News on...

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a **true partnership** approach

Pensions - August 2013

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Nortel-Lehman Judgment

The *Supreme Court has overturned a ruling* that financial support directions (FSD) issued by The Pensions Regulator (TPR) after insolvencies should be treated as an expense of the administration.

The court found that FSDs were in fact provable debts that would rank alongside the claims of other unsecured creditors. This reverses earlier decisions by the High Court and Court of Appeal, which had effectively moved liabilities arising from the FSD to the front of the queue for recoveries from insolvent firms. The court unanimously ruled that TPR's moral hazard powers were not designed to give pension liabilities expense status.

TPR has issued *a statement* welcoming the judgment and noting that it is "...pleased that the Supreme Court has decided that an FSD issued against an insolvent target is effective."

TPR goes on to say: "Since the challenge was first made, we have made clear that we have no intention of frustrating the proper workings of the administration process. Today's judgment will provide clarity to the UK's restructuring and rescue practitioners that FSD liabilities have to be recognised in insolvent situations but do not have priority over administration expenses or secured debts."

Latest news from The Pensions Regulator

Report and accounts: 2012/13

TPR has published its *Annual report and accounts for 2012/13*. The report describes TPR's work over the past year in preparing employers for automatic enrolment. TPR also sets out how it has disrupted pension liberation fraud and improved standards and outcomes in defined contribution (DC) and defined benefit (DB) schemes. TPR recognises that 2014 will be a critical period for automatic enrolment as large numbers of medium-sized employers reach their staging dates.

Trust-based DC Code of Practice

TPR has published a revised *draft Code of Practice 13* setting out practical guidance to help trustees meet the legislative requirements for running occupational trust-based DC schemes. It is expected that the Code will come into effect in November 2013, and that TPR will publish further associated guidance at the same time. Following consultation, the Code was re-drafted to clarify certain aspects and to "draw out key messages". Practical guidance has been added on setting a default investment strategy, stewardship and governance factors. To help trustees familiarise themselves with the Code, TPR has composed a *short introduction* to accompany the main document.

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

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Record-keeping survey results

The results of its *2013 scheme record keeping survey* have recently been released by TPR. The survey is primarily concerned with how trustees are faring against TPR's record keeping standards, ie:

- Common data (data used to identify members such as name, address and National Insurance number) should be present in 100% of instances of new data created since June 2010, and in at least 95% of earlier data. TPR had set a target of 31 December 2012 for schemes to achieve this target,
- The presence of Conditional data (scheme-specific data used to calculate members' benefits such as pensionable salary or contributions history) should be assessed by trustees and their administrators against agreed targets.

The survey shows that around 95% of medium and large trust-based schemes are engaged with the measurement of common data and over half of these meet the target for common data. However, small trust-based schemes were less likely to measure their common data (56%) and meet the target (37%), and only 42% of administrators of trust-based schemes (and 18% of administrators of contract-based schemes) were able to recall TPR's common data target when asked.

The survey highlighted that measuring conditional data is less of a priority for schemes. Of the large trust-based schemes surveyed, 42% have not generated a conditional data score – the main reasons given were a lack of time, and that it was not a priority. Half of small trust-based schemes who do not measure the conditional data score were not aware of the requirement to do so.

Later this year, TPR intends to publish detailed results of its review of record keeping, alongside further guidance for trustees. In the meantime, it has released *some comments on the results* of the 2013 survey.

PPF news

PPF: Experian to replace D&B

Following a "competitive tender", the Pension Protection Fund (PPF) has decided to *replace* Dun and Bradstreet (D&B), who have provided insolvency information to the PPF since it was set up in 2005, with Experian. The PPF intend to use Experian's bespoke failure scores in levy calculations from 2015/16.

There will be a handover period between the two companies during which time the PPF will continue to use D&B to calculate the levy and the current methodology will remain unchanged. The PPF intends to give schemes and sponsoring employers access to the new insolvency risk scores from early 2014. PPF levies can be very sensitive to changes in failure score, so many pension schemes have put time and effort into ensuring that the information held by D&B is accurate.

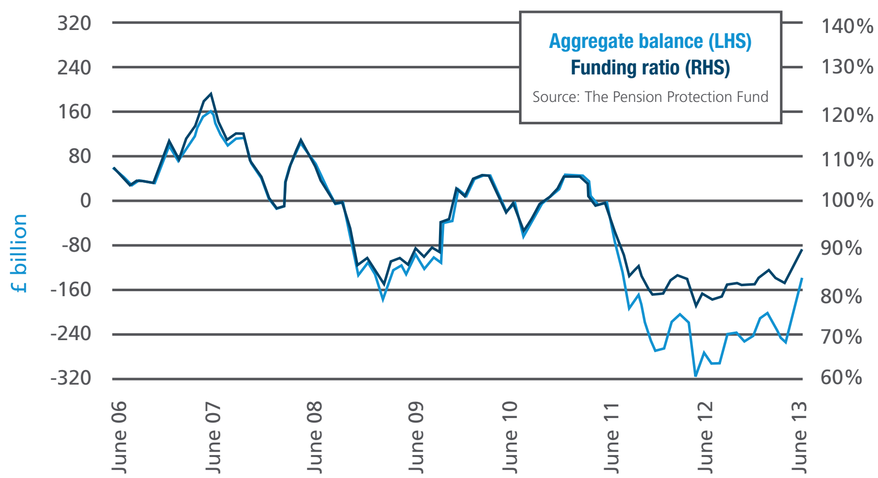
For further information, please speak to your usual Barnett Waddingham consultant or contact *Nick Griggs*.

PPF: 7800 Index

The *latest update* of the PPF's 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 decreased over the month to £134.3 billion at the end of June 2013 (there was an aggregate deficit of £185.5 billion at the end of May 2013).

Overall funding has improved over the year – there was an estimated aggregate deficit of £271.6 billion at the end of June 2012. At the end of June 2013, there were 4,692 schemes in deficit and 1,624 schemes in surplus.



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Other news

Auto-enrolment – update

The Government has laid draft regulations before Parliament which will ban "consultancy charging" in schemes used for Automatic Enrolment. The regulations, when enacted, will mean it will not be possible to pass on third-party consultancy costs to members via deductions from their contributions or personal funds, or via offsets to their investment income. Legally enforceable agreements that were set up before 10 May 2013, and which are expected to come into effect by November 2013, will be exempt.

The Department for Work and Pensions (DWP) is also *planning* to exempt companies from having to auto-enrol members with "Fixed Protection" or "Enhanced Protection", or members who are serving a period of notice to leave employment.

Meanwhile, TPR has published series of *guides* to help employers with limited pensions experience to select a good quality pension scheme for automatic enrolment. Further guides for financial advisers and accountants have been produced alongside the employer guides.

Finally, TPR has published *guidance* on "Monitoring your pension scheme" for employers wanting to regularly review the pensions arrangements they put in place for employees. TPR suggests that setting up a management committee would be a good way to formalise employers' governance of pension schemes.

CJEU ruling: VAT on investment costs

The Court of Justice of the European Union (CJEU) has *ruled* that pension scheme investment management fees paid by employers are business costs and so the employer can reclaim the VAT it has paid on these costs (providing that the costs are not passed on to the pension fund). Dutch firm PPG Holdings BV (PPG) had challenged the Netherlands tax authority on this matter, arguing that there was a "direct and immediate link" between investment management costs and its general business.

In the UK, HM Revenue and Customs' (HMRC) policy has been to allow VAT to be recovered on day-to-day management fees but not investment management fees (which are instead classed as scheme expenses). The ruling could leave HMRC open to claims from UK pension scheme sponsors who paid their schemes' investment management charges. Retrospective VAT claims are capped at the VAT costs incurred over the four years immediately prior to any claim. Employers can, however, lodge a protective claim with HMRC now.

This latest CJEU ruling follows an earlier case in which the National Association of Pension Funds and Wheels Common Investment Fund Trustees were unsuccessful in arguing that pension funds are "special investment vehicles" and therefore exempt from paying VAT on investment management services.

EIOPA update

The European Insurance and Occupational Pensions Authority (EIOPA) has published a *final report* on its Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs).

The headline results for the UK have not changed - namely a deficit of £450bn under the benchmark scenario, compared with approximately £300bn under the current regime - but the final report includes more detail and analysis. The report also highlights the wide variety in pension provision across Europe. EIOPA still believes that "the holistic balance sheet approach… may contribute to the sustainability of IORPs" although it recognises that it is still not in a position to fully assess the practicality of the holistic balance sheet. EIOPA has also released a *discussion paper* on how employer covenant might be valued in the "holistic balance sheet". They have suggested an alternative approach to the stochastic valuation method specified in the original QIS. In particular, they are now proposing that a probability of default (linked to credit ratios from the company's accounts) should be taken into account when determining Recovery Plan contributions. The paper also suggests how one might illustrate the effect of changing sponsor support on pension schemes.

Finance Act and Marriage (Same Sex Couples) Act

The *Finance Act 2013*, which will reduce the standard lifetime allowance from 2014/15 to £1,250,000 has been granted Royal Assent and become law (See *News on... Pensions - July 2013*).

The *Marriage (Same Sex Couples) Act* has also received Royal Assent. Mirroring the existing provisions for civil partners, the Act will exempt pension schemes from having to provide survivors' pensions to same sex spouses in relation to rights that members accrued in the scheme before 5 December 2005. An employment tribunal recently held that limiting the survivors' pension to pre-2005 benefit accrual amounted to direct discrimination. However, it is understood that this decision is not binding and is being appealed.

DWP: Disclosure regulations

The DWP has published a *response* to its earlier consultation on draft Disclosure of Information Regulations (see *News On… Pensions – March 2013*). The Government intends to introduce new regulations as soon as possible after the summer recess but they will not come into force until April 2014 to give schemes more time to prepare. Implementation was originally scheduled for October 2013. Some small changes have been made to the draft regulations, in particular:

- DC schemes which adopt a "lifestyling" approach (where funds are gradually automatically switched into a less risky investment strategy as the member's retirement date approaches) must be told about this as part of the basic scheme information provided at joining, and again between 5 and 15 years before retirement.
- DC schemes will not be required to issue Statutory Money Purchase Illustrations (SMPIs) until a member's auto-enrolment opt-out period has ended and contributions have started.
- Trustees of DC schemes can choose whether to allow members to select certain assumptions for their SMPIs.

Life expectancy statistics

ONS: Life expectancy by region

The Office for National Statistics (ONS) has published statistical bulletin on *"Life expectancy at birth and at age 65 for local areas in England and Wales, 2009-11"*. Highlights include:

- The distribution of life expectancy across England was characterised by a "north-south divide", with people in areas of the north generally living shorter lives than those in the south.
- The gap between the local areas with the highest and lowest life expectancy was wider for males (9.2 years) than for females (7.1 years) but there was no significant change in this inequality between 2005–07 and 2009–11.
- In 2009–11, male life expectancy at birth was highest in East Dorset (83.0 years) and lowest in Blackpool (73.8 years). For females, life expectancy at birth was also highest in East Dorset (86.4 years) and lowest in Manchester (79.3 years).

And finally…

The DWP has released figures showing the *increasing life expectancy* of the general population at the time of different royal births.

Royal Baby	Year of birth	Life expectancy at birth	Chance of living to 100
Elizabeth	1926	70.6 (girl)	3.4% (girl)
Charles	1948	77.4 (boy)	8.2% (boy)
William	1982	85.2 (boy)	19.5% (boy)
George	2013	90.9 (boy)	33.0% (boy)

The DWP use the statistics to illustrate how State Pension Age (which was set at 65 for a man in 1926) has not kept pace with improvements in life expectancy. In 1926, there were nine people of working age for every pensioner - in 2013 there are only three.

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