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Current issues

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Out with the old, in with the new (allowances)

His Majesty's Revenue and Customs (HMRC) has published a December 2023 Lifetime Allowance Guidance Newsletter. It gives a useful summary of the provisions that the current Finance Bill would make, from 6 April 2024, for the abolition of the lifetime allowance.

The Newsletter also—

- sets out details of future tax reporting arrangements;
- reassures readers that the Bill's implication that almost every lump sum payment must be reported is a mistake that will be corrected (the intention is to require reporting of 'relevant benefit crystallization events' exceeding a member's available allowances, or when reliance on protections or enhancement factors is necessary to avoid a charge);
- confirms that the process whereby a deceased member's personal representatives are responsible for liaising with HMRC in connection with lump sum death benefits has been made permanent; and
- says that, from 2025, a protection look-up service will allow administrators to check whether a member's claim to a higher, protected lump sum is valid.

The Newsletter not only outlines the Bill's lifetime-allowance provisions, it also cites the parts of the legislation that are relevant to each change. So, it will be a helpful crib-sheet and index for those who don't want or have time to pore over the hundred or so pages of legislative amendments.

Down with the levy—PPF confirms 2024/25 policy

The Pension Protection Fund (PPF) has announced the final levy rules for 2024/5. As proposed in a consultation document in September 2023, it is targeting total levies of just £100m. It expects that 99% of schemes will receive lower invoices as a result, and that legislative amendments will pave the way for them to fall yet further.

Having considered commentators' largely supportive reactions to its consultation proposals, the PPF has decided to proceed as planned, by

- increasing the risk-based levy-scaling factor from 0.37 to 0.40;
- reducing the scheme-based levy multiplier from 0.000019 to 0.000015; and
- delaying adoption of up-to-date valuation assumptions.

As noted previously, the £100m target levy is an artificially high number. The PPF feels compelled to raise more than it needs, just to protect its capacity to raise more money in future years if conditions change. It is legally prevented from increasing its levies from one year to the next by more than 25%. It is also obliged to impose a risk-based levy that the accounts for at least 80% of the total amount to be raised.

Had the PPF not made the planned changes, the 2024/25 levy estimate would (as indicated by the September consultation document) have been just £90m. The increase to the scaling factor was necessary to raise the targeted amount, and the reduction to the multiplier will maintain the minimum 80:20 ratio between the risk- and scheme-based components of the levies. Using the latest actuarial assumptions would have further reduced the required levy, as well as the pool of levy payers (or forced the levy scaling factor even higher, to the detriment of those still paying risk-based levies).

The consultation document also aired ideas on how levies held at the £100m level might be distributed amongst levy payers in 2025/26 and beyond, if legislative intervention is not forthcoming. The PPF's policy statement discusses the responses, and says that it will take them into account, but also notes that the Department for Work and Pensions '*has agreed to revisit the legislation as soon as parliamentary time allows.*'

Other announcements

The Pensions Regulator plans to publish revised asset-class reporting guidance in January 2024. It will be used for levy purposes, so the PPF encourages trustees and their advisers to study it in preparation for their scheme returns (see the article in this edition for more about next year's return).

Following contract re-negotiations, the PPF has decided to drop Moody's as a provider of credit ratings, whilst retaining the services of Fitch and S&P. This change will apply for the purposes of the 2024/25 levies, and will be reflected firstly in the scores published for January 2024, with those for April to December 2023 updated soon after. The PPF thinks that the impact on schemes '*is likely to be extremely limited*', but says that those affected will be informed and will receive support with any resulting queries.

The PPF has expressed ambitions to move to nil levies, eventually, and only resume charging if its funding position deteriorates. Without the statutory changes necessary to enable it to realize that goal, the incentive to over-collect on its levies will persist and, if average scheme funding positions continue to improve, become more incongruous. Whilst it's good to see that the DWP has committed to doing something about the problem, its packed agenda in the run-up to the next general election means that it's unclear when a suitable opportunity might present itself.

Boundary issues

The Financial Conduct Authority (FCA) and His Majesty's Treasury have jointly published a discussion paper in which they propose ways to increase the availability of support for those making financial decisions. Although it is focused primarily on the sorts of guidance and advice provided by regulated financial advisers, the paper also contains a chapter on the assistance given by pension trustees to scheme members.

The discussion paper, *Advice – Guidance Advice Boundary Review: proposals for closing the advice gap* (DP23/5), seeks views on plans to—

- clarify financial firms' ability to offer their clients support and guidance that falls short of full, regulated financial advice;
- allow '*targeted support*', falling between guidance and advice, which is based on limited personal information about the client but is instead aimed at groups of people in similar circumstances ('these solutions have been designed for people like you'); and
- introduce lower-cost, simplified advice, focused on meeting one specific need and based only on the personal information that is relevant to that need, for persons with less-complicated circumstances and fewer assets.

Chapter 7 of the discussion paper is headed '*Specific considerations for pension scheme trustees*'. Aimed at the trustees of occupational defined contribution (DC) schemes, it asks how the advice – guidance boundary affects the support that they want to provide to their members. Reference is made to the Department for Work and Pension's proposal to require that DC schemes offer a suite of suitable decumulation solutions, with a default option.

Comments can be submitted in the period from 8 December 2023 to 28 February 2024.

Wariness about the precise location of the advice – guidance boundary persists despite previous attempts at clarification. Simplified-advice propositions have been advanced before too, with limited success. The targeted-support concept is new, and it will be particularly interesting to see where that proposal, which is still at the embryonic stage, will lead.

Ready, steady...

The Pensions Administration Standards Association (PASA) has issued guidance to help schemes get ready to connect to the dashboards system. It is published alongside a 'call to action' that gives reasons why trustees and providers should ensure their readiness now, despite the postponing of the connection deadline until 31 October 2026.

The PASA explains that, for a scheme to be 'connection ready', those in charge should be capable of connecting to the dashboards infrastructure and able to meet their duties thereafter. The guidance sets out tasks that need to be completed in the following five areas:

- governance
- matching
- pensions values
- technology
- administration

It also contains an example timeline, suggesting that the work required for connection readiness might take 18 months or longer.

The PASA is justifiably concerned that trustees and scheme managers may neglect or otherwise allow complacency to creep into their dashboards preparations, in the absence of staging deadlines to focus their attention.

Free cyber upgrade available

The Pensions Regulator has updated its cyber security guidance. It now asks that trustees, advisers and pension providers report significant incidents.

The guidance was first published in 2018, and is intended to help trustees and managers meet their duties to assess cyber-risks, ensure that controls are in place, and respond to incidents. The revised guidance sets out the steps schemes can take to satisfy the Regulator's expectations on cyber security, as contained in the draft 'General Code'.

The updated version also contains a new section that asks for voluntary reporting of 'significant' cyber incidents to the Regulator. A significant incident is one likely to result in a significant loss of member data, major disruption to member services, or a negative impact on other pension schemes or service providers. Incidents should be reported as soon as reasonably practicable: the Regulator says that it not necessary to carry out a full investigation beforehand.

The Regulator emphasizes that this new reporting expectation does not replace the existing legal requirements to report personal data breaches to the Information Commissioner's Office or to report breaches of pensions law that are likely to be of significance to the Regulator.

Competing authorities

The Pensions Ombudsman has expressed disappointment with the Court of Appeal's recent decision that he does not constitute a 'competent court'. The import of the case is that the Ombudsman cannot—currently—resolve overpayment disputes by making scheme recoupment proposals enforceable.[1] It seems, however, that the Department Work and Pensions is willing to make the necessary changes to the law to give him that authority.

In the meantime, a factsheet from the Ombudsman gives guidance on how to manage such disputes, including how to go about getting the necessary rubber stamp from the County Court. The Ombudsman will help by specifying in his determinations the total amount of the overpayment and the rate at which it should be recouped; and, indeed, he has also just published the first determination in which he does just that.

Return revamp

The Pensions Regulator plans to issue defined benefit & hybrid scheme return notices at the end of January 2024. The returns, which will ask new questions about how trustees have complied with their obligations to put fiduciary management appointments out to tender and set objectives for their investment consultants, will be due for completion by 31 March.

The Regulator says that it has improved the format of the return, which will be entirely contained within the Exchange system. For the last couple of years, it has been necessary to use a separate online form to provide some information.

The new questions arise from action taken by the Competition and Markets Authority (CMA) in 2019, following an investigation into the operation of the markets for fiduciary management and investment consultancy services. Responsibility for overseeing compliance with the obligations passed from the CMA to the Regulator, in most cases, in October 2022.

3 feet high & rising—pensions complaints

The Pensions Ombudsman (PO) published his annual report and accounts for 2022/23. The overall picture is one of improvements in efficiency, but a burgeoning workload.

The organization experienced a 17% increase in complaints (it had anticipated a 12% rise), but managed to dispose of more than in the previous year (indeed, more than it received). Very few were ultimately determined by an Ombudsman (only 326 out of the total of 7,280); the rest were instead dealt with using initial assessment, early resolution, or adjudication processes. Only 1/3 of the determinations represented outright victories for the complainants: just under a half were dismissed, and the remainder were only partially upheld (often when this happens the PO will make a finding of maladministration, and award compensation for 'distress and inconvenience' as a result, but reject the complainant's claims to have suffered financial loss).

The top five subjects for complaints were contributions—the PO is now dealing with lots of cases involving non-payment of AE contributions by micro employers], administration, transfers, retirement benefits, and misquotes/misinformation. The PO’s dedicated Pensions Dishonesty Unit concluded three cases, expects to determine six more shortly, and has another seventeen waiting in the wings (so far).

Long waiting times to resolution continue to be a problem. The continual increase in complaints leads the PO to conclude that, despite additional funding for 2023/24, reducing the delays experienced by complainants will be '*a real challenge*'.

And Finally…

AF turns once again to the drama of an appeal against a penalty imposed by the Pensions Regulator for an auto-enrolment breach. It's not uncommon in such cases for the appellant to complain that the fine is excessive and imperils a small and struggling business (and indeed, the fixed £400 penalty takes no account of the nature of the offence or circumstances of the transgressor). The appellant in *Evan One Ltd v The Pensions Regulator* distinguishes itself by accusing (via its accountant) the Regulator's staff of pursuing the case only to justify expense-funded outings to its business premises (alternatively, they are merely ignorant and thrawn, rather than corrupt).[1]

According to Companies House the employer's registered office is in Beckenham, in Kent. Now, *AF* has nothing against Beckenham, and it's not even cut-and-dried that that was the destination for the alleged jaunts; we just feel that an outing to there from the Regulator's base in Brighton would set an unambitiously low bar for junkets and official graft. It wouldn't even necessarily take one out of the office for the entire day.

Then again, the nature of the business is stated as being 'Public houses and bars', so maybe the allure wasn't so much the geographical location or time away from their desks as the refreshments that awaited them there…(?)

[We should probably add, for the sake of completeness, that the First-tier Tribunal judge was unconvinced by the accountant's account of the Regulator's motivations, and indeed said that the unevidenced allegations were '*completely improper*'.]

[1] [2023] UKFTT 01060 (GRC).