw benefits before 57 will be retained for both existing and future pension rights.

Further guidance on the changes is promised "in due course".

ACTION
— Look out for final legislation.
— Review scheme rules.
— Consider a member communication (and remind members about pension scams; the changes may encourage scammers to promote transfers with promises of early access to pension benefits).

Helpful Links

NMPA Consultation Response - July 2021 (gov.uk)

‘Own Risk Assessments’: Time to get ready

In their interim response to the consultation on the new ‘super code’ (i.e. the replacement of The Pension Regulator’s (TPR) existing Codes of Practice with a single Code), TPR confirmed that it does not currently have a firm final publication date and does not expect the code to be laid before Parliament before spring 2022. It is, therefore, unlikely to become effective before summer 2022.

TPR received over 10,000 individual responses to its consultation, from a total of 103 respondents representing private and public service schemes and service providers. A key point in responses and a reason for the delay in the final code, which had been expected this year, was concerns about the new “own risk assessment” or “ORA”. Respondents to the consultation highlighted, in particular, the timeframe, format and the burden the ORA will place on smaller schemes.

TPR remain of the view that trustees should still prepare their first ORA in a timely fashion, taking the legislative timescales as a maximum but preparing the document in a shorter timescale as a matter of best practice.

Additionally, although the legal deadline for the first ORA is unlikely to be before summer 2023, the final version of the TPR single code of practice is still expected to set out material governance requirements for pension schemes. It was emphasised during the consultation on the Code that “the first such [ORA] exercise may be a significant piece of work”. Legal commentators have opined that this will be the single biggest work-stream for pension schemes in 2022, possibly even surpassing GMP equalisation.

So, trustee and other governing bodies would be well-advised to use the delay in the publication of the final code as an opportunity to ‘get their ducks in a row’. Steps that can be taken now include:

- information gathering, and collating all relevant policies, practices and procedures;
- training on, and knowledge and understanding of the prospective changes;
- agreeing roles and responsibilities;
- ensuring the scheme already has an Effective System of Governance (see below);
- agreeing an approach towards and project plan for reasonable and proportionate compliance with the code.

Importantly, although trustees are likely to have at least 12 months from publication of the final code to complete their first ORA, the requirement for an Effective System of Governance (ESoG), supplanting the Internal Controls provisions of the Pensions Act 2004, came into force in January 2019. The ESoG provisions include:

- how a pension scheme provides for sound and prudent management of activities;
- how it includes an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
- how it includes an effective system for ensuring transmission of information;
- how it includes an effective internal control system;
- how it ensures continuity and regularity in the performance of its activities, including the development of contingency plans;
- how it includes consideration of environmental, social and governance factors related to investment assets in investment decisions;
- how it is subject to regular internal review.

In other words, whilst getting ready for their first ORA, schemes should already be ESoG compliant. Also, whilst the ORA requirements apply to schemes with 100 or more members, all schemes should have an ESoG.

Market Commentary 2021 Q3

Global equities had a positive quarter mainly driven by the -2.6% decline in GBP versus the USD boosting non-GBP asset values. Equity markets were volatile after hitting all-time highs in early September then decreasing due to fears of slowing economic growth, supply disruptions, high inflation and rising interest rates.

US stocks posted gains over the quarter due to strong corporate earnings, but the central bank (Federal Reserve) signalled it would begin quantitative tightening by reducing its quantitative easing programme and raise interest rates faster than expected causing markets to decline.

Emerging market equities were the worst performer as China introduced tough regulations on technology companies and one of the country's largest property developers, Evergrande, may default on its $300bn of liabilities increasing systemic financial in the region.

UK equities had a positive quarter and returned 2.2%. The energy sector was the standout performer as crude oil prices rose to 5-year highs and increased merger & acquisition activity e.g., Morrison Supermarkets supported investor sentiment.

Commodities performed strongly over the quarter driven by energy was the best-performing sector, driven by energy prices hitting record highs caused by increased demand coupled with supply constraints in the wholesale gas market.

High yield bonds performed well over the quarter driven by improving investor sentiment and strong demand for yield. Investment grade bonds declined as yields increased as investors expect interest rates to rise.

The UK government successfully issued its first green gilt and due to the huge level of demand it yielded -1.5 basis points lower than fair value also known as a "greenium". Long-term nominal UK gilt yields increased (Q3: 1.33%, Q2: 1.18%) due to rising expectations of monetary policy tightening and increased interest rates. All else being equal, the move in gilt yields acts to decrease the value placed on pension schemes' fixed liabilities. Real UK gilt yields marginally decreased over the quarter (Q3: -2.14%, Q2: -2.11%) . All else being equal, this acts to increase the value placed on pension schemes' real liabilities.

Long-term inflation expectations increased over the quarter (Q3: 3.54%, Q2: 3.36%) as inflationary pressures continued to surpass expectations due to supply chain bottlenecks and rising energy prices. All else being equal, this will increase the value placed on pension schemes' liabilities.

Long-dated credit spreads, after a period of volatility early in the quarter did not change (Q3: 0.68%, Q2: 0.68%) as the increase in yields on corporate bonds matched government bonds.

The Financial Reporting Council (FRC) published a list of successful signatories to the new UK Stewardship Code which sets high standards of stewardship for those investing money on behalf of UK savers and pensioners. 147 asset managers applied to be included in this year's list, with only 90 making the cut however it is expected the unsuccessful managers will reply later in the year.

Pension Protection Fund (PPF)

Compensation cap unlawful

The Court of Appeal has confirmed that the Pension Protection Fund (PPF) cap is unlawful. The decision follows an appeal by the PPF to last June's High Court ruling, in the judicial review of the way that it was calculating the pension increases that were to be paid after the European Court of Justice 2018 ruling in the 'Hampshire' case.

The appeal was heard in May and the Court of Appeal has now published its judgment in relation to the PPF appeal, and also that lodged by DWP. In summary:

- the Court of Appeal has supported the PPF approach for increasing payments to PPF and FAS members following the 2018 European Court of Justice judgment in the Hampshire case; and
- it has also confirmed the High Court's decision that the PPF compensation cap, as set in legislation, is unlawful based on age discrimination and must be disapplied.

Since the Court of Appeal judgment, the PPF has published updates on the progress it has made regarding the removal of the compensation cap.

Most recently, the PPF has said that, for those PPF pensioners affected by the cap, it has plans to offer the option of a lump sum, as well as committing to increasing and paying arrears on monthly compensation. It is also in the process of assessing whether to implement a six-year time limit on these payments.

The PPF has said that Financial Assistance Scheme (FAS) pensioners are also entitled to a pension increase to ensure that they receive 50% of the value of their accrued old age benefits.

Extension of levy payment window

The PPF has confirmed that it will continue to support levy payers impacted by the COVID-19 pandemic and will offer up to 90 days interest free to pay their 2021/22 levy bill. This is the second year the PPF has said that schemes and sponsoring employers can apply for the payment extension within 28 days of receiving their levy invoice.

According to David Taylor, Executive Director and General Counsel at the PPF, "We hope that offering this flexible payment option again will give our levy payers some breathing space to cope with their financial commitments in a difficult and changing environment."

New Chair of the PPF

The DWP has announced that Kate Jones has been appointed as the new Chair of the PPF. Ms Jones will take up the post as Chair on 1 July 2021 and has been a non-executive member of the PPF Board since February 2016.

Risk Based Levy 2022/23

The PPF has announced that it expects to collect £415m from its levy payers in 2022/23, a reduction of £105m from the previous levy year.

The 2022/23 levy consultation document also states that 82% of schemes that pay a risk-based levy will see a reduction, and the PPF levy methodology will remain unchanged.

It is confirmed that the measures introduced to help schemes and employers in 2021/22 will remain in place.

The consultation closes on 9 November.

ACTION
Mainly for noting, but employers may also want to consider applying for the levy payment extension.

Helpful Links

Removing the compensation cap and paying arrears | Pension Protection Fund (ppf.co.uk)

PPF extends 90-day levy payment window for schemes impacted by COVID-19 | Pension Protection Fund

Kate Jones announced as new Chair of the Pension Protection Fund - GOV.UK (www.gov.uk)

Levy Rules (ppf.co.uk)

The Britvic Case

A 'refreshing' decision for employers on pension increases?

Since the decision from Government to make Consumer Price Inflation (CPI) the preferred measure of indexation in 2011, many sponsoring employers of defined benefit pension schemes, with indexation currently linked to the Retail Price Index (RPI), have been searching for reasons to switch indices. The rationale for this is that a switch could mean lower pension scheme liabilities.

CPI has historically been much lower than RPI (by around 1% p.a.) and it is expected to be lower in future. From 2030, it is proposed that RPI be aligned with CPIH (a variant of CPI that includes housing costs), so the difference will become minimal. However, this will not happen for at least nine years (and, in the meantime, the alignment of RPI with CPIH is being challenged by a number of large pension funds).

The ability of a scheme to change index depends on the specific wording in the Trust Deed and Rules; in fact, it is often referred to as a 'rules lottery'. In 2011, most schemes will have undergone some analysis to determine if a switch was permitted under the rules. Following a recent ruling, it may be time to revisit this.

A court case involving Britvic (the well-known producer of 'refreshing' soft drinks) challenged the decision to increase benefits in line with RPI as the Trust Deed and Rules gave Britvic plc the power to choose "any other rate".

Whilst the High Court ruled that this should be interpreted as meaning any 'higher' rate, this decision has now been overturned. The Court of Appeal decided that the words "any other rate" could mean "any other rate or rates" – higher or lower.

In other words, Britvic could choose to increase benefits in line with CPI rather than RPI which may result in benefits that are c.10% less over the period until RPI is aligned with CPIH.

Helpful Links

Court of Appeal Judgment Template (bailii.org)

GMPE – Three years on

Are we there yet?

In October 2018, the High Court decided that inequalities arising from Guaranteed Minimum Pensions (GMPs) had to be equalised as between male and female members in pension schemes that were contracted-out of the State pension before 1997 (when GMPs ceased to accrue).

An objective bystander would probably assume, three years on, that most, if not all, pension schemes have now have complied with this 'GMP equalisation' (GMPE) obligation.

The reality, however, is quite different, and not without good reason.

As all trustees know, nothing in pensions is ever simple. Moreover, those who have started their GMPE journey will be acutely aware that trying to equalise GMPs, whilst remaining compliant with regulatory and tax requirements and avoiding unintended consequences, is a legal and actuarial minefield.

Many schemes have also held back in the expectation that there would be more clarity on 'known unknowns' in the fullness of time and that those who wait would benefit from the lessons learned by the early adopters.

Nevertheless, that waiting game should now be over.

There is unlikely to be any further substantive guidance from government departments and, following a second High Court case in 2020 on past transfers-out, trustees now know that their GMPE obligations go beyond those who still have benefits secured and payable under their schemes. Those members who ostensibly had their benefits fully discharged may need to be revisited too.

Schemes that have not at least started GMPE projects must surely be exposed to potential claims from members and other beneficiaries for underpayment of pension benefits. The Pensions Regulator (TPR) will also have GMPE on its radar. At some point, it may even ask schemes for updates through the pension scheme return.

Further, with 2022 lining up to be an exceptionally busy year for the pensions industry – Pension Schemes Act 2021 coming into force, new TPR Code of Practice, new funding and governance requirements, etc. – schemes that have not already agreed fees and timescales may find that there is a lack of resources which will compound existing GMPE delays.

Against this backdrop then, what should trustees already have done / be doing?

Firstly, if you have not already done so, start now. Bearing in mind that you do not need to use your incumbent service providers for your GMPE project, speak to your advisers about costs and timescales. After agreeing terms, the steps that follow include:

- Getting your data sorted (and not just for GMPE; come 2023, pension schemes will be required to provide information to the Pensions Dashboard so that pension savers can see all their benefits in one place)
- Agree your approach (at this stage, there should be no need for lengthy / costly reports on the different methods; unless you have a compelling reason to convert GMPs into scheme benefits then adopt the method of minimum interference - Method C2 - which all third party administrators should be able to accommodate)
- Equalise benefits going forward, for future transfers and retirements (just because you use one method as an interim solution for future settlements, you are not bound to use that method for the wider GMPE project)
- Equalise benefits for those that currently have benefits secured and payable under the scheme; especially those who are already retired and may be due years of arrears payments
- Revisit past settlements – transfers-out, deaths, trivial commutations
- When you have something to tell them, i.e. you have quantified the GMPE uplifts, communicate with members.

ACTION
See the checklist, above.

Helpful Links

GMP Equalisation – The Pensions Administration Standards Association (pasa-uk.com)

Pension Schemes Act (PSA) 2021 – Notifiable Events

The Pensions Regulator has for many years required trustees and sponsoring employers to proactively notify it when certain events occur. The purpose of this is to provide an early warning system of circumstances which may lead to compensation being payable from the Pension Protection Fund (PPF), and as a result reduce the risk of any such calls. Early notification gives TPR the opportunity to assist, or to intervene, before a scheme falls into the PPF.

At the moment, information is generally provided after the event has occurred, however under new proposals more events will become notifiable and additional information will need to be provided before some events actually take place. The objective is to create a better early warning system and to encourage earlier engagement with trustees. The changes might also impact the timetable for corporate transactions, and the amount of work involved.

The detail will be in regulations, and a draft has just been issued for consultation. Key proposed changes are:

- Two new notifiable events:
  - A decision in principle by the sponsoring employer to sell a material proportion of its business or assets
  - The intended granting (or extending) of security by the employer over its assets which leads to the secured creditor having priority above the scheme in the event of insolvency
- Removal of one notifiable event: 'Wrongful trading'. (This is not to diminish the seriousness of wrongful trading, but rather an acknowledgement that the requirement is ineffective: a director is unlikely to admit to wrongful trading.)
- A new duty for a 'relevant person' to give notices and statements to TPR in respect of certain events, including:
  - Implications for the scheme in respect of specified corporate events relating to the employer; and
  - How any risks to the scheme will be mitigated

These notices and statements will be required at a later stage of the corporate transaction than the initial notifiable event notification, at a point when there is greater certainty as to whether the transaction is going ahead, its nature and implications for the scheme.

These proposals are consistent with the direction of travel of a stronger, more proactive TPR. The proposed changes appear sensible and are designed to provide a greater degree of protection to members by improving the information flow to TPR, enabling it to get involved where changes are proposed that might significantly impact the pension scheme.

The proposed penalties will certainly focus the minds of employers and their advisers.

ACTION

Be aware of the prospective changes, which are expected to take effect from April 2022. In particular, the provisions around timing of notifications will need careful consideration.

- The initial notification to TPR must be made an an early stage (i.e. as soon as a "decision in principle" has been made)
- The second notification and accompanying statement must be made as soon as reasonably practicable (i.e. when there is greater certainty over the terms of the proposed transaction, but prior to signing)

Helpful Links

Strengthening The Pensions Regulator's Powers: Notifiable Events (Amendments) Regulations 2021 - GOV.UK (www.gov.uk)

Coming up next...

Our quarterly updates normally follow a fairly consistent recipe: the majority of ingredients being articles dealing with events that have been served up over the past three months, complemented by items looking ahead to future events that (k)need to be prepared ahead of time, with the finishing garnish being this Coming Up Next article, that blends together in a concentrated form the pensions matters that will be rising in the longer term. (You might be able to tell that this writer is quite pleased the Great British Bake Off has returned!)

However, you may have noticed that the mix of this quarter's update was weighed more towards the changes that have come into force on 1 October, such as The Pension Regulator's new powers to prosecute those who put saver's benefits at risk, new requirements for investment reporting and chair statements. So, while this report has looked back to the last quarter, it felt right that a particular focus was placed on the October changes and the actions that trustees and employers alike need to be mindful of in the coming months. Leaving all of this to the Coming Up Next article would have left the report heavily back-ended to say the least!

It must be stressed that while it might be easy to dismiss some of the requirements as not being applicable to many schemes right now – such as the ESG reporting for schemes with over £5 billion in assets – we have to avoid such complacency. While requirements may seem remote, they should be considered by all trustees and employers, from all sizes of scheme. All of us should be asking how the new requirements could be implemented in our schemes. Taking ESG as a prime example – while the reporting requirements may not be mandatory for all (yet), the essence and import of the requirements should be considered by all schemes, to at least ask, "Would we be able to meet that criteria?".

While preparing those reporting ingredients, it is important not to take your eye off the other bits and pieces that are also in the oven, getting ready to be digested over the coming months, such as:

- The Pensions Dashboard Programme (PDP) has published its latest newsletter which provides updates on its work, including confirmation of successful recruitment of software providers, insurers and third-party administration to help with the PDP's initial test phase of pensions dashboards. Seven organisations will work with the programme and the successful central digital architecture supplier in the next phase of the programme.
- As of 1 October 2021, the **Coronavirus Job Retention Scheme** was no more. While the impact of its removal may be unclear, or perhaps intangible for a period, it will be important for employers and trustees alike to remain engaged and vigilant. Trustees should pay attention to the sponsor's financial situation post-furlough, remaining in regular contact with the employer to monitor its plans and performance. While this is important for all trustees, it is particularly the case for any schemes that have sponsoring employers with business interests that may be adversely affected by the current pressure on **energy prices** and supply chains. The end of furlough, coupled with rising gas prices, could see significant pressure on some sponsors, which trustees should be alive to and actively seeking more information in regard to their sponsor covenant.
- Earlier in the year the DWP produced draft regulations to implement a so-called **"stronger nudge"** to pensions guidance requirements, that will apply to members aged 50 or over who are seeking access to pension flexibilities for their accrued rights (or to transfer in order to access such flexibilities). The draft regulations are not expected to come into force until 6 April 2022, but trustees should be planning for these changes well ahead of time, as some significant changes to annual statements to members may be required. Trustees will need to refer the member to appropriate pensions guidance (i.e. the Pensions Wise guidance provided by the Money and Pension Service), offer to book the member an appointment for such advice, and will be required not to proceed with the members application unless they have taken such advice, or expressly opted-out. Organising of the member communications and the administrative processes to meet these requirements should be started well before April 2022.

As our report has focused on the plethora of changes that came into effect on 1 October 2021, here are some key dates from later in the fourth quarter of 2021 to keep in your diary:

- **27 October 2021** – Closure date for responses to DWP's consultation on the new Regulations that propose to extend the employer-related notifiable event requirements (as discussed earlier in this report).

- **27 October 2021** – Chancellor to announce his Autumn Budget.
- **8 November 2021** – High Court hearing to begin, considering whether a transfer of insurance business should proceed from Prudential Assurance Company Ltd to Rothesay Life PLC.
- **18 November 2021** – Closure date for responses to DWP's consultation on the proposed reduction of GMP revaluation from 3.5% p.a. to 3.25% p.a. for those leaving pensionable service from 5 April 2022.
- **21 November 2021** – Closure date for responses to Royal Mail's consultation on the formation of its collective money purchase scheme.

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