STEPHENSON HARWOOD

pensions law group

CLEAR VIEWS

Quarter four 2022 update

November 2022

OVERVIEW

Priorities for trustees this quarter are to:

- consider if they need to take any steps as a result of the rapid increase to inflation (for example discretionary increases and a review of factors used for early retirement and transfer values);
- understand the steps they should be taking in light of the recent increase in gilt yields and collateral calls under liability-driven investments (**LDIs**) and its aftermath.
- ensure they are on track with their pension dashboard staging date; recent guidance highlights there are very strict and limited situations that this date can be deferred;

In addition, trustees should be aware of:

- the Pensions Regulator's (**TPR**) response to the consultation on its draft enforcement and prosecution policies. TPR has also published an enforcement strategy;
- the expectations that TPR has on trustees when their sponsoring employers are:
    - undertaking merger and acquisitions; and/or
    - refinancing.
- the alignment of RPI to CPIH from 2030. Trustees should understand the impact this will have on the assets, liabilities and the funding position of their schemes.

KEY DEVELOPMENTS

Development	Date of change	Links to further information
Pension schemes and inflation With the recent rapid rise in inflation, trustees have been considering what steps, if any, they should be taking. Trustees are, in particular, considering if they should use discretionary powers to increase pensions in payment or revaluation of deferred benefits. Factors used for early retirement and transfer values may also need reconsidering to ensure the assumptions underlying these are accurate in the current climate.	Now	Further information on this case can be found in our briefing on the topic here.
The Pensions Regulator sets out expectations for trustees in managing investment and liquidity risk TPR has set out steps that trustees of both DB and DC schemes should be taking in light of the recent	Now	Further information can be found in our November snapshot here.

increase in gilt yields and collateral calls under LDIs and its aftermath. For DB schemes this includes reviewing the scheme's liquidity position, hedging position and funding and risk position as well as their operational processes to ensure they can implement their liquidity and cash management plans quickly.		TPR's statement can be found here.
Pensions dashboard developments Extension of notice period prior to Dashboard Available Point (**DAP**) In a consultation response, the DWP has extended the notice period that will be given prior to the DAP (which is the date that dashboards will be made live to the public) from the initial proposed 90 days' to 6 months. One reason for the extension is to give schemes time to prepare for what is expected to be an increase in member queries following the DAP. Draft guidance on deferred connection Draft guidance has also been published for trustees who are considering looking at deferring their staging date for dashboard compliance. The guidance makes it clear that deferral is only possible in very limited circumstances (relating to changing administrator). Even when those circumstances arise, trustees are expected to have considered alternative ways to still meet the staging deadline and to show these alternative to be unviable.	Now	Further information can be found in our November snapshot here. Further background information on dashboards generally can be found in our July 2022 snapshot here. The consultation response discussing the extension to the DAP notice period can be found here. The guidance relating to deferring a scheme's staging date can be found here.
RPI is set to be aligned with CPIH from 2030 We have previously discussed the proposed alignment of RPI with CPIH. This would likely result in RPI being lower by an average of 1% per annum. Pension schemes (in particular, defined benefit schemes) are expected to be affected in two ways: - a reduction in the value of any RPI linked assets; and - a reduction in any liabilities linked to RPI (for example indexation and revaluation calculated on the basis of RPI) Given that many defined benefit pension schemes are invested in RPI-linked gilts, the	2030	Further information on this case can be found in our briefing on the topic here.

proposed change could have a detrimental impact on the funding position of a number of schemes. A large number of pension schemes with CPI linked liabilities will have RPI linked assets. A number of pension schemes challenged the legality of this proposed change. A recent case has now dismissed these claims and held that the change is lawful. Trustees should therefore understand the impact upon their schemes of RPI being aligned with CPIH from 2030.		
The Pensions Regulator has published its response to the consultation on its draft enforcement and prosecution policies TPR has now published its response to the consultation on the draft enforcement and prosecution policies. The new versions are largely in the same form as the initial draft versions. These set out how TPR will approach exercising its wide variety of powers. TPR has also published an enforcement strategy which provides an insight into the overarching framework that is applied when selecting cases for enforcement actions.	Now	Further information can be found in our November snapshot here. TPR's enforcement policy can be found here. TPR's prosecution policy can be found here. TPR's enforcement strategy can be found here.
TPR expectations for mergers and acquisitions TPR has issued a blog stating it expects trustees to take a robust stance in defending scheme members in M&A deals. They should, in particular, ensure there is a robust funding plan in place and that they are involved in the transaction at an early opportunity. The trustees should also secure protections for the pension scheme when the proposed transaction is likely to detrimentally impact the employer covenant.	Now	Further information can be found in our November snapshot here. TPR's blog can be found here.
TPR expectations on refinancing TPR has also issued a blog on its expectations for trustees when sponsoring employers are refinancing. It highlights certain areas trustees and employers should consider in light of their defined benefit pension scheme.	Now	Further information can be found in our October snapshot here. TPR's blog can be found here.

The Stephenson Harwood pensions law group has been promoted to tier 1 and tier 2 by the Legal 500 for pensions disputes and pensions advisory work. Please see the Legal 500 website here for more information.

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