ALLEN & OVERY

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Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

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TPR appoints independent trustee to DC scheme

Further details have been published about the decision of the Determinations Panel to appoint an independent trustee to a DC scheme due to the lack of competence of the existing trustees. The Pensions Regulator (TPR) had been in contact with the trustees since a scheme return submitted in September 2015 indicated that there had been a breach of the charge cap for default funds in auto-enrolment schemes. To read more about the charge cap, click here.

In this case, the trustees acknowledged that, despite being trustees for over 11 years, they had difficulty understanding how pensions legislation applied to the scheme. The Panel also pointed to the fact that the trustees had not completed TPR's Trustee Toolkit and that only three trustee meetings had been held in six years, as well as to a number of specific breaches, including failure to comply with the charge cap requirements and failure to appoint a member-nominated trustee (the trustees had postponed dealing with this since at least 2014). Penalty notices had been issued in relation to the failure to submit compliant Chair's Statements for 2016 and 2017 – breaches included the failure to describe any review of the default fund strategy and the performance of the default arrangement, how core financial transactions had been processed promptly and accurately, and how trustee knowledge and understanding requirements had been met.

The Panel concluded that it was reasonable to appoint an independent trustee with exclusive powers, given the issues identified above, and that this was necessary to protect members' interests, particularly with regard to the failure by the trustees to comply with professional advice or to address the issues associated with the breach of the charge cap requirements. The trustees (and apparently the employer) also acknowledged that the appointment of an independent trustee would be in the best interests of the scheme.

TPR publishes scheme funding analysis

TPR has published its latest analysis of scheme funding issues, particularly directed at schemes with valuation dates between September 2018 and September 2019 (tranche 14). Although the picture is mixed, TPR expects that for schemes undertaking valuations at the end of 2018, deficits may have

increased and that recovery plans may therefore need to be adjusted. However, it also suggests that employer affordability may have increased for some sponsors, providing more options in terms of deficit management strategies or shortening recovery plans.

Changes to FRS102: multi-employer DB plans

The Financial Reporting Council (FRC) has announced changes to financial reporting standard FRS 102. Section 28 (Employee Benefits) provides that multi-employer DB plans are to be accounted for on a defined contribution (DC) basis where there is insufficient information to account on the DB basis. The amendments specify the accounting treatment to be used where there is a transition to DB accounting because sufficient information is available.

The effective date of the changes is for accounting periods beginning on or after 1 January 2020, with early adoption permitted. The changes follow a consultation on this issue (see WNTW, 4 February 2019) – the Feedback statement is available here.

EMIR Refit due to come into force

Changes to the European Market Infrastructure Regulation (EMIR Refit) are due to come into force from 17 June 2019 (some changes are being implemented on a staggered basis). As expected, the changes include an extension to the exemption for pension schemes from clearing requirements for over-the-counter derivatives – the two year exemption may be extended by up to a further two years. There are also changes to reporting obligations for counterparties (including pension schemes). You can read more about the EMIR Refit changes here.

Latest HMRC newsletter

HMRC has published its latest Pension Schemes Newsletter (no. 110). The newsletter contains an update on relief at source issues, including a reminder about changes to the information to be provided from 5 July 2019 where excess relief has been claimed. The newsletter also highlights the ongoing consultation on the transposition of the Fifth Money Laundering Directive (see WNTW, 23 April 2019 – the consultation closes on 10 June 2019).

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