DLA PIPER

PENSIONS NEWS

AUGUST 2013

IN THIS ISSUE

INTRODUCTION

Welcome to DLA Piper's Pensions News publication in which we report on recent developments in pensions legislation, guidance and case law, as well as keeping you up to speed on what to look out for in the coming months.

This edition brings you the developments from August 2013 including the following.

- **Automatic enrolment:** the results of research completed by the DWP about opt-out rates; the Regulator's latest research looking at employers' awareness, understanding and activity relating to the reforms; and guidance from the Regulator to help employers select a good quality scheme for automatic enrolment.
- **Pensions Regulator:** guidance for employers who want to be more involved in running the schemes they provide (for example, by the use of a management committee); and the latest annual survey results of industry perception of the Regulator.
- **PPF:** an update on levy invoicing and the latest round-up Bulletin.
- **Case law:** a summary judgment granting rectification of a scheme's rules which in error contained a clause granting higher than intended benefits to certain deferred members.
- **HMRC:** publication of forms and guidance on fixed protection 2014.
- **Other news:** an update about the work of the Financial Conduct Authority and the Association of British Insurers on annuities.

If you would like to know more about any of the items featured in this edition of Pensions News or how they might affect you, please get in touch with your usual DLA Piper pensions contact or contact Cathryn Everest. Contact details can be found on page 17.

AUTOMATIC ENROLMENT

OPT OUT RATES – RESEARCH

Background

In August, the DWP published the results of research it has completed about opt out rates.

The research looked at a sample of 50 employers with automatic enrolment duty start dates falling between October 2012 and April 2013. 42 of the 50 sample employers provided detailed opt out data and the remainder provided estimates of opt out levels.

The research is primarily concerned with those who opt out within one month of being automatically enrolled and not those who cease membership in subsequent months.

Main findings

- Most individual employers had an opt out rate between 5% and 15% of those automatically enrolled and the average opt out rate across employers in the survey was 9%.
- For the 42 employers who provided detailed data, overall participation in a workplace pension is estimated to have increased from 61% to 83%.
- 23 of the 42 employers already operated contractual enrolment. Findings in relation to these employers included the following.
  - Participation rates were already 90% on average and therefore only 7% of workers were automatically enrolled.
  - There were large variations in opt out rates although the average was 16%. This higher average opt out rate is thought to be because many of those automatically enrolled had already been contractually enrolled and then opted out of pension saving in the past.
  - Participation is estimated to have increased from 90% to 96%.
- The remaining 19 employers had previously required their workers to actively join a scheme. Findings in relation to these employers included the following.
  - Existing participation levels were 36%.
  - 38% of workers were automatically enrolled.
  - The average opt out rate was 8%.
  - Participation is estimated to have increased from 36% to 71%.
- Limited data was collected about cessation of membership after the opt out window has closed. This data showed that this mostly happened in the second and third month after being enrolled and the proportion of workers ceasing active membership was typically around one fifth of the original opt out rate.
- Opt out rates were higher among those aged 50 and over than for other age groups.
- The opt rate appeared to be slightly higher in a small number of employers where member contributions were introduced above the initial minimum level of 1%.

These figures suggest a positive start to the automatic enrolment reforms particularly given that research completed before automatic enrolment began showed 15% of workers saying they would definitely or probably opt out.

However, the DWP notes that, whilst it aimed to achieve a spread of employer sizes, sectors and industries in the sample, the analysis is not based on a fully representative sample. This means that the results cannot be applied to the whole population of employers, particularly given that medium and small employers will differ from larger employers, for example, in terms of existing participation levels.

It will therefore be interesting to see the results of any future waves of research in order to see if rates change depending on the size of the employer.

REGISTRATION REPORT

The Regulator's monthly report of information registered with it by employers who have reached their staging dates was updated in August so that it now covers the period from July 2012 to the end of July 2013.

In line with the reports for previous months, the following trends continue.

- Over half of workers were already active members of a qualifying scheme on the staging date. This is either due to the employer already making pension provision or implementing contractual enrolment as a means of dealing with the new duties, although the proportion of membership attributable to each of the two factors remains unclear.
- The number of workers already in a qualifying scheme continues to significantly outstrip (by around three and a half times as at the end of July 2013) the number of eligible jobholders who have been automatically enrolled.

In its Annual Report the Regulator stated that future monthly reports will also contain information about the use of its compliance and enforcement powers. Press reports in August stated that the Regulator had confirmed the first use of its powers to issue a compliance notice in relation to failure to meet the automatic enrolment duties. However, this has not yet been included in the monthly registration report and nor have there yet been any formal publications from the Regulator about this exercise of its powers. We expect employers to be keen to understand the circumstances of any exercise of the Regulator's compliance powers and therefore we will report again if any details are published.

EMPLOYERS' AWARENESS SURVEY

Introduction

In August, the Regulator published "*Employers' awareness, understanding and activity relating to workplace pension reforms, Spring 2013*", the results of the fifth wave of a project to inform its automatic enrolment communications programme.

Background

Research of awareness, understanding and activity is conducted on a biannual basis, with this latest wave conducted in April and May 2013. The research comprised of 639 interviews with the main person in the organisation responsible for making decisions about pension provision, although they were not in all cases the person with final responsibility.

The survey results are reported according to the size of the employer ranging from large employers (250 to 799 employees), medium employers (50 to 249 employees), small employers (5 to 49 employees) and micro-employers (1 to 4 employees). Because large employers who have already reached or are close to their staging date are excluded from the research, the definition of large employers changes from survey to survey. In the case of this latest research, large employers due to stage in the first year of the reforms were excluded meaning that employers included in the research have staging dates from 1 November 2013.

Areas covered by the research

As well as looking at awareness and understanding of the reforms, other issues covered by the research include:

- sources of awareness of the reforms;
- the extent to which employers have prepared for the reforms;
- attitudes to the reforms; and
- awareness of the six principles of good workplace DC schemes.

The Regulator published two documents in relation to the research – one provides a summary of the findings and the other is a Technical Report which sets out the results for each question asked.

Large and medium employers – findings

Findings of the survey in relation to large and medium employers include the following.

- Awareness
  - Awareness remained high at 99% for large employers and 95% for medium employers.
  - The need to register details with the Regulator remained the least well known aspect with 88% of large and 86% of medium employers being aware of this.
- Understanding
  - 43% of large and 30% of medium employers were able to correctly identify those working for them who need to be assessed for automatic enrolment. This compares to figures of 47% and 22% respectively in autumn 2012.
  - 69% of large and 54% of medium employers were able to correctly identify the factors that determine whether a person is eligible for automatic enrolment. For large employers this was relatively static since autumn 2012 (66%) and for medium employers, this was a significant increase from 39% in autumn 2012.
- Time for preparations
  - The proportion of large employers who expected to leave it "as late as possible" to prepare for the reforms saw a significant fall from 15% in the autumn 2012 survey to 6%.
  - The proportion of employers who believed the process of preparing for and implementing the reforms would take four months or longer had increased significantly since autumn 2012 from 49% to 62% for large employers and from 34% to 52% for medium employers.

- Implementation plans
  - 10% of large and 3% of medium employers had fully implemented their plans for automatic enrolment.
  - 37% of large and 27% of medium employers had drawn up action plans and started to act on them. This represents a significant increase in levels of preparation among medium employers from a figure of 13% in autumn 2012.
- Scheme choice
  - 61% of large and 41% of medium employers have chosen the scheme they will use for automatic enrolment.
  - Of those who have chosen which scheme to use, the most popular type is a GPP at 51% for large employers and 50% for medium employers.
  - 64% of large and 75% of medium employers who have a pension scheme and have selected the scheme they will use for automatic enrolment intend to use their current pension scheme.
- The activities most likely to have been completed were:
  - large employers: finding out their staging date, investigating which pension scheme to use, making initial project plans and identifying which workers need to be automatically enrolled; and
  - medium employers: finding out their staging date.
- The activities least likely to have been started included:
  - large employers: finding out the information required to be registered, working out implementation costs and working out the communications process; and
  - medium employers: working out implementation costs, working out how to communicate the changes to workers and working out the costs of the pension contributions.
- The main challenges were seen as:
  - for large employers: administration of automatic enrolment (43%), cost (19%), assessing workers (14%) and a lack of interest from the workforce (11%); and
  - for medium employers: administration of automatic enrolment (32%), cost (22%), lack of understanding (15%) and a lack of interest from the workforce (13%).
- Six DC principles
  - 26% of large and 17% of medium employers were aware the Regulator had published the principles.
  - Of those aware of the publication of the principles, 16% of large and 7% of medium employers had a 'very good' understanding of them and 57% of large and 65% of medium employers had a 'fairly good' understanding of them.

The Regulator's accompanying press release notes that the research shows that employers are beginning to recognise the need to allow time to plan for automatic enrolment, but also warns against complacency as levels of detailed understanding have remained largely unchanged since autumn 2012. If you would like any training to assist with your levels of understanding or any support with your preparations for implementing the duties, please get in touch with your usual DLA Piper pensions contact.

HELPING EMPLOYERS WITH SCHEME SELECTION

Introduction

On 1 August, the Regulator published a suite of guides to help employers who have limited pensions experience to select a good quality scheme for automatic enrolment.

The guide for employers

The guide explains that the scheme to be used for automatic enrolment will need to meet certain legal requirements and goes on to state that, as well as these requirements, employers should choose a good quality scheme that is well run, offers value for money and protects workers' pension savings.

The key areas that the Regulator states employers should look at (either directly with the provider or with an adviser) when assessing the quality of a DC scheme are set out below together with a summary of the Regulator's view in relation to each.

- Scheme simplicity
  - The key here is that the scheme must reflect the fact that members may not be engaged with the scheme but they should be protected even if they don't make active decisions about their pension savings.
- Investment options
  - It should be checked that each investment option suits a certain type of member.
  - As too much choice can be confusing to members, the pension provider should be able to justify why the core investment options provided in addition to the default strategy are appropriate.
- Managing investments
  - The employer should be clear who is responsible for monitoring the performance of the investment options including the default strategy.
- Value for money
  - Costs and charges borne by members should be competitive when considered against the benefits and services the members receive and should be a key consideration when assessing value for money.
  - If additional services are provided that involve a cost, it is important for employers to understand what their workers get for the money, how much it costs and whether the services are actually needed.
- The pension provider
  - Providers should be asked how they ensure the needs of the employer's workers are taken into consideration when they make commercial decisions.
  - Employers should check whether investment options qualify for protection and compensation arrangements and that the provider is required to hold enough money in reserve to survive as a business even if severe problems are encountered.
- Communications
  - The provider should regularly send good quality communications to members covering a number of issues such as how much they have saved and their projected savings at retirement and employers should ask for examples of typical scheme communications when assessing the scheme.

The Appendix to the guide sets out some questions covering each of these areas that can be put to providers.

The guides for advisers

The Regulator states that its research suggests that small and medium employers will approach finance professionals with whom they have an existing relationship for advice about automatic enrolment. The Regulator has therefore also published the following.

- A guide for financial advisers which summarises the key areas to consider when assessing schemes. This guide in particular gives further information on value for money emphasising that as any added services are usually provided at a cost, it is important for employers to fully consider the suitability of the services and whether they add value and are necessary to meet the needs of the scheme and the members.

- A guide for accountants which summarises the key areas to consider and notes the importance of selecting a good quality scheme. This guide recognises that it is unlikely that accountants will be in a position to provide financial advice to their clients about pensions. Nevertheless, it states that accountants could be a potential first point of contact for employers and therefore they should be able to direct employers to sources of information, guidance and advice about scheme selection.

A note on trust-based scheme size

The guide for employers states that the Regulator's evidence suggests that most employers will find that it is not cost effective to set up a new trust-based scheme unless it has at least 1,000 people saving in it.

This point is reiterated in the guide for financial advisers in which the Regulator states that it is encouraging employers with fewer than 1,000 workers who will only be paying the statutory minimum contributions to question any recommendation that they set up a new trust-based scheme.

Taking a role in managing the scheme

Alongside these guides, the Regulator published information for employers who wish to be more closely involved in the running of the scheme that they offer. This applies whether or not the scheme is being used for automatic enrolment. Further details on this guidance can be found in the Pensions Regulator section of this newsletter.

Whilst the guides are aimed at employers with limited pensions experience, other employers may also find it useful to look at this guidance (as well as the six DC principles and underlying features) when selecting a scheme.

It is noteworthy that some of the areas of focus in the guidance – such as investment options and the references to scheme size – are also areas being considered in the DWP's Call for Evidence about imposing minimum statutory quality standards on DC schemes.

THE PENSIONS REGULATOR

EMPLOYERS AND SCHEME MANAGEMENT

Introduction

At the same time as publishing guidance on selecting a good quality pension scheme for automatic enrolment (see previous article), the Regulator published "*Monitoring your pension scheme. Management committees for employers*".

This document is a guide for employers who wish to oversee and review the pension scheme they provide for their workers including any scheme chosen for automatic enrolment. The guide is stated, in particular, to be for employers using a Group Personal Pension (GPP) or master trust.

The benefits of engagement

The guide states that employers are not legally required to review and monitor the scheme on an ongoing basis but employers could nevertheless set up their own processes to do so. The following benefits of taking a more active role in the scheme are noted.

- Early identification of administration problems.
- Better value for money.
- Improved employee engagement and awareness of employer contributions.
- Improved member understanding of their retirement savings.
- Fewer member complaints.

Management committees

The guide contains information about establishing a voluntary management committee. This sets out the following suggested areas for a management committee to focus on when monitoring and reviewing a scheme: value for money; pension provider performance; late and inaccurate employer contributions; performance of the default fund and other investment choices; communications; member engagement; and employer recommendations.

The Appendix to the guide is an example of terms of reference for a management committee. The sample terms cover areas such as: the matters on which the committee will make recommendations; membership of the committee; frequency of meetings; decision-making by the committee; requirements for any proposals to amend the scheme to be discussed with the committee prior to implementation; receiving reports on investment and administration performance; and dealing with member complaints.

Other forms of engagement

The guide also reports on other ways for employers to monitor and review the performance of their pension arrangement such as: monitoring by an independent financial adviser or employee benefit consultant; informal review by employer representatives; and asking trustees of an existing trust-based scheme to help with keeping the new scheme under review.

SURVEY RESULTS – PERCEPTIONS OF THE REGULATOR

In August the Regulator published the results of its ninth annual survey tracking perceptions of it among a sample of its key audiences.

Background

The respondents to the survey include lay trustees, employers, pensions professionals (scheme managers, in-house administrators, professional trustees, lawyers, actuaries, auditors and third party administrators) and non-pensions professionals (independent financial advisers /employee benefit consultants and accountants).

The survey aims to track: how effectively the Regulator is perceived to be fulfilling its objectives; its compliance with the PACTT Principles of Better Regulation (to be Proportionate, Accountable, Consistent, Transparent and Targeted); use and perception of the services provided; and frequency of contact with the Regulator and the usefulness of each channel.

The latest survey consisted of interviews with 719 respondents which took place in September 2012 and between February and April 2013.

Findings

Findings of the survey include the following.

- 66% rated the Regulator's overall performance as 'good' or 'very good' (compared to 64% in the 2011-12 survey).

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- Employers are more likely than other groups of respondents to rate the Regulator's performance as 'fair' rather than 'good' and to say they do not know how to rate the performance.
- In respect of the PACTT Principles:
  - the Regulator's Corporate Plan set itself a target of an average of 70% of respondents agreeing these principles are met and the Regulator exceeded this target with a result of 73% (compared to 71% in 2011-12);
  - there are six statements about these principles which respondents have to comment on and, as was the case in 2011-12, the highest score related to whether the Regulator is a trusted source of information, with 92% agreeing this is the case;
  - the scores for the other five statements ranged from 66% to 74% with a significant improvement from 66% to 71% agreeing with the statement that the Regulator explains clearly why decisions affecting occupational pension schemes have been made; and
  - the rating of the Regulator in relation to these principles was lowest among employers with an average score of 63% across the six statements and highest among non-pensions professionals with an average score of 82%. It is said that the score for employers may at least in part be accounted for by the fact that employers are more likely than other groups to be neutral (i.e. neither agree nor disagree) or to be unable to give an answer in relation to statements.
- In terms of effectiveness at carrying out its role:
  - there have been significant increases in the proportion of respondents rating the Regulator as 'very' or 'fairly' effective at strengthening the funding of DB schemes (from 65% to 75%) and at reducing the risks of claims to the PPF (from 55% to 67%);
  - for the first time the objective of maximising employer compliance with automatic enrolment was considered with 66% regarding the Regulator as 'very' or 'fairly' effective in this; and
  - effectiveness at protecting the benefits of members of DC schemes was also measured for the first time with 71% regarding the Regulator as 'very' or 'fairly' effective.
- There were improvements in the perception of the Regulator across all the attributes discussed in the survey with significant increases since 2011-12 in the proportion rating the Regulator as independent (from 80% to 84%), respected (from 73% to 78%), straightforward (from 59% to 64%) and transparent (from 53% to 63%).
- The most frequently used channels of communication with the Regulator over the last 12 months were the Regulator's website, e-mails or letters from the Regulator and the Trustee Toolkit.
- 97% of those who use the website said it is either 'very' or 'fairly' useful (compared to 92% in 2011-12) and the score was 94% for the Trustee Toolkit (also compared to 92% in 2011-12).

PENSION PROTECTION FUND

INVOICING THE 2013/14 LEVY

On 9 August the PPF updated its website to state that invoicing for the 2013/14 levy will start in September.

"*A guide to the Pension Protection Levy 2013/14*" was added to the PPF's website as well as sample invoices and updated FAQs.

The guide explains the key features of the levy, how to pay the levy, information used in the levy calculation and how to query the levy. The PPF stated in its general update Bulletin also issued in August that very little has changed from last year with the Levy Scaling Factor and scheme-based levy multiplier having been updated, but everything else remaining the same.

The FAQs cover:

- general issues such as what D&B failure scores are used for the 2013/14 levy; how investment risk is measured; and how to appeal the failure score; and
- some specific scenarios such as: the calculation of the guarantor insolvency rate in a multi-employer last man standing scheme where a Type A contingent asset has been put in place; how failure scores affect foreign employers; and calculating the average failure score where monthly failure scores are a combination of industry averages and actual failure scores.

For schemes that are querying their invoice, it is worth noting that the Guide states that interest will accrue on the scheme's levies if they remain unpaid during the PPF review or D&B appeals process and therefore the PPF states that schemes are encouraged to pay levy invoices subject to such review or appeal.

PPF BULLETIN

In August, issue 14 of the PPF Bulletin was published. This provides an overview of developments from the PPF over the last few months including:

- the publication of the 2013/14 levy guide;
- the PPF's announcement (reported in the July edition of Pensions News) that it has appointed Experian as its new insolvency risk provider;
- the PPF's plans to bring member administration services in-house from 2014;
- the appointment of four firms to the PPF's new Trustee Advisory Panel which is part of the PPF's programme to push schemes through the PPF assessment process and FAS wind-up process more efficiently;
- the publication of default early and late retirement factors (reported in the May edition of Pensions News) for use by certain schemes in assessment which have to equalise for GMPs before transfer;
- the publication in June of the PPF's enhanced Responsible Investment framework which reinforces the PPF's commitment to responsible and sustainable investment;
- the publication of the PPF's three year Strategic Plan (reported in the May edition of Pensions News); and
- the restructuring of UK Coal which means its schemes will enter the PPF (reported in the July edition of Pensions News).

CASE LAW UPDATE

RECTIFICATION

Background

In the January edition of Pensions News we reported on the judgment in a preliminary hearing relating to the case of *Konica Minolta Business Solutions (UK) Limited v Applegate and others*.

Konica was seeking rectification of the rules of the Konica Minolta Business Solutions (UK) Pension Plan (**"Plan"**) to remove an underpin that it said was applied in error to the deferred pensions payable to members who transferred into the Plan following a bulk transfer in 2002.

The preliminary hearing considered whether, if the rectification claim was successful, the Plan would be in breach of the preservation legislation. The court concluded that a breach would not occur which meant that the rectification claim could proceed. In August judgment was issued in relation to the rectification claim.

The nature of the rectification hearing

The question of rectification was not considered by way of a full trial but rather on an application by Konica for summary judgment.

Summary judgment can be granted in cases where the court is satisfied that the defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim should be dealt with at a trial.

The defendants in the proceedings were the trustees of the scheme and a representative beneficiary (representing all those in whose interest it may be to retain the underpin) and the summary judgment application was in fact not opposed by them.

The rule in question

The underpin applies to certain members who transferred to the Plan in 2002 and states that they will receive the higher of:

(a) a deferred pension calculated at the date of leaving service in accordance with the rules relating to active members who retire at Normal Retirement Date (NRD) and increased by reference to revaluation legislation (although the rules inadvertently refer to the "*Regulation Laws*"); and

(b) a deferred pension calculated using the pensionable service that the member would have had at NRD multiplied by the fraction of actual pensionable service over total pensionable service the member would have had if pensionable service had continued to NRD.

Paragraph (a) is the part said to have been included in error when the Plan rules were consolidated in 2006.

The error was spotted and corrected for future service in a new definitive deed and rules executed for the Plan on 21 April 2009.

The requirements for rectification

In order to grant rectification for mutual mistake the following criteria need to be met.

- The parties had a common continuing intention in respect of the matter to be rectified.
- That common continuing intention existed at the time of the execution of the instrument to be rectified.
- That common continuing intention is established objectively.
- By mistake, the instrument does not reflect the common continuing intention.

The following principles of rectification were also relevant to this case and noted by the court.

- In cases where the error has had an unexpected effect, the parties may simply not have addressed this point and therefore may not have stated that they did not intend to have that effect. However, rectification is still available if, on an objective analysis, there was never any common continuing intention to have that effect. If so, the court can find there was a common continuing intention not to have the particular effect.
- Whilst in this case, there was evidence from the employer, the then trustees and the draftsperson stating that the underpin had not been intended, because the test is an objective one, this had to be ignored.

The court's decision

The court referred to evidence of an objectively established common continuing intention of the parties including:

- correspondence stating that the Plan was to carry forward benefits of the transferring scheme (in contrast, the underpin would be a major change to benefit entitlements);
- correspondence pointing out an error in the relevant rule in a previous draft of the 2006 consolidation which was not dealt with effectively in the final version;
- the fact that the deferred pension described in paragraph (a) would always be greater than that under (b) which would mean paragraph (b) would simply not have been needed; and
- the fact that there was no evidence to show that a decision had been taken to confer the underpin or that the Plan Actuary had been consulted about the conferment of enhanced benefits on these members.

The court was therefore satisfied that all the requirements for rectification were met and that whilst rectification is a discretionary remedy, there was no reason for it not to be granted. The court concluded that this was an appropriate case to grant summary judgment as there was no real prospect of success for the defendants and there was no other compelling reason why the case should be dealt with at trial.

The rectification was retrospective to the date that the 2006 rules were adopted and involved the deletion of paragraph (a) and the addition of a reference to the revaluation legislation in paragraph (b).

The court noted that, if any members' benefits had been put into payment on the basis that the underpin applied, the retrospective rectification means that they will have been overpaid and they may now face claims for recovery of overpayments. Whilst it was not thought that any members' benefits had been calculated in this way, in the absence of definitive evidence to that effect, the court granted liberty for any such members to apply to the courts to argue that the rectification claim ought to have been granted subject to protective terms.

It is interesting to see the principles of rectification being applied in practice and the type of factors that the court regards as evidence of a common intention. It is also noteworthy that the court recognised that summary judgment applications (rather than a full trial) to deal with rectification claims are becoming relatively commonplace citing two cases from 2012.

HMRC

FIXED PROTECTION 2014

As we reported in the July edition of Pensions News, the Finance Act 2013 received Royal Assent on 17 July. This Act (and accompanying regulations which were also made in July) reduce the lifetime allowance from £1.5 million to £1.25 million from the tax year 2014/15 onwards and also introduce a fixed protection regime for 2014 (**"FP14"**).

The purpose of FP14 is to allow those who have been saving on the basis that the lifetime allowance will be £1.5 million (and therefore already have, or expect to have, savings in excess of the new lower level of £1.25 million) to fix their lifetime allowance at £1.5 million. However, FP14 will be lost in certain circumstances which, in summary, are where the individual starts a new arrangement under a registered pension scheme, makes contributions to a DC scheme, accrues further benefits in a DB scheme or breaches restrictions on what transfers are permissible.

On 12 August HMRC published various items in relation to FP14.

- **Online tool**
  - The online tool asks a series of questions about a person's pension saving in order to help them decide whether to apply for FP14.
- **Forms**
  - HMRC announced that it is now accepting applications for FP14 which can be submitted online (provided the person knows their national insurance number) or in paper form. The applications must be received by HMRC on or before 5 April 2014.
- **Guidance**
  - The guidance covers issues such as who can apply for FP14, how to apply and the circumstances in which FP14 will be lost.
  - In relation to the circumstances in which FP14 will be lost, the guidance provides detailed information covering issues such as: the limited circumstances in which a new arrangement can be joined without losing FP14; what transfers are permitted; what transfers can cause FP14 to be lost; what constitutes benefit accrual in a DC scheme and in a DB scheme; and examples of scenarios in DB schemes (such as changes in an earnings cap and continued life cover) and whether they could cause FP14 to be lost.
  - The rules on when FP14 will be lost are complicated and it is useful for schemes to note that the guidance states that the person who has FP14 is responsible for testing for benefit accrual. However, it also states that individuals may need to ask the scheme administrator for information to help them carry out the test.

Whether or not to apply for FP14 is a decision for the individual to make, taking independent financial advice where necessary. For schemes, the key point to note is that queries may be received from members asking for information to help them decide whether or not to apply for FP14 and to monitor whether FP14 is lost. Looking ahead, whilst the detail for FP14 is now in place, the detail of the individual protection regime is awaited with a response to HMRC's June consultation (reported in that month's edition of Pensions News) expected in the autumn.

OTHER NEWS

ANNUITIES

Background

Two developments in August show the continued focus of the industry on annuities.

Feedback to the FCA's Transparency Discussion Paper

In March 2013, the Financial Conduct Authority issued a Discussion Paper on Transparency. Areas this Paper covered included information that the FCA could require firms to release, in particular, relating to transparency in the annuity market. The Association of British Insurers' Code of Conduct (referred to in further detail below) was noted by the FCA but is also went on to say that it believed that it may also have a role in making the annuity market more transparent, comprehensible and comparable.

On 5 August, the FCA published the Feedback Statement to the Discussion Paper. This reported that views in responses had been divided about the proposal that the FCA improve transparency in the annuity market. Several respondents were said to have referred to the ABI's Code of Conduct suggesting that the effectiveness of this be assessed before deciding if further work is needed although views were divided about whether the Code goes far enough.

Points made in the FCA's response include that:

- it will monitor the ABI's work on improving the information given to customers and its transparency initiative to assess whether it meets consumer needs;
- through the work the FCA is completing on annuities, it is seeking to build a comprehensive picture of the market and to establish whether further regulatory interventions could help consumers; and
- to support this work, the FCA issued information requests to annuity providers in July and expects to report on its findings in early 2014.

The ABI Annuity Window

In the February edition of Pensions News, we reported on the implementation with effect from 1 March 2013 of the Association of British Insurers' Code of Conduct on Retirement Choices. One of the requirements of the Code is for ABI members to encourage customers to gather comparative quotes and highlight the benefits of shopping around for the right pension deal.

As part of this Code, on 21 August the ABI launched its Annuity Window which publishes specimen annuity rates offered by ABI members.

The specimen rates are based on 12 example customer profiles with variations according to whether a single or joint life annuity is purchased, health and lifestyle factors and postcode.

It is emphasised that the publication of the rates in the Annuity Window is for information only to show what is available in the market, how rates can vary and the need to get expert advice. The Annuity Window is specifically stated not to be a real time comparison service.

The illustrations will be updated regularly. The initial rates were based on a July survey of ABI members' annuity rates and it is reported that this survey showed that a 65 year old buying an annuity with £24,000 from their pension fund could receive between £800 and £1,800 per year depending on personal circumstances and the provider.

ON THE HORIZON

- **OFT market study on DC workplace pensions.** This study is expected to be complete by August 2013 although it is not yet known when the outcomes will be published.
- **DC quality standards.** The Call for Evidence closes on 9 September 2013.
- **Codes of Practice on Maintaining Contributions.** The Pensions Regulator's updates to these Codes of Practice and new draft guidance are expected to come into force in the autumn.
- **New statutory objective for the Pensions Regulator.** TPR's consultation on amendments to its Code of Practice on 'Funding defined benefits' and its regulatory approach to defined benefit schemes is expected to be published in the autumn.
- **Charges.** Regulations to ban consultancy charges in schemes used for auto-enrolment have been laid before Parliament. A consultation on amendments including the introduction of a cap is expected in the autumn.
- **Exceptions to automatic enrolment duties.** A consultation is due to be published in the autumn.
- **IORP Review.** Proposals to amend the IORP Directive in relation to governance and transparency are expected to be published in the autumn.
- **Personalised lifetime allowance.** A summary of responses to the consultation and updated draft legislation are expected to be published in the autumn.
- **Disclosure regulations.** The new regulations will be laid before Parliament after the summer recess and come into force on 6 April 2014.
- **Pension protection following TUPE transfer.** The consultation on amendments to this legislation closed on 5 April 2013. Changes are proposed to come into force on 1 October 2013.
- **Employer debt.** The consultation on amendments to the "restructuring provisions" closed on 7 June 2013. The changes are proposed to come into force on 1 October 2013.
- **Fiduciary duty.** The Law Commission's consultation on fiduciary duties in relation to investments is expected to be published in October 2013 with the report (containing recommendations) to follow in June 2014.
- **DC regulation.** An updated version of the Regulator's regulatory approach will be published in the autumn with the compliance and enforcement policy to be published later in the year.
- **DC Code.** The DC Code of Practice and accompanying guidance are expected to become effective in November 2013.
- **Record-keeping.** An updated version of the Regulator's guidance is expected to be published in 2013 which will include a focus on "conditional data".
- **IORP solvency.** Further details of EIOPA's work programme on IORP solvency will be published later in 2013.
- **PPF's insolvency risk provider.** New insolvency risk scores will be available in early 2014 and will be used for the 2015/16 levy year.
- **Simplification of automatic enrolment.** The DWP's consultation closed on 7 May 2013 and it is proposed that the majority of amendments will come into force in April 2014.
- **Pensions Bill.** The Bill is expected to receive Royal Assent by the end of the parliamentary session in spring 2014.
- **Equalisation for GMPs.** During the Parliamentary debate on the Pensions Bill, it was reported that guidance on GMP conversion (which will provide guidance on an alternative method by which schemes can equalise benefits including GMPs prior to conversion) is expected to be provided by spring 2014.
- **Short service refunds.** It is intended that short service refunds will be withdrawn from money purchase schemes in 2014.
- **Changes to the annual allowance and the lifetime allowance.** The lifetime allowance will be reduced to £1.25 million and the annual allowance to £40,000 for tax years 2014/15 onwards.
- **State Pension.** The reform of state pension which would result in the end of contracting-out is proposed to take effect in April 2016.

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