SQUIRE PATTON BOGGS

Hot Topics in Pensions
Summer 2017

Don't be *The Weakest Link*! Take a look at our game show themed pensions hot topics briefing for a summary of current issues that should be on the radar of trustees and employers.
We think *It's a Knockout* edition.

Who Wants to Be A Millionaire? – A Taxing Question

Two areas of draft pensions tax legislation were removed from the Finance Bill before it was enacted: (1) The reduction in the money purchase annual allowance from £10,000 to £4,000 from 6 April 2017, affecting those who flexibly access DC pension savings; and (2) the increase in income tax exemption for employer-arranged pension advice from £150 to £500 from 6 April 2017. The Treasury intends to bring this legislation into force during the new parliamentary session but will it be unchanged/retrospective? We may have to *phone a friend or ask the audience*. Our communication highlights the safest course of action.

Call My Bluff – "Now, We'll See if This [Enforcement] Bell Still Works"

The Pensions Regulator has recently upped its game by bringing two prosecutions for failure to comply with notices to provide information (section 72 notices – see our Blog): consulting on a monetary penalties policy; and revisiting the definition of a professional trustee. The latter will be instrumental in determining the level of fine that the Regulator might impose on a trustee. This is all in line with its corporate plan for 2017-20, which includes a priority to "drive up standards of trusteeship across all schemes, with a particular focus on chairs and professional trustees".

Through the Keyhole – PPF Consultation on Third Levy Triennium

The Pension Protection Fund has made various proposals, including changes to some scorecards and a switch to annual (rather than monthly) scoring. Perhaps the most interesting proposal is for standard form contingent asset documents to be revised, with a requirement for **all** existing contingent assets to be put on the new basis – this will involve unexpected work for pension plans. Additionally, a guarantor strength report would be required for Type A contingent assets where the realisable recovery amount is certified at £100 million or more.

Wheel of Fortune – RPI/CPI

Two recent cases (*Dutton* and *Thales*) highlight that use of the Retail Prices Index/Consumer Prices Index for pensions indexation and revaluation is still a hot topic. In *Thales*, the introduction of the UK House Price Index was held to be a material change in the composition of RPI, potentially impacting on the index that should be used by the plan. See also our Blog on the BA case. Meanwhile, the government has consulted on whether there should be a statutory override allowing plans to switch to CPI, and the Office for National Statistics is developing another new index, so everything could change *in the spin of a wheel.*

Play Your Cards Right – Investment Guidance

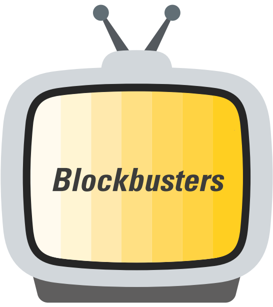
The Pensions Regulator dealt its ace card with the issue of detailed investment governance guidance designed to help trustees establish an effective governance framework for investing assets to fund defined benefit arrangements. The guidance contains a number of practical examples that trustees may find useful. The Regulator emphasises the importance of trustees obtaining legal advice before entering into investment agreements and negotiating terms in light of that advice. We recommend that trustees consider the guidance and review their investment practices and training needs as appropriate.

Have I Got News For You – There is a New Tax Charge

A new tax charge of 25% applies where an individual makes a formal application to make a transfer to a Qualifying Recognised Overseas Pension Scheme on or after 9 March 2017 unless an exemption applies. The trustees and the transferring member are jointly and severally liable for the new tax charge. Trustees are advised to seek assurance from scheme administrators that transfer procedures have been updated in line with HMRC's guidance on overseas transfers; otherwise, the pension plan could be exposed to unwelcome tax liabilities. See our Blog for further information.

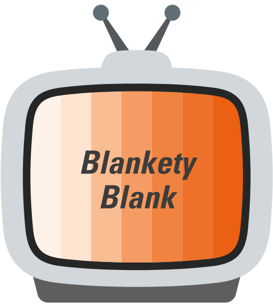
Mastermind – Proposed Amendments to the Employer Debt Regulations

Proposed new provisions from 1 October 2017 will give employers in a multi-employer plan the ability to defer an employer debt on ceasing to employ any active members. The employer would remain a statutory employer of the plan and would retain its liabilities. The deferral would require trustee agreement and the funding test to be met. The employer would lose the ability to trigger a debt at a later date without trustee agreement and – *I've started, so I'll finish* – the trustees would have unilateral power to terminate the arrangement.



Blockbusters – Can I Have a "P"PF/Pensions Ombudsman, Please, Bob?

The PPF/Pensions Ombudsman's exercise of his powers has been causing some waves in the pensions world. As PPF Ombudsman, he recently found that the PPF did not exercise its discretion correctly when determining whether a guarantee should receive partial recognition as a contingent asset. In his capacity as the Pensions Ombudsman, he declared that he had the power to render authorised a payment that would otherwise be subject to tax. It remains to be seen whether HMRC will challenge this approach.



Blankety Blank – Waiting for Regulations to Fill in the Blanks

The Pension Schemes Act 2017 ("the Act") introduces a new regime for the authorisation and supervision of master trusts that provide some money purchase benefits. Trustees should seek advice if they are unsure whether their pension plan is caught by the definition of a "master trust scheme". Some parts of the Act are in force in relation to existing master trusts but much of the Act is not yet in force and we await regulations which will set out the detailed provisions. The compliance issues are extensive – *a Blankety Blank chequebook and pen* may be required.

Countdown – The Conundrum of Forthcoming Legislation

Stricter money laundering regulations intended to come into force in June 2017 may impact pension plans – we await more information from HMRC. The DWP expects to consult in the autumn on legislation allowing bulk transfers of deferred members from a formerly contracted-out pension plan to a plan that has never been contracted out. The early exit charge cap affecting money purchase plans will come into force on 1 October 2017. In the meantime, we wait to hear the outcome of the new minority government on the pension manifesto pledges.

Reader Quiz – Just for Fun

We finish with our own conundrum: "genuinely random" is an anagram of which area of legislation mentioned in this publication?

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TRAINING
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