

## 1. Transfers

From April 2012 it has been possible to make transfer payments from contracted-out to contracted-in pension plans. Many members have a statutory right to such a transfer (irrespective of contrary restrictions in pension plan rules). Legislation sets down a number of member safeguards that must be met. Any transfer is subject to a receiving scheme being willing to accept it. Trustees should be aware of the impact on administration and member communications.

## 4. Retirement age ruling

The Supreme Court recognised a number of legitimate reasons for having a contractual retirement age in the *Seldon* case, but the key issue of whether age 65 was 'proportionate' in that case has been referred back to the Employment Tribunal. Since the abolition of the Default Retirement Age it has become increasingly important for trustees and employers to ensure that: employment practice is aligned with pensions provision; and arrangements do not breach age discrimination legislation.

## 2. Bankruptcy

A surprising High Court ruling casts doubt on the established premise that the pension benefits of bankrupt members are protected from creditors until they come into payment. The Court ruled that an Income Payments Order could be made against a bankrupt pension plan member where he had reached the age at which he could draw his pension but had not yet elected to do so. This ruling is being appealed: we await the outcome with interest.

## 5. Incentive exercises

A voluntary code of good practice has been issued by an industry group on 'incentive exercises' (these commonly include enhanced transfer values and pension increase exchanges). The code provides that cash should not be offered to members where this is conditional upon accepting the incentive offer. Modification exercises should not be set up so as to provide a substantial lump sum payment.

## 3. Good member outcomes

The Pensions Regulator's statement on "Good member outcomes" sets out its view of how DC arrangements should be established and governed. The Regulator is keen that those involved in designing and running automatic enrolment pension plans take its statement into account. Well governed trust based plans will already be applying many of these principles, but employers with contract based arrangements may find that there are governance 'gaps' that should be filled.

## 6. DB Funding statement

The Pensions Regulator's funding statement is aimed at trustees and employers with actuarial valuation dates from Sept 2011 - Sept 2012. The statement reassures trustees that they should focus on long-term financial health and not short term volatility. Bringing forward effective valuation dates and 'smoothing' the discount rate is not consistent with the Regulator's views. Contingency plans should be documented. The statement carries no legal force but adhering to its principles should minimise the risk of Regulator intervention.

### 7. Pensionable salary cap

In the *Bradbury v BBC* case, the High Court held that a contractual agreement to impose a cap on pensionable salary can be effective, notwithstanding the provisions of the pension plan rules, provided that this does not breach the employer's implied duty of trust and confidence. The practice of restricting salary increases for pensions purposes is not uncommon. There may yet be further legal proceedings in this case.

### 8. Unregistered pensions

Following the reduction in the Annual Allowance and the Lifetime Allowance, we are noticing an increase in the use of unregistered pension plans for higher earners. In spite of the legislative changes that have affected certain types of unregistered plans, those that are established on an unfunded basis as a contractual promise remain a viable option. Such arrangements deserve consideration by employers when setting remuneration strategies.

### 9. Disclosure of information

The DWP has amended the timescales within which trustees should supply basic pension plan information to new members to tie in with the auto-enrolment regime. Members who are automatically enrolled should be provided with basic information within one month of the date that the pension plan receives jobholder information from the employer. Trustees should review administration and communication material for pension plans that will be used for auto-enrolment.

### 10. Auto-enrolment

The automatic enrolment earnings trigger, and the upper and lower limits of the qualifying earnings band are now confirmed in legislation (these figures are £8,015, £42,475 and £5,564 respectively for 2012/2013). The DWP has issued an auto-enrolment visual stamp (reproduced here). The DWP informs us that this can be used by any organisation who will be communicating messages or information about automatic enrolment – so you will be seeing a lot more of it!



#### Further information

For further information about any of our Hot Topics please contact any of the partners listed or your usual contact in the Squire Sanders pensions team.

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