Spence & Partners Limited – Industry Changes

Your Quarterly Pensions Update – Q3 - 2018

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Introduction

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Welcome to your Quarterly Pensions Update.

The purpose of this report is to update sponsors and trustees with recent pensions industry changes in the quarter.

For your convenience, Spence has summarised the key developments and highlighted the necessary actions sponsors and trustees may need to take.

The report combines brief written comment with links to any further relevant information and any deadlines you should be aware of. We trust you will find the update useful and informative. If you require further information about how any of the topics covered might impact on your scheme specifically, please get in touch with (hugh_nolan@spenceandpartners.co.uk) or your usual Spence contact.

STOP PRESS: The imminent Lloyds judgement mentioned in this edition of our Quarterly Update has been published today and confirms the requirement to equalise Guaranteed Minimum Pensions (GMPs). We will study the judgement but are confident that our investment in modern technology enables us to make year on year comparisons between males and females easily, so we will be able to respond quickly to provide the correct benefit to members. Administrators using legacy software may well have problems and could even have to suspend transfer values for a period. It gives some comfort that some clarity is emerging and it will be a relief to sponsoring employers that the Court has not demanded the most expensive approach to equalisation.

NOTE

This document is aimed at providing you with generic information about recent developments in the pensions industry.

You should not take any action as a result of information included in this document without seeking specific advice in relation to the impact these matters might have on your scheme or company. Spence & Partners Limited accepts no liability for actions taken or not taken as a result of this document.

Brexit – the clock is ticking…

Article 50 has been triggered. The UK is due to leave the European Union by the end of March 2019 (less than 6 months away!). The current economic uncertainty caused by the UK's exit from the EU highlights the need for an effective integrated risk management framework for pension schemes. It is important that trustees understand the risks that their pension schemes face. Effective contingency planning is crucial.

There are potential implications for employer covenant, funding and investment strategy in schemes and trustees should be considering a number of immediate actions to ensure their pension schemes are well placed to deal with Brexit, whatever the outcome is.

Employer Covenant

In terms of employer covenant, trustees need to fully understand the impact that Brexit will have on the business of its sponsoring employer. Conversations should be taking place with sponsoring employers now to review their prospects in this uncertain economic climate. Employers should be asked how potential shifts in currency or other markets may impact on their support for schemes – either in terms of DB funding or contributions to DC pots.

Actuarial Assumptions

Brexit should be taken into account in setting assumptions for actuarial valuations and agreeing recovery plans. To enable the trustees to assess the impact on planned contributions, it would be useful for them to understand the impact of various Brexit negotiation outcomes on the cashflows of the employer's business. Consideration should also be given to multinational companies with operations in the UK – understanding the parent company's intentions following Brexit is important.

The funding levels of DB Schemes need to be reviewed as continuing low interest rates and quantitative easing means DB liabilities remain high. The funding level and the associated risk it poses to the sponsoring employer needs to be considered and ways of mitigating this risk need to be discussed.

Buy-out prices for DB schemes may be more attractive. It would be worth checking with the scheme's advisers whether now is the time to remove some risk from the scheme.

Investments

Trustees should also consider whether the investment strategy is still appropriate for current market conditions. For a DC Scheme, trustees should check to see if their default fund is suitably diversified so as to protect members from any shock to the UK or European economy.

A check should be carried out to see whether there has been an impact on the value of collateral that the scheme posts or receives under derivative contracts. The scheme might need to post extra margin, or ask their counterparties to do so.

It will be some time before there is clarity on how Brexit affects scheme investments, contingent assets and investment yields in other countries. Trustees need to keep this under review.

Trustees cannot remove Brexit risk for members. However members can be re-assured by the sight of trustees actively monitoring and responding to risks on their behalf. Trustees may wish to consider communicating with members to tell them what they are doing in response to Brexit.

ACTION

Trustees should be engaging with their sponsoring employer to discuss the potential impact of Brexit on the employer covenant. They should also be considering potential impacts on funding and investment strategy and seeking appropriate advice. Trustees may also wish to consider a communication to members.

Investment Market Update

UK equities fell as Brexit continues to weigh on the share prices of many UK domestic companies and Sterling. The value of Sterling was strengthened temporarily by the Bank of England's increase to the base rate. However, the more volatile Brexit negotiations have produced a see-saw effect on the currency, with short-lived improvements in the exchange rate, when sounds from Brussels are positive, being quickly eroded when another hurdle is reached in the negotiations.

US consumer confidence hit its highest level since 2000, and the monthly average of initial jobless claims fell to the lowest level since 1969. Stability and growth in US employment figures allowed the Federal Reserve to increase the federal funds rate by 0.25% over the quarter.

Global equities made gains over the quarter, mainly driven by the US market. Recent tax cuts in the US economy have seen US equities benefit from increased investment. Japanese equities also performed well amid a weaker Yen and greater clarity on the medium-term policy outlook.

Emerging market equities continued to struggle due to the strengthening US dollar, affecting those countries with US dollar denominated debts. The spiralling US/China trade wars, involving tariffs on $250 billion of Chinese goods have also taken their toll. Turkey was the worst performing market, amid a sharp sell-off in the Lira as geopolitical concerns with the US remain, coupled with other issues such high inflation and current account deficit.

The Bank of England increased base rates by 25 basis points in August to 0.75%, primarily due to improving prospects for UK economic growth being expected to continue and the desire to bring inflation back down towards its target of 2% (being 2.35% in May).

Gilts yields rose (i.e. prices fell) over the quarter due to higher than expected inflation and positive economic data. The news in August that Mark Carney would be staying put as the Governor of the Bank of England added to the rise in gilts. Whilst UK corporate bond spreads decreased as investor sentiment helped support company valuations.

Industrial metals had negative returns due to the global trade uncertainty, however Brent crude oil was up considerably as supply fears linked to US sanctions on Iran affected prices.

ACTION

Trustees should continue to monitor their investment portfolio at regular intervals and liaise with their investment advisors to ensure that their scheme's investment strategy remains appropriate.

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Peak Longevity

The latest headline figures from the ONS show life expectancy of 82.9 years for women and 79.2 for men, compared to the highest around the world of 87.0 for women (Japan) and 81.5 for men (Switzerland). We lag behind France, the Netherlands, Spain and Italy but we're ahead of the USA, Poland and Russia. Our longevity hasn't improved at all recently and the ONS global analysis in August showed that Germany, Spain, Sweden and Portugal had also slowed down by 30-40%, though only the USA had stopped completely. Japan actually saw accelerating improvements after several sluggish years.

The ONS stats might not mean much for UK pension schemes though because:

1. Pension costs rely more on how long people live after retirement. They are less affected by mortality of younger members, which will be built into the ONS stats. Life expectancy at 65 has also stagnated though, at 18.6 years for men and 20.9 for women.

2. Hardly any UK schemes use ONS data. About 90% use the Self-Administered Pension Schemes (SAPS) tables that are based on the more relevant experience of actual members of such schemes. Typically these members are a bit better off in retirement and may well live longer as a result.

3. The ONS figures are based on "period" life expectancy, which assumes that current mortality rates apply forever. Pension schemes sensibly use "cohort" figures that allow for expected improvements.

4. Trustees have to make prudent assumptions and err on the side of caution. It's not too long ago that the Regulator's Annual Funding Statement explicitly encouraged trustees to disregard the mounting evidence of slower improvements.

Any projection of future rates depends heavily on personal views. It's easy to predict slower improvements based on recent experience but it's equally reasonable to expect faster improvements to return in time. The question now is whether we can identify WHY improvements have slowed down. Austerity may be having an impact but we're not the only country suffering from this stagnation. It could just be a natural cycle of peaks and troughs or even a genuine sign that we're approaching the peak of longevity, with our frail human bodies eventually wearing out.

Industry Update

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Peak Longevity Continued…

Helpful Links:

Life expectancy stagnates - https://www.bbc.co.uk/news/health-45638646

Analysis of global improvement - https://www.bbc.co.uk/news/health-45096074

ACTION

Fortunately help is at hand! Scheme Actuaries can help trustees and sponsoring employers through all this uncertainty. We can advise our clients on the range of assumptions that might be appropriate in their specific circumstances, with the scheme demographics, employer covenant, end game plan and the Regulator's guidance all taken into account. Understanding and explaining the issues can help avoid excessive caution in funding assumptions.

Master Trust Decision Making Procedure

The Master Trust market has had a very difficult 2018. As expected by many (see appended blogs) there is real pressure on Master Trusts to consolidate through both failing to reach critical mass and from The Pensions Regulator (TPR) heavily policing quality, in the form of new rules on Master Trust authorisation.

What is Master Trust authorisation?

In order to operate a defined contribution Master Trust from 1 October 2018, a provider will be required to seek authorisation from TPR. In order to be successful, the following criteria must be met:

1. Fit and proper: all the people who have a significant role in running the scheme can demonstrate that they meet a standard of honesty, integrity and knowledge appropriate to their role.

2. Systems and processes: IT systems enable the scheme to run properly and there are robust processes to administer and govern the scheme.

3. Continuity strategy: there is a plan in place to protect members if something happens that may threaten the existence of the scheme, including how a master trust will be wound up.

4. Scheme funder: any scheme funder supporting the scheme is a company (or other legal person) and only carries out master trust business.

5. Financial sustainability, including business plan: the scheme has the financial resources to cover running costs and also the cost of winding up the scheme if it fails, without impacting on members. If you operate a qualifying scheme, you may have chosen to ensure compliance on a different basis using a different definition of earnings. There are three allowable approaches here, and you should check the appropriate percentages for the selected basis to ensure you remain compliant (see below for a link to TPR's website for further information).

In addition there is a £41,000 fee for an existing Master Trust to go through the relevant process (regardless of success). A lower fee of £23,000 applies to new providers, who will also be invited to a pre-application meeting and be subject to a high level of supervision due to their lack of a track record.

What is the authorisation procedure?

The authorisation process will be run by a special team within TPR who will submit recommendations to the Determinations Panel which makes the ultimate decision.

If the Determinations Panel is satisfied to authorise the Master Trust, they will be added to the list of authorised Master Trusts and the process will be concluded.

If the Determinations Panel does not grant approval, the issues will be shared with the Master Trust. The Master Trust will have two weeks to submit a response to the concerns raised. They will then be invited to an Oral Hearing to discuss the issues. They may exit the process at any stage, if they no longer wish to receive authorisation. If an Oral Hearing does not proceed, or information is not received, then the Determinations Panel will make a formal decision based on the information available. If this does result in authorisation then they will be added to the list of authorised Master Trusts.

The full process note is linked below.

ACTION

Anyone who is a member of a Master Trust, or uses a Master Trust for pension provision, will need to understand their provider's progress on authorisation. If their provider does not meet the criteria, the Master Trust will either wind up or be consolidated with an approved Master Trust. This will mean disruption to members and may result in sub-optimal outcomes. Employers should be ready to move quickly to avoid an enforced move.

Helpful Links:

http://www.thepensionsregulator.gov.uk/trustees/master-trust-authorisation.aspx

https://spenceandpartners.co.uk/archives/should-nest-say-tata-to-atp-for-now/

https://spenceandpartners.co.uk/archives/swimming-with-sharks-a-master-trust-story/

http://www.thepensionsregulator.gov.uk/docs/master-trust-decision-making-procedure.pdf

G4S plc v G4S Trustees Ltd – Closed Scheme is "frozen" even where members retain final salary link

Background

The G4S scheme is a multi-employer DB scheme.

In 2011 an amendment was made to the Scheme Rules to stop future accrual for all active members in two (out of three) sections in the Scheme. Members of the two sections were entitled to a deferred pension, but with an underpin so that if the final salary link was ultimately more valuable than normal revaluation of the deferred pension, the member would get that at retirement.

Currently a "Section 75 debt" calculation (under the Occupational Pension Schemes (Employer Debt) Regulations 2005 ("Employer Debt Regulations")) is triggered in a multi-employer DB scheme where an employer is no longer employing at least one person who is an active member of the scheme, while another employer with DB liabilities continues to employ at least one active member (this is known as an "employment-cessation event" or "ECE"). On the other hand an employer ceasing to employ members in a "frozen" scheme does not trigger an ECE.

Issue

The question before the court was whether the link to final salary meant the two sections were "open" or "frozen" in relation to the employer debt legislation. In deciding this, Nugee J stated that,

"… the critical question is whether the existence of the final salary link… means that the Employed Deferred Members are or are not in "pensionable service" as statutorily defined."

If the relevant members were held to be in pensionable service, they would be considered "active members" and therefore an ECE and Section 75 debt would be triggered if the employer ceased to employ those members in the future. However, if the Employed Deferred members were not in pensionable service, the relevant sections of the scheme would have no active members and would be deemed "frozen" and immune to an ECE if the employer ceased to employ them.

The Court therefore considered the substantial case law on the definition of "pensionable service" and its definition in Section 124(1) of the Pensions Act 1995.

Judgement

Due to the fact the Pensions Act 1995 defines "pensionable service" by reference to service which qualifies for benefits under the scheme, Nugee J had little hesitation in declaring that the scheme was frozen.

His Honour was of the view that Employed Deferred Members, who had retained a final salary link for the purpose of calculating their benefits after the closure to future accrual, were:

"…not in pensionable service because their service after the closure date did not qualify them for any further pension; it simply revealed the amount of pension or… quantified the pension that they had already earned by their service before the closure date." (paragraph 31)

In short, only service that qualifies a member for additional units of accrual can be "pensionable service". Any service an Employed Deferred Member earns after a scheme has been closed to future accrual simply quantifies their pension, rather than add to the benefits already earned.

Impact

The decision of Judge Nugee will be welcomed by trustees and employers across the industry. With around 40% of DB schemes in the UK closed to future accrual and a significant proportion of those (around 20-30%) retaining a final salary link, the clarity brought by this judgement will be a significant relief, given the large Section 75 debts that can arise should an ECE occur and the scheme not be frozen.

Helpful Links:

http://www.bailii.org/ew/cases/EWHC/Ch/2018/1749.html

IORP II – Member communication requirements

The pensions industry is certainly fond of its acronyms and there are a few notables at present: with GDPR's 25 May 2018 effective date and GMP reconciliations due to be concluded by 31 December 2018, the next deadline is the implementation of IORP II - or, to give it its Sunday name, the Directive on Institutions for Occupational Retirement Provision. On 13 January 2019 it must be brought into national law by the UK Government – Brexit will not affect this requirement.

IORP II suggests that there is an IORP I, and indeed there is. The original IORP Directive was enacted in June 2003 as part of the European Commission's policy objective of creating the single market in financial services. The provisions of the IORP Directive were largely implemented in UK law by the Pensions Act 2004. In 2014, the European Commission published a proposal for extensive revisions to the IORP Directive. These are set out in IORP II.

The changes in IORP II are wide-ranging, but we would like to concentrate on one of the important changes – providing further protection to pension scheme members by enhancing governance requirements and focusing on member communications.

UK pension schemes, trustees and their administrators, by and large, do a good job communicating with scheme members. The changes required by IORP II are either already in place or are incremental rather than a re-write of the current approach. For example, it should come as no surprise that the principles of communicating in a clear and concise manner and using plain English as much as possible are maintained. Added to this, the DWP's target of ensuring all members have access to all of their pension savings online - via the Pensions Dashboard - by 2019 sits well with the directive's requirements.

The other communication changes are summarised as follows:

Pension Benefit Statement

At present in DB schemes, benefit statements are issued to active members of schemes while deferred members tend only to receive an annual Summary Funding Statement (SFS). Under IORP II, both active and deferred members are required to be issued with a 'Pension Benefit Statement' (PBS). Its contents should detail, amongst other things, a member's accrued entitlement, projection to retirement and information on the funding level of the pension scheme itself. The PBS must also:

- Be written in a clear manner, using succinct, comprehensive language and presented in a way that is easy to read;
- Be provided free of charge electronically or, on request, on paper;

- Be provided at least annually; and
- Clearly indicate if there has been a material change in the information since the last statement.

General Scheme Information

Upon request, members can receive a pension scheme's annual report and accounts and its Statement of Investment Principles. While the reality is that these documents are not often requested, IORP II requires that details on how to obtain these specific documents must be contained within the PBS. Both documents must also be publicly available.

Prospective Members

Prospective members should be given information on structure of the scheme's benefits, along with the investment options available. Information on the scheme's investments should also detail whether environmental, social and governance factors have been considered.

Remuneration Policies

Pension schemes will also be required to implement a 'sound remuneration' policy in relation to all parties associated to a pension scheme (e.g. trustees and outsourced service providers). The policy itself should be publicly disclosed and updated at least once every three years. The direction of travel points to this policy being available on a pension scheme's online dashboard and, while it may be a rarely-viewed document, publishing the details of a service provider's costs could lead to more schemes undertaking benchmarking exercises on their service providers and, ultimately, delivering greater value to its members.

While IORP II will not result in a seismic change as to how pension schemes currently operate, it will lead to a greater level of information being available to those who want it. The volume of communications is unlikely to materially increase; it will instead be value-added and promote a message of transparency, which can only provide comfort to members.

Helpful Links:

https://www.plsa.co.uk/Policy-and-Research/Europe-International/IORP-Directive

https://pensionsdashboardproject.uk/saver/about-the-pensions-dashboard/

ACTION

Although the Directive will be brought into UK law on 13 January 2019, we understand DWP will be consulting on the requirements and introducing secondary legislation and/or Codes of Practice throughout 2019. So whilst trustees won't be expected to be in compliance with IORP II by 13 January 2019, they should still liaise with their scheme administrators to prepare their member communications for the imminent changes.

Scamsmart campaign – UK regulators join to help grow awareness, but will it stem the flow?

"Don't let a scammer enjoy your retirement" this is the headline used in the new ScamSmart campaign. The UK's financial services and pensions watchdogs, the FCA and The Pensions Regulator, have launched a nationwide campaign to raise awareness of pension fraud. The new television advert shows a water ski-ing, champagne drinking fraudster generally enjoying the highlife – using money gained fraudulently from pension scamming; but will this get the message across? With pension scam victims losing on average £91,000 each to these fraudsters, according to Action Fraud, let's hope so.

The campaign aims to make people aware of the very real pension fraud risks and to ensure they are checking that any pension firms they deal with regarding a transfer of their pension entitlement, whether that be advisory firms, introducers or schemes, have the appropriate authorisation or are genuine.

Scams usually start with a cold call, a text message or a social media approach offering a free pension review or some promise to make attractive returns on their pension savings. They can make offers of upfront loans or cash back payments, even to people below the minimum pension age of 55. There will be agreements that the loan may be repaid to the scammers (with a handsome interest rate applied) when the pension pot can be legally accessed. Sadly though, many caught up in these scams either receive nothing or they find what little is left in their pension fund after the fraudsters have taken their cut, is invested in high-risk and sometimes non existent investments. In other words their pension pot is likely to be totally worthless. Add in a potential tax bill for an unauthorised payment and the misery is compounded.

These fraudsters prey on the increasing complexity and lack of understanding of their entitlements by the "normal" pension scheme member. For some, instead of Pension Freedoms providing more choice, it has led to greater mis-understanding - making it easy for fraudsters, who are charismatic, sympathetic and very credible; talking knowledgably about pension benefits, building up trust with their victims and helping them part with a lifetime's pension savings.

The FCA and The Pensions Regulator are part of a wider project, "Project Bloom", aimed at combating pension-related fraud.

The joint committee of Project Bloom can investigate, enforce and prosecute but the aim of the ScamSmart campaign is to prevent rather than cure. By raising awareness, they hope to do that by asking people to reject unexpected pension offers made by cold-callers or on social media. They are encouraging people to check who they're dealing with before making any changes to their pension arrangements, by checking the FCA Register or by calling the FCA Contact Centre.

A ban on pension cold-calling, first announced almost two years ago, whilst not a silver bullet for the problem, would certainly be an effective obstacle to help block some of these scams. In a never ending series of moves which looks a bit like kicking the can down the road, the government's treasury department recently consulted on draft regulation, with the consultation period having closed in August. It is hoped that a ban will eventually be effective in 2019.

ACTION

Employers should work closely with trustees and advisers to ensure member communications make them aware of pension scams and the very real, devastating effects they can have, including links to the campaign documentation. The material is there in the form of the Scorpion campaign – Use it before someone ends up losing it.

British Airways v APS Trustees Ltd – The Return Flight to the Court of Appeal

If court cases came with frequent flyer miles, this one would be well on its way to a free round the world trip. Involving a set of facts that took off back in February 2011, in July 2018 the Court of Appeal added its judgement to the history of the case.

You may well be as familiar with the facts of this case as the route of your daily commute, but to briefly recap:

- In 2011 the Trustees of the Scheme decided that they had a discretionary, and unilateral, power of amendment and introduced a new trustee power to allow discretionary pension increases (subject to certain express restrictions).
- Having introduced this new power, the Trustees decided to exercise it and in 2013 awarded a discretionary pension increase of 0.2%.
- British Airways PLC (the principal employer) challenged the amendment, claiming it to be an improper use of the amendment power.
- The High Court held in May 2017 that the Trustees' decision to amend the Rules and grant the discretionary increase was a valid exercise of the Scheme's power of amendment and that the decision to award the discretionary 0.2% increase was valid in itself.

Jet forward to July 2018 and there was a split decision in the Court of Appeal, with the majority of Judges eventually finding in favour of British Airways, reversing the High Court's decision. In short, the Trustees' decision to exercise its unilateral power of amendment to introduce a new trustee power to provide discretionary pension increases was invalid.

In reading the judgement (at 39 pages a lot easier read than the original 164 page decision) a couple of points stand out:

Para 102: "… the function of the trustees is to manage and administer the scheme; not to design it. The general power that is given to them is limited to a power to do all acts which are either incidental or conducive to that management and administration."

Para 121: "… there is nothing to suggest that the power of amendment was intended to give the trustees the right to remodel the balance of powers between themselves and the employer"

Now it is always difficult to highlight only points of interest in a complex case (which relies on the facts) but the two above struck a note, indicating the attitude of the Court to the exercise of a unilateral power by trustees and what their parameters should be. Indeed, the distribution of power between trustees and employers is very much a fine balance.

Trustees have to be cognisant of their powers and duties and take care in exercising them properly ensuring the "… journey itself is permitted…" [paragraph 122], especially in the area of discretionary increases. If trustees are unsure then they should take legal advice – their advisers will be taking this case into account. If they don't, you can bet the employer's lawyer will!

Interestingly, although this did not form the basis of their decision, the majority were of the view that if the scheme had been in surplus, there would have been no problem with the unilateral exercise of the Trustees' powers. At paragraph 124 Jackson LJ opined:

"I would consider the trustees' actions in taking steps to dispose of a surplus to be conceptually different from actions that would increase the employer's liability for a scheme already in very substantial deficit."

It is certainly an interesting view point, but one that leads to a very real stumbling block – what assumptions should be adopted to say whether a scheme is in surplus? Previous High Court decisions have roundly rejected arguments that trustees can vary their decisions based on the funding level of their scheme, so this has now been reversed too.

It should be noted that the Court of Appeal has (unsurprisingly) granted the Trustees permission to appeal the decision. So all aboard for the third leg of this journey… Destination? The Supreme Court.

Helpful Links:

Case Report: http://www.bailii.org/ew/cases/EWCA/Civ/2018/1533.html

ACTION

- Trustees must fully understand how their scheme documents are constructed, the powers available to both the trustees and the principal employer and the proper process for exercising decisions.
- The decision making process must be followed to the letter and with proper advice. This is critical in protecting trustees from a challenge from the employer.
- The decision making process must be properly documented. In other words, trustees should make sure the minutes are accurate and are detailed enough to stand up to the scrutiny of the Court.

Competition in the investment consulting market

The Competition & Markets Authority ('CMA') launched an investigation last year into the investment consultancy and fiduciary management services markets. The investigation has identified some issues that impact competition in these markets including low levels of engagement from some schemes, lack of transparency in information (fees and performance), and trustees not having the necessary skills or time to scrutinise their consultants. This has led to trustees finding it difficult to know if they are getting a good deal and if the quality of service could be better elsewhere.

The CMA has proposed some changes that it believes will improve competition and help trustees make more informed choices and get a better deal. We look at these below.

Mandatory tendering and warnings

The mandatory requirement for a tender of fiduciary management services will reduce the competitive advantage that investment consultancies have. They will also need to provide explicit warnings they are marketing their own fiduciary offering and that others are available.

From a trustee's perspective, it should help to give them a better understanding of the fiduciary management market to make a more informed decision when choosing a fiduciary manager. However, the cost of doing such an exercise can be expensive and at the moment and there are only a handful of firms that offer a review of fiduciary managers. Therefore it may prove challenging for some schemes that have a limited budget. The CMA should consider this before any details are made final as it could force some schemes to rule out fiduciary management altogether on the grounds of cost of doing a review of different providers, even if it could be the best option for them.

Guidance for pension schemes on tender process

Greater guidance from The Pensions Regulator is proposed to help trustees make more informed decisions when tendering for investment or fiduciary management services. We believe that this will be helpful to trustees in getting the most out of the tender process, especially for smaller schemes who may have limited experience of doing such exercises.

Fee breakdowns and standardised performance reporting

Better transparency on fees charged by fiduciary managers should help trustees understand what they are paying for to assess value for money and could also aid comparison between different providers. This could form a good basis of negotiation for trustees. The requirement to standardise reporting of performance should help trustees compare consultancies and fiduciary managers.

Objective setting for consultants

The requirement for trustees to set objectives for investment consultants will mean there is a measureable approach when assessing the performance of the investment services that are provided. This will give trustees a good way to assess the performance of their investment advisor to see if they are doing a good job and potentially make it easier to make comparisons between advisers. The Pensions Regulator will have responsibility for setting guidance on objective setting and we are supportive of this to encourage investment consultants to improve the quality of the services they provide.

The other remedy proposed is the regulation of investment consulting and fiduciary management services by the Financial Conduct Authority.

The CMA has consulted on these proposals and the deadline for its final report is 13 March 2019.

Our views

Overall, we are supportive of the CMA's drive to increase competition as well as increasing the level of transparency among investment consultants and fiduciary managers in order to provide pension schemes with better outcomes. However, a sensible approach must be taken to avoid any unintended consequences for pension schemes.

Helpful Links:

https://assets.publishing.service.gov.uk/media/5b4f4db2e5274a730e4e273b/investment_consultants_market_investigation_provisional_decision_report.pdf

https://www.gov.uk/cma-cases/investment-consultants-market-investigation

ACTION

Whilst there is no immediate call to action, trustees could take some steps to increase engagement with their investment consultant and/or fiduciary manager. They could consider doing a wider review of fiduciary managers if they are going down this route. Trustees could ask more questions of their investment consultant or fiduciary manager so they have greater clarity on fees and work with their advisers to set targets and monitor them.

Coming Up Next…

We have said it for months at this point of our Quarterly Updates – the Brexit negotiations are the only show in town (or at least, Whitehall) at the moment, meaning major changes in the pension industry have been few and far between.

That said, courtesy of the Courts, the various regulators and those working in DWP (counting their lucky stars that they haven't been drafted on to a Brexit team!), we think the following might be worth looking out for in the coming months:

- The High Court is expected to provide its judgement in the **Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc** case, which was heard in July. The Court has been asked to decide whether it is necessary to equalise benefits in respect of unequal GMPs and how it should be done. Although we suspect this will be one of those cases "with legs", that will end up being appealed at least once, trustees should take careful note of the decision, as it may have costly results.
- **New Disclosure Requirements for DC Costs and Charges** – Schemes with a scheme year ending on 6 April 2018 must have the enhanced information on transaction costs and charges relating to money purchase benefits available on a website accessible to the public by **5 November 2018**. These will be the first schemes to be affected by these new requirements, as we mentioned in our last Quarterly Update. The new requirements apply to all DC schemes where a Chair's Statement is required. DB schemes where the only DC benefits are Additional Voluntary Contributions do not have to comply. So, if you are a trustee of such a scheme and do not have this in place, take action now!
- On 29 October 2018 the Chancellor, Philip Hammond will present this year's **Autumn Budget**, which will be the last before the UK leaves the EU (probably!). The chance of widespread changes to pensions is generally thought to be low amongst commentators, but as we have seen in the past, Budgets can always throw up some surprises.
- On 7 November 2018 the European Court of Justice will give its ruling in the case of **O'Brien v Ministry of Justice**. This cases centred on whether non-discrimination legislation could retrospectively change the pension entitlement of members. If the ECJ rules in the affirmative, pension entitlement changes could be retrospectively applied to pension built up before the antidiscrimination laws even came into force – needless to say, this could have a significant impact on scheme liabilities.

Trustees and sponsoring employers alike should also be aware of the following key dates coming up:

- **25 October 2018** – Deadline for responses to the PPF’s consultation on the draft Levy Determination for 2019/20.
- **November 2018** – Consultations expected on Defined Benefit consolidation and Collective Defined Contribution schemes.
- **November 2018** - the State Pension Age to be adjusted to 65 for both men and women (before increasing to 66 by October 2020).
- **29 November 2018** – Deadline for responses to the LGPS consultation amendments to same-sex survivors' pensions following the Supreme Court decision of *Walker v Innospec*.
- **Autumn 2018** – The Pensions Minister has said a full consultation paper regarding proposals for Collective DC schemes will be published in the Autumn.

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