



Welcome to the Circus!

Roll up, roll up, to see the greatest pensions publication on Earth! Employers and trustees have a lot of pensions issues to juggle, and the lion's share of these have legislative roots. So, prepare to be spellbound with amazement! Here are our (big) top 10 current issues for your agenda.

1.

Walking the Legislative Tightrope

Pension trustees and employers must not discriminate against same-sex spouses and civil partners on the grounds of sexual orientation. The Supreme Court has ruled that overriding EU law principles of non-discrimination means that the exception in the Equality Act 2010, limiting same-sex spouse and civil partner rights to post-2005 pensionable service, is invalid. Trustees of plans that provide (or have previously provided) time-limited benefits should now review and correct, where applicable, previous benefit decisions. Plan rules should also be amended, if necessary, so that they reflect current law.

2.

Cracking the Anti-Money Laundering Whip

Trustees of private occupational pension plans are, for the first time, subject to the anti-money laundering regime. New regulations require trustees to keep records of all beneficial owners of a plan. This includes any intermediate and holding companies of employers and corporate trustees, anyone who otherwise "controls" the plan (which might capture an actuary who has powers under the deed), members and beneficiaries. If the trustees are liable to pay certain taxes in respect of the plan, they must make their first report to HMRC before 31 January 2018, giving details of the plan and its "beneficial owners". Our [blog](#) has more information.

3.

Don't Clown Around With Data!

Do not underestimate the work involved to ensure compliance with the General Data Protection Regulation. Trustees are required to keep a detailed record of the processing of personal data. We recommend that trustees should by now be undertaking a "data mapping" exercise of all the data that they control, to establish exactly who holds what data, where it is located and why it is processed. This will involve liaising with a number of other parties. And that's just the start of the show! We have products that can assist with this exercise.

4.

No Longer Suspended in Mid-Air

A recent Court of Appeal judgment may offer comfort to employers who have felt constrained in their ability to make cost-saving cuts to employees' pension provision. In the long-running, complex case of *IBM v. Dalgleish*, the Court of Appeal held that IBM had not breached its duty of good faith by implementing a series of pensions changes and a court should only interfere if the employer acted in a way in which no reasonable employer would have acted. There are many pitfalls associated with making pensions changes and legal advice should always be sought.

5.

Those Age Discrimination Plates Keep Spinning

Two similar employment cases, resulting in different decisions, are being appealed to the Employment Appeal Tribunal. In *McCloud* (the Judges' case), it was decided that the inclusion of a transitional period on a switch to a new pension plan, allowing older members to remain in the previous pension plan, was age discriminatory and could not be objectively justified. In *Sargeant* (the Firefighters' case), however, the tribunal decided that similar transitional arrangements could be objectively justified (see our [blog](#) for more information). Employers continue to face a balancing act when making changes that might be age discriminatory!

6.

Make Sure the Safety Net Is in Place

Employers who offer pension plans with defined benefits and have used the “transitional period” to delay their automatic enrolment duties should note that the period ends on 30 September 2017 and action is required (our [blog](#) contains more information). Separately, employers should consider carrying out a periodic audit of their auto-enrolment processes to ensure that these remain legally compliant over the passage of time – failure to comply may leave employers open to regulatory scrutiny, potential fines and unexpected pension costs. The Pensions Regulator is currently conducting random compliance audits and naming and shaming where breaches are found.

7.

A Jumbo New Definition

From 6 April 2018, new requirements will apply to pension plans with “safeguarded-flexible benefits” (i.e. benefits which have the broad characteristics of money purchase or cash balance benefits but have a promise or guarantee relating to the rate of pension payable). Detailed risk warnings will need to be issued to members before certain transactions are carried out to highlight the value of the guarantee. The method of valuing these benefits for the appropriate advice requirement is also changing. Trustees should be clear on the benefit categories within their pension plan; this is not always straightforward.

8.

More Legislation? Let's Get This Show on the Road

The Finance Bill (No 2) 2017 will reintroduce the reduction in the money purchase annual allowance and the change in the income tax exemption for employer-related pensions advice retrospective to 6 April 2017 – these provisions were dropped from the Finance Bill 2017 due to the timing of the General Election. We are following the bill's passage through parliament. The Financial Guidance and Claims Bill is also progressing through parliament – amongst other things, this bill will establish a single financial guidance body that will replace Pension Wise, The Pensions Advisory Service and the Money Advice Service.

9.

FCA Report Provides a Springboard for Improvement

The Financial Conduct Authority (FCA) has put together a package of proposals for improvement in the asset management market (see our [blog](#) for more details). The FCA is concerned that some smaller pension plans have been unable to secure fair terms from managers and believes that trustees should be using their bargaining powers more effectively. The FCA has also noted the potential for conflicts of interest to arise in the investment consultancy market. This serves as yet another reminder to pension trustees to take legal advice when entering into agreements with third-party providers.

10.

Throwing a Few More Caps Into the Ring

We start with two reminders: (1) from 1 October 2017, a 1% cap on early exit charges applies for members with flexible benefits who joined a pension plan before 1 October 2017, and there is a complete ban in respect of new members; (2) the transitional period for current practices of VAT recovery on service provider fees will end on 31 December 2017 – unless it is further extended by HMRC. Finally, we anticipate that the abolition of employment tribunal fees will spark a surge in tribunal claims and an increasing number of these may have pensions implications in view of the success of auto-enrolment.

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