ALLEN & OVERY

2 December 2019

Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

New TPR investment consultancy and FM guidance | Master trusts: new PASA guidance | Latest HMRC newsletter | High Court orders rectification of increase rule: *Colart*

New TPR investment consultancy and FM guidance

New rules from the Competition and Markets Authority (CMA) requiring pension scheme trustees to run competitive tenders for fiduciary management services and to set strategic objectives for investment consultancy providers will take effect from 10 December 2019. Regulations establishing a similar (but not identical) replacement regime are expected by April 2020.

The Pensions Regulator (TPR) has now published its supporting guidance for trustees on: choosing an investment governance model; setting objectives for providers of investment consultancy services; tendering for fiduciary management services; and tendering for investment consultancy services. The guidance has been drafted to support the CMA rules; it will be updated once the government has published the replacement regulations (for more information, see WNTW, 5 August 2019). TPR's consultation response is also available.

Following consultation, the objective-setting guidance has been clarified to state that in most cases trustees should assess performance against objectives annually (with a detailed assessment of performance at least every three years). It now also states that there are many ways to monitor and assess performance, and that trustees should adopt a proportionate approach that is appropriate for their scheme. TPR expects trustees, as a matter of good governance, to consider the full range of advice and services provided by investment consultants and whether it is appropriate to set objectives even where there is no direct legal obligation to do so. TPR has also suggested that, in certain cases, failure to consider setting these objectives could be viewed as a failure to ensure there is an effective system of governance, or as a failure to meet the TKU requirements. More broadly, TPR expects trustees to consider setting objectives for all their providers of advisory services.

With less than two weeks before the 10 December deadline, many schemes will already have set objectives for existing providers of relevant investment consultancy services, but trustees should note that, if objectives have not been set, they must not continue to obtain services within the scope of the CMA rules from 10 December 2019 (or enter new contracts) unless the scheme is exempt.

Master trusts: new PASA guidance

The Pensions Administration Standards Association has published new guidance on master trust transitions – this is focused on (a) transfers between a single employer DC only scheme and a master trust, and (b) where members are transferred between master trusts before the transferring master trust winds up following a triggering event (known as Continuity Option 1). The guidance contains sections on potential legal pitfalls to avoid, planning the transition, planning communications, and transitioning data and assets. It includes example project plans which may be a useful reference point for employers and schemes considering a transfer to a master trust.

Latest HMRC newsletter

HMRC's latest Pension Schemes Newsletter (no.115) contains information on how to report details to HMRC about members who have relied on certain lifetime allowance protections, guidance on using the Managing Pension Schemes service, and a further request for scheme administrators to remind members to declare the annual allowance charge on their Self Assessment tax return (even where they are using 'scheme pays' to cover the tax charge).

High Court orders rectification of increase rule: *Colart*

The High Court has ordered rectification of a pension increase rule which failed to state that it only applied to pensions in excess of GMP: *Colart International Holdings Ltd v Colart Pension Trustees Ltd*. Rectification is a discretionary, court-ordered remedy which allows the claimant, usually the employer, to fix a mistake in the trust deed or rules with retrospective effect.

In 2002, a DC section was introduced into the scheme for all new joiners. A new rule for the DB section stated that pensions in payment for a DB member were to be increased by 5% LPI per annum – by mistake, this rule did not state that it only applied to pensions in excess of GMP. The scheme had always been administered on the basis this indexation applied only to the GMP excess, and the additional liabilities due to the mistake were estimated at between GBP2.37-2.93 million.

The judge was satisfied that the trustees and employer did not intend to retrospectively modify DB accrual or GMPs, or to change pension increases applying to the DB section. You can read more about rectification claims for pension scheme documentation at www.allenovery.com/rectification.

Contact information

Helen Powell
PSL Counsel, London
020 3088 4827
helen.powell@allenovery.com

Ruth Emsden
PSL (Australian lawyer), London
020 3088 4507
ruth.emsden@allenovery.com