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pensions law group

Snapshot

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Overview

- **Consolidated and simplified enforcement policy and updated prosecution policy published by the Pensions Regulator**
  The Pensions Regulator (**TPR**) has issued a consultation relating to its new enforcement policy and updated prosecution policy to clarify how it will approach exercising its overlapping enforcement powers.

- **TPR publishes Annual Funding Statement**
  Against volatile and uncertain market conditions and events, TPR emphasises the need for trustees to have robust risk management policies in place and to consider the impact of market conditions on the covenant of the employer. TPR also stresses the need for trustees to pay attention to any corporate activity and obtain suitable mitigation, where appropriate. Trustees should also ensure the scheme is treated fairly compared with shareholders receiving dividends.

- **Queen's Speech**
  Whilst there were no measures relating specifically to pensions, proposed legislation including a new Data Reform Bill, an Online Safety Bill and a Financial Services and Markets Bill will have an impact on pension schemes.

- **Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022**
  This Act introduces changes to the GMP conversion legislation, some of which will have an immediate impact once the Act is brought fully into force. Others will need to be fleshed out in secondary legislation.

- **Cybercrime Protection checklist**
  In order to help administrators in the fight against cyberattacks, the PASA Cybercrime & Fraud Working Group (which included Philip Goodchild, a Partner in our pensions law team) has published a Cybercrime Protection checklist.

More information

Consolidated and simplified enforcement policy and updated prosecution policy published by TPR

TPR launched a consultation last autumn regarding the way in which it would exercise its enhanced powers under the Pensions Schemes Act 2021. Some respondents to that consultation requested greater detail about and clarification of TPR's approach to the use of its new and existing powers.

TPR has now launched a further consultation relating to its new draft enforcement policy document and updated prosecution policy, designed to address these requests for clarity.

TPR's draft enforcement policy consolidates previous policies for defined benefit, hybrid, public sector and defined contribution pension schemes.

On overlapping powers, the draft enforcement policy:

- sets out the different factors that TPR will consider when deciding which powers are appropriate to exercise.
- provides guidance on how those factors might be weighed up.
- sets out case study examples.

Generally, TPR will not pursue criminal proceedings and financial penalty proceedings against the same target for the same act. However, where TPR chooses to pursue a financial penalty, it may later pursue criminal proceedings if the act or conduct continues or new evidence emerges which makes this appropriate. Civil penalties will, therefore, lead the way.

TPR's approach is said to be focused on assessment of risks and harm to schemes (including future anticipated harm), the size of the scheme, the type of breach, the number of members, compliance history and previous interactions with TPR.

The draft was issued alongside new and separate policy documents setting out TPR's approach to monetary penalties - one for "avoidance-type penalties" and one for "information requirements penalties".

These policies do not necessarily create new policies but bring TPR's policies up to date and consolidate them. The draft enforcement policy brings all enforcement-related content into a single enforcement policy.

The consultation ends on 24 June 2022 and TPR expects to publish the final enforcement and prosecution policies later in the year.

TPR publishes Annual Funding Statement

TPR has recognised that schemes coming up to their valuation process are doing so against an uncertain economic background of high inflation and slower economic growth. This will have an impact on both scheme investments and employer covenant. There is also ongoing uncertainty surrounding the impact of the war in Ukraine.

As a result of this, TPR emphasises the need for robust risk management across schemes assets, liabilities and covenant. Trustees should ensure effective monitoring mechanisms are in place and understand the overall impact that current market events may have on their sponsor's business. Where employers request reduced or deferred deficit repair contributions as part of a revised recovery plan, trustees are expected to obtain mitigation.

TPR also emphasises that recovery plans have decreased in length in recent years and is therefore using six years as a benchmark length.

TPR notes that, following a hiatus during Covid-19, shareholder distributions are increasing. Trustees need to ensure fair treatment of the scheme compared with shareholder distributions and should seek mitigation for any corporate activity where appropriate. Trustees should also take a rigorous approach to assessing the impact of corporate transactions and ensure they keep a detailed record of their deliberations in respect of the scheme.

TPR also reminds trustees that, once the relevant provisions of the Pension Schemes Act 2021 are implemented, there will be a legal requirement for trustees to have a specific long-term strategy designed to deliver an agreed long-term objective. TPR therefore advises trustees to take steps now to adopt a long-term funding target, agreeing it with the employer and setting out their journey plan accordingly.

Queen's speech

The Queen's Speech, delivered on 10 May 2022, marked the state opening of a new Parliament and set out the Government's legislative agenda for the next parliamentary year. Whilst there were no measures relating specifically to pensions, proposed legislation includes a new Data Reform Bill, an Online Safety Bill and a Financial Services and Markets Bill.

As anticipated, there was no new Pensions Bill announced in the Queen's Speech. The Bill is required to implement the measures outlined in the 2017 Automatic Enrolment Review. The Government has committed to introduce these measures from the 'mid-2020s' to enable more people to benefit from auto-enrolment and higher contributions.

However, a number of the proposed Bills that have been announced are still likely to have an impact on the pensions industry:

- the Data Reform Bill aims to reform and simplify the UK data protection regime by reducing the burdens which UK businesses face from GDPR. Removing burdensome compliance obligations that are seen as "box-ticking" exercises in favour of an outcomes-focused approach would reduce compliance costs for pension schemes.

- The Online Safety Bill aims to improve protection for users online by requiring social media platforms, search engines and websites to tackle illegal activity. The Bill imposes a duty on online platforms to establish proportionate systems and processes to prevent hosting of fake and fraudulent content, including pension scams adverts.

- The purpose of the Financial Services and Markets Bill is to build on the Financial Services Act 2021, which was the first step in amending the UK's regulatory regime post-Brexit. One of the main elements of the proposed Bill is the introduction of additional protections for those investing in or using financial products. Reform of the Solvency II capital requirements for insurers is also on the agenda and this may have an impact on the UK's pensions buy-out marketplace.

The Bills, while not pensions-specific, will be welcomed by those in the industry who have long called for a more flexible approach to data protection and for online platforms to be held accountable for publishing and hosting fake or fraudulent pensions adverts.

Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022 (the **Act**) received Royal Assent on 28 April 2022. It introduces changes to the GMP conversion legislation, some of which will have an immediate impact once the Act is brought fully into force. Others will need to be fleshed out in secondary legislation.

Immediate impact of the Act

In terms of the immediate impact of the Act (once in force):

- it clarifies that the GMP conversion legislation applies to survivors as well as earners that earned the GMP.
- it ensures that money purchase benefits are not included in the actuarial calculation required to convert GMPs into ordinary scheme benefits.
- it removes the existing requirement for HMRC to be notified of GMP conversion.

Future regulations

The Act also gives regulation-making powers in relation to two key areas of GMP conversion that have been causing a fair amount of dismay in the pensions industry:

- First, the Act removes the existing complex conditions in relation to the provision of survivors' benefits by the converted scheme and, instead, requires the converted scheme to (i) provide benefits to or in respect of any widow, widower or surviving civil partner of the earner, and (ii) meet further conditions in relation to those benefits (to be set out in regulations). It is anticipated/hoped that these conditions will be much more straightforward and therefore simplify the conversion process.

- Second, the Act removes the existing requirement for the "*employer*" to consent to GMP conversion and, instead, provides a power to set out in regulations details about who must consent to the conversion. Again, it is anticipated that this will remove current ambiguity regarding the consent requirements and therefore simplify the conversion process.

The Act will come into force on 28 April 2022 for the purpose of making regulations and will be brought fully into force on a day to be appointed.

Comment

Whilst clarification of the GMP conversion legislation is to be welcomed, the key changes are subject to regulations which will fill in the details. In addition, further guidance is expected from HMRC on the tax implications of conversion. Pension schemes which are using GMP conversion as a means of achieving GMP equalisation (for future benefits) might therefore want to delay fully implementing conversion until the regulations come into effect and the tax implications are clear(er).

Cybercrime Protection checklist

In order to help administrators in the fight against cyberattacks, the PASA Cybercrime & Fraud Working Group (which included Philip Goodchild, a Partner in our pensions law team) has published a Cybercrime Protection checklist.

The checklist provides examples of how to increase resilience in order to:

- meet legal and regulatory standards.
- understand your organisation's vulnerability.
- ensure your organisation is resilient and remains able to fulfil key functions.

The checklist examples under the above areas are by no means exhaustive and PASA encourages each administrator to review its own vulnerabilities and add further steps which are relevant to its own environment. PASA also sets out steps to establish scope and coverage before considering the checklists in each area.

PASA admits that, while following all the steps on the checklist may not prevent a successful cyberattack, administrators can be cybercrime resilient by being as well protected as possible, able to manage an attack when it occurs, able to investigate what has happened and in a position to recover and mitigate any damage.

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