SQUIRE PATTON BOGGS

Hot Topics in Pensions

Spring 2021

Heroes come in many shapes and forms, but they generally symbolise "hope" during times of darkness. Vaccine developers, front-line NHS workers and charity fundraisers have been among our heroes for the last 12 months. In our Spring Hot Topics in Pensions, we celebrate a diverse group of figures who may be considered heroic in their own way (some more worthy than others), while highlighting a range of current pensions issues for your trustee and corporate agendas.

1. Shooting an Arrow Across the Bow of Risk-Takers

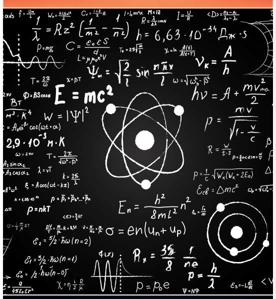
While the Pension Schemes Act 2021 is now law, we are still waiting for regulations and guidance that will give effect to the majority of its provisions. Regulations dealing with the restrictions on statutory transfers, expansion of the notifiable events regime and contribution notices are expected to be in final form by autumn. If you cannot see the wood for the trees, consider a training session for trustees and key corporate personnel. Will The Pensions Regulator (TPR) be more like Robin Hood or the Sheriff of Nottingham when it comes to enforcing the new criminal sanctions and £1 million fines?

2. Holy Smoke, Batman! Retirement Ages Are Increasing

In 2014, the government announced that the normal minimum pension age in registered pension schemes would increase from age 55 to age 57 on 6 April 2028. It is now consulting on how to implement the increase and on the protection regime for members who, as at 11 February 2021, have an unconditional right to draw benefits before age 57 under the scheme rules. Trustees should take legal advice in due course and be mindful of the increase when communicating with members. In Gotham City, this news might merit a bat-call, but we suggest that an agenda item is sufficient for now.

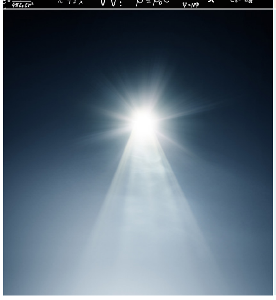
3. Herculean Efforts on GMP Equalisation

Hercules had to complete the 12 labours – the PASA-led GMP Equalisation Working Group seems to have a similarly challenging task list. The first labour of 2021 has already been completed with the publication of a guidance note on tax issues, although HMRC did not comment on the note despite having advance notice of its contents. Further guidance material will follow on topics including GMP conversion, anti-franking and equalising past cash equivalent transfer values. Wrestling with these topics may be as challenging as confronting a mixed bag of mythical monsters.



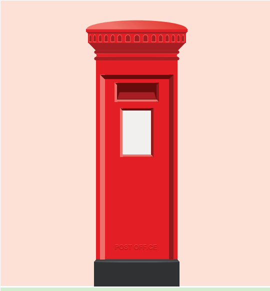
4. Exit Payments – A Partial Solution

The problems surrounding LGPS exit payments would have baffled Albert Einstein. In a sudden (but welcome) U-turn, the government announced it is revoking the £95,000 cap on public sector exit payments brought into force on 4 November 2020. LGPS administering authorities and public sector employers had been grappling with how to square the cap with redundant employees' rights to an unreduced pension, and four judicial review applications were due to be heard in March. New HM Treasury directions mean the cap can be ignored for future payments, but redundancies that have already been implemented will require correction.



5. Charge Cap in Good Health

The DWP (channelling its inner Florence Nightingale) shone a beacon of light on the default fund charge cap in defined contribution (DC) schemes used for auto-enrolment. The outcome of its review confirmed that the level of the charge cap will not be lowered and transaction costs will not be included within the cap. It is accepted that schemes need some headroom to be able to react to changes in the economy and to take advantage of investment opportunities. The DWP has, however, prescribed a dose of new legislation to prevent flat fees being applied to small pension pots of less than £100.



6. IR35 – Ready for (Delayed) Delivery

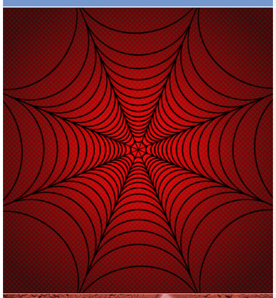
Pre-schoolers love the antics of Postman Pat, who is not the most efficient member of staff at the Royal Mail, but has a heart of gold. While Pat and others are currently stretched to their limit delivering online shopping, the government is stamping its mark in a different way. The postponed reform of the off-payroll working rules (IR35) will come into force on 6 April 2021, transferring from a contractor to the "end client" (with certain exceptions) the obligation to assess whether IR35 applies. Those using the services of professional trustees will need to consider whether they are caught by the change.

7. ESG – Not Just a Recent Concern

Did you know that the Montreal Protocol, tackling the depletion of the ozone layer, was signed as long ago as 1987? Many campaigners have devoted their lives to lobbying for further change ever since. The UK government has now published draft legislation that would require some trustees to undertake mandatory governance and reporting for the effects of climate change. More trustees are successfully weaving environmental factors into their policies, but do not forget the "G". Risk management is currently a key focus both within schemes and when assessing the "Governance" credentials associated with a particular investment.

8. Can Trustees Soar Like an Eagle Over Potential Brexit Challenges?

British ski-jumper Eddie "the Eagle" Edwards captured our hearts with his brave efforts in the 1988 Winter Olympics. The rules were subsequently changed to make it harder for amateurs to compete. Rule changes following the end of the Brexit transition period could make it harder for pension trustees to enforce a guarantee given by an EU company if the guarantee has a non-exclusive jurisdiction clause (as with the old Pension Protection Fund standard). However, developments are in motion. Unlike Eddie, trustees may want to wait before jumping (into guarantee amendments).



9. The Tangled Web of Data

The flow of pensions data is an intricate web that could have been spun by Spiderman. Employers and pension schemes who rely on the free flow of personal data from the EEA would have been relieved that the EU and the UK agreed a post-Brexit extension period (of up to six months) during which organisations can continue to lawfully transfer personal data from the EEA to the UK. During this period, the European Commission is considering whether to grant an adequacy decision in favour of the UK. The recent publication of draft data adequacy decisions is an important step forward, and was welcomed by the UK government.

10. Ending With a Pick-and-Mix

We end with a modern-day source of comfort – Cadbury's Heroes – because when it comes to the "crunchie", there are many issues on the pensions horizon that cannot be fudged. Watch out for TPR's draft guidance covering the exercise of its new powers, and the outcomes of consultation on the general levy increase and improving outcomes for DC members. In terms of auto-enrolment, we have some stability – from 6 April 2021, the earnings trigger for auto-enrolment will remain fixed at £10,000 and the qualifying earnings band will continue to be aligned with the earnings limits for national insurance contributions.

Contacts

Kirsty Bartlett
Partner, London
T +44 20 7655 0298
E kirsty.bartlett@squirepb.com

Matthew Giles
Partner, Birmingham
T +44 121 222 3296
E matthew.giles@squirepb.com

David Griffiths
Partner, Manchester
T +44 161 830 5359
E david.griffiths@squirepb.com

Wendy Hunter
Partner, London
T +44 20 7655 1119
E wendy.hunter@squirepb.com

Catherine McKenna
Partner, Leeds
T +44 113 284 7045
E catherine.mckenna@squirepb.com

Clifford Sims
Partner, London
T +44 20 7655 1193
E clifford.sims@squirepb.com

Philip Sutton
Partner, Birmingham
T +44 121 222 3541
E philip.sutton@squirepb.com

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