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Defining "money purchase"

The Department for Work and Pensions (DWP) is *consulting on legislation* to introduce a new definition of money purchase benefits for occupational pension schemes.

The consultation follows the Supreme Court ruling in the case of Houldsworth vs Bridge Trustees (see *Pensions News – July 2011*) that benefits subject to a guaranteed interest rate or money purchase benefits which had been converted into a scheme pension (for example) remained money purchase benefits under the law as it then stood.

Crucially this meant that even though it was possible for the assets and liabilities of such schemes to be mismatched, they would not be subject to legislation on funding nor qualify for compensation from the Pension Protection Fund (PPF).

Following the court judgement, the government enacted Section 29 of the Pensions Act 2011 to ensure that benefits are only money purchase where they are calculated solely with reference to the assets - i.e. there is no mismatch between assets and liabilities. When it comes into effect in April 2014, Section 29 will have retrospective effect from 1 January 1997.

The DWP is now consulting on the draft regulations which will transition the impact for schemes which will no longer be classed as money purchase following the enactment of section 29. The Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014 will mean that:

- Affected schemes will have three months (from 6 April 2014) to appoint a Scheme Actuary and the effective date of their first triennial valuation must be before 6 April 2015. Schemes will have 15 months to complete the valuation.
- Affected schemes will need to submit their first PPF "section 179" valuation by 31 March 2015 and will pay PPF levies from 2015/16.
- Schemes which began winding up on or before 27 July 2011, or have completed winding up by 6 April 2014, will not have to revisit past decisions unless members' entitlements were not met in full, or if the former trustees consider that further assets could be obtained.
- Schemes which are winding up outside the PPF may be directed by the PPF to continue to treat affected benefits as money purchase. The schemes which have qualified for the Financial Assistance Scheme will not be required to unpick past decisions.
- Schemes where an employer debt event occurred on or before 27 July 2011 will not be required to recalculate the debt, or revisit scheme apportionment arrangements, withdrawal arrangements or flexible apportionment arrangements, where any benefits of the scheme were treated as money purchase.
- Affected schemes which paid a refund of surplus to the employer on or before 27 July 2011 (or after this date where the scheme was not underfunded) will not be required to revisit calculations.
- Schemes will not be required to revisit historic pension sharing on divorce cases.

To discuss these issues in more detail please contact your usual Barnett Waddingham consultant or use the following:

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Company accounts: WHSmith

Following a ruling by its conduct committee, the Financial Reporting Council (FRC) has instructed WHSmith plc to *restate its accounts* for the year ending 31 August 2012.

WHSmith accounts for its pension costs under International Accounting Standard IAS 19. IAS 19 limits the measurement of any Defined Benefit (DB) scheme surplus to the "present value of economic benefits available in the form of refunds from the plan or reductions in future contributions".

Moreover, if the company is obliged to meet a "minimum funding requirement" – for example has agreed to a Schedule of Contributions under UK Scheme Funding regulations – that is expected to lead to an IAS 19 surplus in future, then the present value of that commitment could be treated as an additional liability in accordance with the International Financial Reporting Interpretations Committee note IFRIC 14.

WHSmith had not accounted for a Schedule of Contributions that was in place between one of its subsidiary companies and its pension scheme trustees. The company claimed the treatment was uncertain in their case, partly because they actually hold a surplus in the pension scheme and have not historically taken credit for this on the balance sheet. The restated accounts have reduced WHSmith's disclosed profit by around £4m.

Companies reporting under IAS 19 may wish to discuss the application of IFRIC 14 with their auditor.

Latest news from TPR

Section 75 debts: "Double counting" warning

TPR has issued a *statement* reminding trustees and employers of multi-employer DB schemes that payments under a schedule of contributions cannot also be considered payments towards "section 75" debts, or vice versa.

Legislation requires section 75 debts that become due where an employer departs from a DB scheme to be treated as a separate payment from ongoing "Scheme Funding" contributions. Despite TPR's recent guidance on *multi-employer schemes and employer departures* making it clear that double counting is not acceptable, TPR is currently investigating a number of cases where section 75 payments and ongoing recovery plan payments have been incorrectly offset against each other.

TPR considers that attempted double counting is a reportable matter, and potentially a Notifiable Event, and that it may use its powers if any double counting (including past occurrences) is not properly addressed.

DC scheme compliance and enforcement policy

TPR has launched a *consultation* on its compliance and enforcement policy for occupational trust-based DC schemes. The policy sets out TPR's expectations for compliance with relevant pensions legislation and how it will enforce cases of non-compliance. The draft policy explains in broad terms:

- how TPR identifies and assesses risk in DC schemes;
- TPR's approach to monitoring DC schemes, in particular how it will monitor the market to identify schemes which are not complying with their legal obligations;
- how a DC scheme may be investigated by a case team; and
- the enforcement options available to TPR and how it makes enforcement decisions.

Auto-enrolment for medium-sized employers

TPR has begun to write to medium sized employers to warn them that they have *six months to go* before their duty to automatically enrol workers into a work-based pension begins. An estimated 5,000 employers will reach their staging date in April next year. A further 20,000 employers will reach their staging date between May and July. TPR has also updated its *monthly report on auto-enrolment*, which shows that 1.7 million eligible jobholders were automatically enrolled up to the end of September 2013.

For more information on Barnett Waddingham and Standard Life's simple, packaged solution to auto-enrolment please register *here* or speak to your usual Barnett Waddingham consultant.

PPF news

Annual Report

The PPF's *annual report* for 2012/13 shows that its invested assets rose from £11.1bn at 31 March 2012 to £14.9bn at 31 March 2013, corresponding to a return on its investments of 11.1%. According to the report, the PPF's funding level was 109.6% at 31 March 2013 (equivalent to a surplus of £1.8bn, up from £1.1bn in March 2012). Since 2005, the PPF has paid out nearly £800m in compensation to members. A further £319m has been paid out by the PPF under the Financial Assistance Scheme.

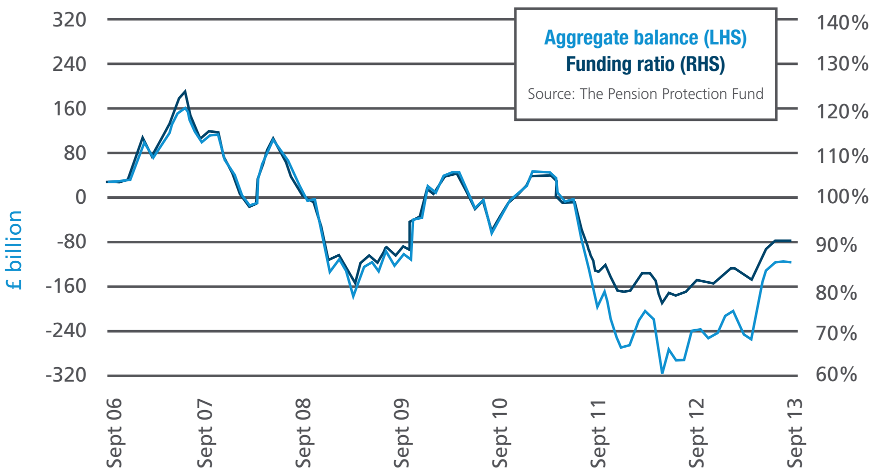
Alongside its annual report the PPF has also published *an update* on its long-term funding strategy. The update shows the estimated probability of the PPF meeting its target of self-sufficiency by 2030 increased from 84% to 87% over the year to 31 March 2013.

7800 Index updated

The *latest update* of the PPF 7800 Index of schemes' funding (on the s179 basis) has been published.

The aggregate deficit of the 6,316 schemes in the index is estimated to have increased slightly over the month to £114.8 billion at the end of September 2013 (there was an aggregate deficit of £112.4 billion at the end of August 2013).

The funding ratio fell slightly from 90.8% to 90.7%. There were 4,565 schemes in deficit and 1,751 schemes in surplus.



Other news

Pension liberation

The High Court *has ruled* that nine suspected liberation schemes are in fact occupational pension schemes and are therefore within scope of TPR's "suite of powers". The case had been brought by the independent trustees appointed to the schemes in order to clarify their legal status.

TPR has said that "the market should not doubt that we will continue to take action against schemes where there is evidence of misuse of members' pots".

Meanwhile, Her Majesty's Revenue & Customs (HMRC) has made *a number of changes* to processes with immediate effect in a bid to deter pension liberation. In particular, HMRC will:

- conduct a "detailed risk assessment" before deciding whether or not to register a pension scheme, rather than confirming registration immediately on submission of the online application;
- respond to requests for confirmation of another scheme's registration status without seeking consent from that scheme. This should help administrators who are dealing with member transfers; and
- continue to raise the profile of the consequences to deter individuals from liberating their pensions. A *factsheet* and *update* with more information on HMRC's approach have recently been published.

Public sector pensions: Treasury finalises "new Fair Deal"

HM Treasury has published the response to its further consultation on a new *Fair Deal* policy, which sets out pension considerations when staff are compulsorily transferred from the public sector to a private sector employer. The Treasury has also *published guidance* which sets out how the new Fair Deal will work.

The revised framework is effective immediately, although there will be a transition period until April 2015 to allow public sector scheme rules to be amended, and to avoid holding up procurement exercises already in progress.

Under the old Fair Deal, private sector employers were required to provide transfer staff with access to a pension scheme which was "broadly comparable" with the public sector scheme they were leaving, and to offer a bulk transfer of benefits from the old scheme. Under the new Fair Deal members will instead be offered continued membership of the public sector scheme, with the new employer contributing to that scheme. The guidance suggests pricing adjustments in order to avoid bidders having to price for the risk of a rise in future contributions.

Cap on DC charges

The DWP has issued a *consultation* in which it proposes a cap on pension charges for defined contribution (DC) schemes used for auto-enrolment. The DWP has set out three alternatives:

(i) Limit charges to 1% of funds under management,

(ii) Limit charges to 0.75% of funds, and

(iii) A "two-tier" option with a 0.75% cap as standard, but where schemes would be able to charge fees up to 1%pa if they can provide justification to The Pensions Regulator (TPR).

The DWP is also considering a ban on "active member discounts" (where higher fees become payable once a member leaves the company); a ban on adviser commissions and consultancy charges (at present the ban on consultancy charges only applies to schemes set up specifically for auto-enrolment); and improved disclosure requirements.

In its *impact assessment*, the DWP estimates that between 25,000 and 35,000 employers would need to review charges in their schemes if the cap was set at 1%. The number of affected employers would rise to 90,000 if the cap was set at 0.75%.

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