

Autumn always heralds the start of a new academic year: the time to wipe the dust off our books and exercise our minds with matters that may have been allowed to rest a little over summer.

Our educationally themed trustee update is designed to help our readers to get back on track with issues that may need a place on forthcoming trustee meeting agendas. Or, for some, it may act as a comforting checklist to verify that key issues have already been addressed. We focus on areas that may require action as a result of changes to legislation, rather than general points of governance and good practice.

According to John F Kennedy: "*The goal of education is the advancement of knowledge and the dissemination of truth.*" We aspire to provide our readers with both knowledge and truth in this update by running through five lessons that you may remember fondly (or not so fondly!) from your schooldays.



Lesson 1 – Latin

"*Persevere and preserve yourselves for better circumstances.*" Virgil, Roman poet.

(a) Carpe Diem – Power to Make Payments to Employers

A quirk of legislation (section 251 of the Pensions Act 2004) requires trustees of defined benefit (DB) occupational pension plans to pass a resolution on or before 5 April 2016 if they wish to retain an existing power in their pension plan rules to make future payments to participating employers. This applies to pension plans that were in existence on 6 April 2006 and where the trustees have not already validly passed such a resolution.

Sponsoring employers have a vested interest in ensuring that trustees consider this issue. Many employers make significant levels of contributions to DB pension plans and would not want any future surplus to become trapped within the plan. There are also accounting implications if a potential surplus could not be recovered by an employer.

Trustees should first of all consider whether passing such a resolution is in the interests of the pension plan members: in most cases they can conclude it is. Trustees have a specific process to go through before a resolution can be passed. The process includes (1) agreeing the proposed resolution, (2) giving three months' notice of the proposed resolution to the employer and the members, (3) passing the resolution after the three months' notice period has expired. *Tempus fugit*, and due to the statutory timescales attached to this process we recommend that trustees give this matter their prompt attention to assess whether action is needed before the opportunity to do so runs out.

Many trustees passed a similar resolution before April 2011, under the original section 251 which was wider in scope and has since been amended. In such cases, trustees do not need to pass a further resolution unless they would like to amend the original resolution or they have concerns about the validity of the process that was followed at the time. Trustees can amend the previous resolution before April 2016 (following a similar process outlined in the above paragraph), if they wish to do so.

Nota bene – unless a valid resolution is passed, the power to make payments to employers will be lost, irrespective of any provisions contained in the rules of the pension plan.

(b) Terra Nova – Refunds of Contributions

Individuals who join an occupational pension plan from 1 October 2015 and who have purely money purchase benefits can no longer take a refund of their contributions if they have 30 days of qualifying service. Previously, plan rules could allow members to take a refund of contributions if they have less than two years of qualifying service.

Trustees should ensure that their pension plan rules adequately reflect preservation legislation and that new member communications are up to date, *et cetera*. Preservation legislation is not overriding, and conflict between rules, legislation and member expectations could lead to unnecessary complications.

Trustees may wish to draw to the attention of the employer the potential cost implications associated with this change to legislation. Normally, where a refund of member contributions is paid the associated employer contributions remain in the pension plan and are often used to offset costs. This residual amount can reach significant levels where there is a high turnover of staff.

Lesson 2 – Advanced Mathematics

"Pure mathematics is, in its way, the poetry of logical ideas." Albert Einstein, scientist.

We struggle to find too much "poetry" in the recent round of pensions tax changes, but there are most certainly some mathematical challenges!

(c) Angle of Depression – Lifetime Allowance

The Lifetime Allowance (LTA) will reduce from £1.25 million to £1 million from 6 April 2016, before beginning to rise in line with increases in the Consumer Prices Index from April 2018. The LTA has eroded in recent years to almost half of its highest value of £1.8 million in 2011/12, and, as a result, an increasing number of individuals are affected by it.

Trustees can expect an increase in member enquiries. Employers may look for flexibility within their remuneration packages, so that individuals who have exhausted tax efficient ways of making pension savings can be rewarded in other ways.

(d) Going off at a Tangent – Annual Allowance

There will be a tapered reduction in the Annual Allowance (AA) for individuals whose 'adjusted income' (including the value of pension savings) is over £150,000. For the tax year 2016/17, for every £2 that an individual's 'adjusted income' exceeds £150,000, the AA (normally £40,000) will be reduced by £1, down to a minimum of £10,000. This will be confusing for individuals who are responsible for monitoring their level of pension savings against the AA and reporting any excess to Her Majesty's Revenue & Customs (HMRC).

Trustees and administrators will not know the level of AA that applies to a member as this will depend on the individual's income, which may come from more than one source. HMRC acknowledges that the existing requirement for trustees to provide an annual statement to members whose pension savings exceed the AA in that pension plan may no longer be appropriate and it is considering how the current rules could be adapted.

Where trustees have previously amended pension plan rules to limit member benefits to the level of the AA the practicalities of complying with this rule should be reconsidered, as it may be a difficult practice to operate when AA tapering commences.

(e) Point of Symmetry – Pension Input Periods

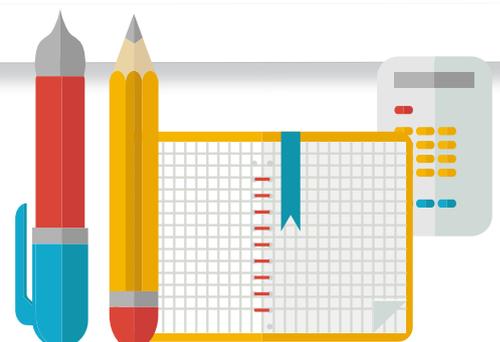
A Pension Input Period (PIP) is the period of time over which an individual's pension savings are assessed against the AA. The PIP may have been set by the pension trustees to align with the scheme year or calendar year rather than the tax year. However, linked with the AA changes described above, PIPs will be aligned with tax years from 2016/17. As a consequence of some complex transitional arrangements for this tax year, individuals may be able to take advantage of an additional amount of AA and may therefore seek to make extra pension contributions to make the most of this opportunity.

A rule amendment may be necessary if a PIP has been hardwired into pension plan rules.

(f) Conditional Equations – Death Benefits

Draft legislation amends the tax treatment of lump sum death benefits paid on or after 6 April 2016. Certain lump sum death benefits that currently attract high tax charges will instead be subject to income tax at an individual recipient's marginal rate. The change in legislation covers some lump sums where the deceased was over 75 and also where the lump sum is not paid within two years of the administrator becoming aware of a member's death. A tax charge of 45% may apply where the recipient does not have a marginal rate of income tax (for example, where the recipient is a trust or a company).

It may be advantageous to delay lump sum payments where the tax position is to become more favourable for the recipient from 6 April 2016, e.g. because the deceased was over age 75 or because the two year time frame has already been exceeded.



Lesson 3 – Politics

"There are greater storms in politics than you will ever find at sea. Piracy, broadsides, blood on the decks. You will find them all in politics." David Lloyd George, former British Prime Minister.

(g) Major Reform – State Pension Integration

The state pension system will undergo major reform in April 2016 with the existing two-tier state pension system being replaced with a single-tier flat rate state pension. Pension plans with benefit structures that are integrated with the state pension (for example, state pension offsets or bridging pensions) may be affected by the reforms. The Government has recently confirmed that it does not intend to introduce any legislative easement to allow the rules of affected pension plans to be modified (e.g. through a special trustee resolution power). Instead, trustees and employers will need to use the pension plan's amendment power to make any necessary changes to scheme design, ensuring that the amendment complies with the requirements of section 67 of the Pensions Act 1995.

(h) Keeping the Blair Necessities? – Contracted-out Underpins and Benefits

Trustees of contracted-out DB pension plans should check the extent to which contracted-out provisions in the rules will cease to apply when contracting-out is abolished in April 2016. In some cases, provisions such as reference scheme test benefits may have been hardwired into the rules as a benefit underpin. Trustees should check whether the pension plan rules reflect the benefits to be provided.

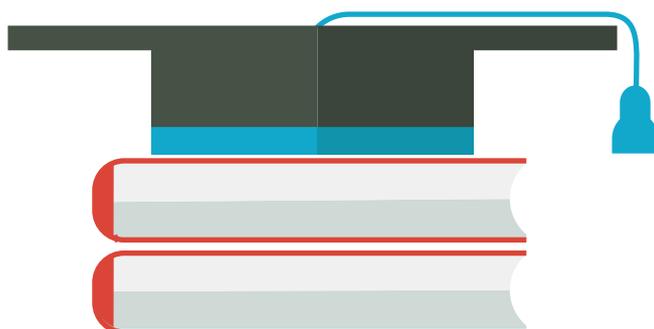
(i) Option to Peel Back the Costs – Employer Amendments

Sponsoring employers of DB pension plans who wish to offset the increase in their National Insurance contributions when contracting-out is abolished next year can use a statutory power to amend pension plan rules. The rules can be amended now to take effect from 6 April 2016. The employer can elect to increase member contributions or reduce future benefits or a combination of both. The employer must appoint an actuary (who is unlikely to be the Scheme Actuary to avoid conflicts of interest arising) to certify that the amendment does no more than offset the National Insurance increase.

Whilst trustee consent is not required to the use of the employer amendment power, we recommend that trustees engage with the employer regarding its plans to amend the pension plan. Trustees have a vested interest in ensuring that any proposed amendment is workable in practice.

We also recommend that trustees consider making use of HMRC's Scheme Reconciliation Service to reconcile their pension plan's Guaranteed Minimum Pension (GMP) records with HMRC's records. Trustees should register by 5 April 2016. Trustees who do not take advantage of this service will miss the opportunity to raise questions with HMRC regarding GMP records that are inaccurate or are allocated incorrectly to the pension plan (because, for example, a group of members transferred out of the plan). HMRC's experience to date is that this service is highlighting a significant number of discrepancies.

Our publication '[Employer Powers on Abolition of Contracting-Out](#)' highlights key issues for employers and trustees.



Lesson 4 – English Literature

"The law hath not been dead, though it hath slept." William Shakespeare, English playwright.

We could continue by saying that the law relating to pensions transfers hath now awakened.

See our publication '[The Trustee's Guide To Tricky Transfers](#)' for more details of the major overhaul of transfer legislation on 6 April 2015. Here is a summary of the key points.

(j) Measure for Measure – Amendments to Statutory Transfer Rights

The legislation governing when a member has a statutory right to transfer his benefits from one pension plan to another was amended on 6 April 2015. Members have a right to transfer a "category" of benefits (as defined in the Pension Schemes Act 2015). For example, this means that a member of a DB pension plan with money purchase Additional Voluntary Contributions (AVCs) could transfer his AVC fund and still continue to accrue DB benefits.

As a further relaxation, individuals with "flexible benefits" (broadly speaking, defined contribution (DC) or cash balance benefits) can now exercise their statutory right to transfer those benefits up to and beyond the pension plan's normal pension age.

Trustees should be clear on the different categories of benefit provided by their pension plan and ensure that members' statutory rights are observed.

It is a legal requirement that trustees should seek confirmation that members with "safeguarded benefits" (broadly speaking DB benefits) have taken "appropriate independent advice" before they make a transfer where the value of the safeguarded benefits to be transferred is more than £30,000. Specific disclosure of information requirements also apply.

As a general point, we also recommend that trustees review and update member communications and transfer documentation, particularly discharge forms.

(k) As You Like It – Overseas Transfers

HMRC has reissued the list of pension plans that have notified it that they meet the conditions to be a Recognised Overseas Pension Scheme. However, HMRC does not guarantee that inclusion on this list means that an overseas arrangement meets all of the necessary requirements for a transfer to be free of UK tax. Members and trustees should proceed with caution.

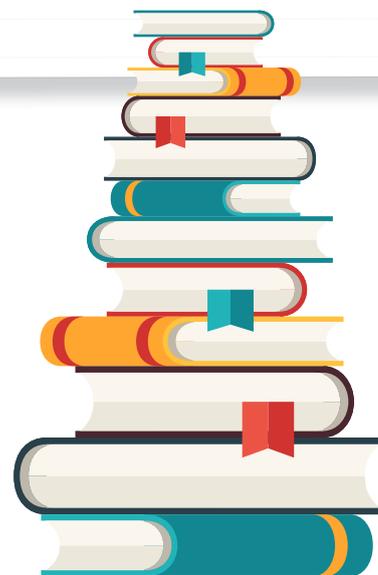
(l) The Tempest – Pension Scams

"All that glitters is not gold", but the unsuspecting general public continue to be drawn by promises offered by pension scammers. As well as implementing changes to legislation, trustees and administrators need to be constantly mindful of 'pension scams' and the need to operate watertight procedures.

(m) All's Well That Ends Well (We Hope!) – Consultation

The Government consultation on '[Pension transfers and early exit charges](#)' asks for suggestions to simplify the current transfer system, as it does not want complexity to act as a barrier to members taking advantage of the DC flexibilities introduced in April 2015. The consultation is a good opportunity to offer feedback to the Government.

Dependent on the outcome, further change may follow.



Lesson 5 – General Studies

"My goal is simple. It is a complete understanding of the universe, why it is as it is and why it exists at all." Stephen Hawking, scientist.

We cannot quite promise to help our readers to achieve a complete understanding of the universe but in order to complete the jigsaw from a pensions perspective we finish with miscellaneous subjects that trustees may already have in hand... but just in case there are any black holes...

(n) Ethics – DC Governance and Charge Capping

Trustees should now be familiar with the requirements of the DC charge capping legislation, and the new DC governance legislation which have been in force since April 2015. This legislation added an extra layer of governance to the already detailed expectations set out in the Pensions Regulator's code of practice, '[Governance and administration of occupational defined contribution trust-based schemes](#)'. Trustees with any element of DC provision in their pension plan (including AVCs) should have undertaken an assessment of the aspects of the legislation that apply to them and have action plans in place to deal with any outstanding issues. Our '[DC Governance and Charge Capping](#)' publication contains further details.

If any trustees are still unsure whether they are fully compliant with charge capping and governance requirements, we recommend that they undertake an assessment as soon as possible and take steps to achieve compliance.

(o) Biology – Shared Parental Leave

Shared Parental Leave of up to 50 weeks was introduced for parents of children due or adopted on or after 5 April 2015. Trustees should ensure that pension contributions and benefit accrual over a period of Shared Parental Leave are consistent with legal requirements and with employer policies. Out of date pension plan rules could be tidied up next time a rule amendment needs to be made.

On 5 October 2015 Chancellor George Osborne announced the Government's intention to extend Shared Parental Leave to grandparents in 2018.

(p) History – New Money Purchase Definition

The new statutory definition of 'money purchase benefits' came into force on 24 July 2014 but with effect on and from 1 January 1997. It is narrower than the old definition and may mean that some benefits that have traditionally been thought of as DC in nature can no longer be treated as such. If any trustees have not yet taken legal advice on whether the DC benefits (including AVCs) provided by the pension plan fit with the new legal definition then we recommend that this issue is addressed promptly.

(q) Economics – Triviality Limits

Trustees who wish to pay out the maximum amounts of trivial commutation and 'small pot' lump sums should ensure that their pension plan rules allow these payments to be made. In addition, the age at which individuals can convert small pension entitlements into lump sums was lowered from age 60 to "Normal Minimum Pension Age" (usually age 55), or earlier if the member meets the ill-health condition, on 6 April 2015. Again, rule amendments may be necessary to allow members to take advantage of the new age limits.

(r) Physical Education – Flexibilities for DC Benefits

From 6 April 2015 new pension flexibilities were introduced for individuals with DC benefits. The flexibilities include the option for members aged 55 or over to fully commute their DC pension benefits for cash, as well as additional options for income drawdown. Trustees and employers will undoubtedly have had discussions around whether any of these flexibilities are to be offered from within the pension plan, or whether members need to transfer their benefits out of the pension plan to take advantage of further options. It is important that the pension plan rules reflect trustee and employer intentions and that member communications are up to date.

(s) Chemistry – Same Sex Marriages

Since March 2014 same sex couples have been entitled to marry and to receive (as a minimum) the same death benefits under occupational pension plans as opposite sex spouses in respect of accrual from 5 December 2005. (Note that different rules apply to contracted-out benefits.)

Trustees of pension plans providing the legal minimum for same sex spouses may have made use of transitional provisions allowing the legal minimum to apply automatically. However, there is a risk that these transitional provisions may fall away when the pension plan is amended. We therefore recommend that benefits for same sex spouses are explicitly provided for in the pension plan rules.

Trustees of pension plans offering equal benefits for same and opposite sex spouses are providing more than the legal minimum and this should be reflected in the pension plan rules.

(t) Law – VAT

In response to a recent change of position from HMRC, employers with DB pension plans have a potential opportunity to increase the VAT that they can recover on fees incurred in the running of their pension arrangements but risk additional VAT if they don't take action. As explained in our communication '[Defined Benefit Pension Plans – VAT Cost Saving Opportunities](#)' employers may seek to restructure VAT arrangements, including putting in place a tripartite agreement between the employer, the trustees and the service provider for the provision of services to the pension plan. Trustees should seek legal advice to ensure that their own rights are not weakened by any amendments to the contractual position.

(u) Sociology – Automatic Re-enrolment

Large employers whose original automatic enrolment staging dates were in late 2012/early 2013 will now be preparing for the first cycle of re-enrolment. An employer can choose its automatic re-enrolment date which must fall within a window three months either side of the third anniversary of its staging date. Employers will need to assess their workforce for re-enrolment purposes and take the necessary steps to re-enrol employees into a suitable pension arrangement, where required to do so. Trustees of pension plans that are used for auto-enrolment should be aware of the employer's plans and prepare for a potential surge of new members.

Saved by the Bell? Not Quite!

Our readers don't get away from school so easily! A summary checklist is attached for trustees to work through to decide the action they need to take for their pension plan.

Further Information

For more information about any of our hot topics please contact any of the lead partners listed or your usual contact in the Squire Patton Boggs pensions team.

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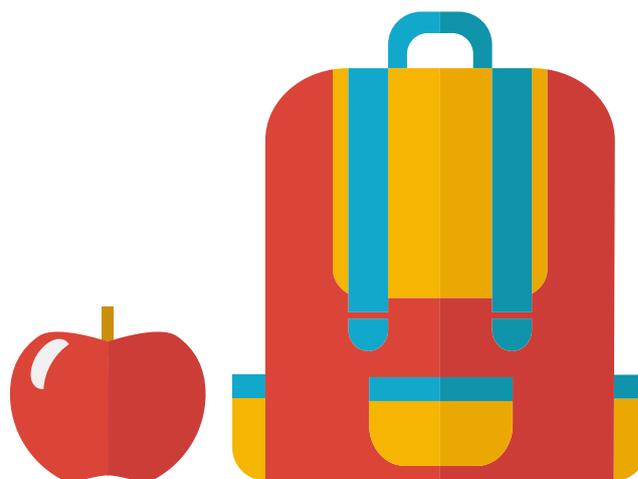
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