

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.

Government responds to TPO consultation | TPR updates DB investment guidance, 'how to' guides | Settlement payment was taxable as EFRBS | Reminder: updated auto-enrolment guide | Parliamentary committee urges action on costs, charges

Government responds to TPO consultation

The government has set out its support for an informal 'early resolution' function for the Pensions Ombudsman (TPO), in its [response](#) to the consultation on TPO's dispute resolution processes and signposting requirements. TPO had already launched its Early Resolution Service before the consultation was published (see [WNTW](#), 24 September 2018).

The consultation response contains high-level commentary on how the government envisages the early resolution function would operate – for example, the government considers that this should be optional: the parties could still choose to use IDRPs and/or investigation by TPO. Any agreement reached between the parties as a result of the early resolution process would not gain any additional specific legal status – the parties could enter into their own settlement agreement, which could be enforced by other means. The parties would still have access to TPO's formal determination process, with TPO ensuring that different staff are involved at the early resolution and formal investigation/determination stages, where relevant, to avoid conflicts of interest. The government is also willing to permit parties to skip the IDRPs process before a TPO investigation in limited circumstances (provided all parties agree). Feedback to the consultation included concern that TPO should be neutral rather than acting as an advocate for complainants; the government agrees that TPO should remain impartial while helping complainants to achieve a resolution.

The response also confirms that the government will be working on other suggestions to improve TPO processes (which do not require changes to legislation), as well as improving some elements of signposting to services, and expanding the types of disputes employers can refer to TPO in relation to group personal pensions. The government has not indicated when it will publish its proposed changes to legislation.

TPR updates DB investment guidance, 'how to' guides

The Pensions Regulator (TPR) has made a minor update to its [DB investment guidance](#), to refer to standardised templates on costs and charges that are now available to trustees (see [WNTW](#), 28 May 2019). TPR has not yet updated its DB investment guidance to take account of the changes to

statements of investment principles (SIP), and related disclosure obligations, which begin to apply from 1 October 2019 (some obligations come into force at a later date). Last month TPR published an updated version of its DC investment guidance, which addresses the new duties. You can read more about the new obligations in our briefing '[Updating your SIP: new content requirements and disclosure deadlines for pension schemes](#)'.

TPR has also made some minor updates to two of its 'how to' guides for DC schemes, including:

- **Value for members:** TPR has updated the guide to refer to the cost disclosure templates mentioned above, and to encourage trustees to use these.
- **Communicating and reporting:** TPR has updated the guide to provide information to members on pooled funds (see [WNTW](#), 1 April 2019), and to publish a default SIP (see our [Updating your SIP](#) briefing). It has also replaced references to Pension Wise with references to the Money and Pensions Service.

Both guides reflect the additional duties to report on costs and charges (see [WNTW](#), 5 March 2018).

Settlement payment was taxable as EFRBS

The First-tier Tribunal has dismissed an appeal against the tax treatment of a multi-million-pound settlement amount paid to a former executive (now deceased): *Clark v HMRC*. Clause 4.3 of Mr Clark's Service Agreement entitled him to lifetime monthly payments after termination of employment; clause 4.4 contained an entitlement to lifetime monthly payments for his wife (after his death). The settlement agreement recorded that the purpose of the payment was to buy out these rights, as well as to reflect compensation for loss of employment and to compromise all other claims (including 'in particular all claims arising from clauses 4.3 and 4.4 of the Service Agreement').

Mr Clark's executors sought repayment of tax deducted on two alternative grounds:

- the payment was a termination payment within section 401 of ITEPA, meaning that part was exempt under section 406 of that Act (this referred to part of the payment that was made on account of Mr Clark's disability);
- all the tax paid was repayable, as the entire payment was made in return for the surrender of pension rights and was outside both section 401 of that Act (not being in connection with Mr Clark's employment), and section 394 (it did not constitute 'relevant benefits' provided under an employer-financed retirement benefits scheme (EFRBS)).

The Tribunal agreed with HMRC that the payment was made for reasons other than Mr Clark's disability and the settlement agreement was an EFRBS. The agreement was clear about the purpose of the payment and did not suggest that any part of it was compensation for premature termination of employment on the grounds of ill-health or in respect of disability. The lump sum was taxable as a relevant benefit under an EFRBS. The judge also commented that if she was incorrect on the EFRBS point, such that it was a termination payment within section 401, the disability exemption in section 406 would not apply. Although Mr Clark was disabled, the payment was not made on account of disability.

This is a complex case where it appears that HMRC changed its position as to the tax treatment of the settlement payment; it is a reminder of the need for detailed specialist advice in termination situations, to ensure that the intended outcome is achieved.

Reminder: updated auto-enrolment guide

With auto-enrolment contributions now in steady state, we have updated our guide to the statutory framework and employer duties: '[Auto-enrolment and re-enrolment deconstructed](#)'.

Parliamentary committee urges action on costs, charges

The Work and Pensions Committee has published a new [report](#) on pension costs and transparency, urging the government not to be complacent about industry performance on transparency about costs, investments and choices.

The report contains a number of recommendations, including for the government/Financial Conduct Authority to review how current arrangements are working (such as the charge cap for auto-enrolment vehicles, and reporting on value for money for members).

It also urges the government to legislate for mandatory cost disclosure templates for DB and DC schemes – the government has previously indicated that it would legislate if cost templates are not voluntarily adopted (see [WNTW](#), 28 May 2019). The Committee was not convinced that this would be sufficient incentive for the templates to be adopted, and has urged the government to introduce legislation, including giving regulators the power to oversee compliance with the templates. It also recommended that the FCA should consider establishing a public register of asset managers' compliance records with reasonable data requests.

The report also comments on the importance of applying the same level of scrutiny to value for money in DB schemes as DC schemes, and urges the government to take a leading role in driving forward the pensions dashboard project. The government is expected to respond to the report in due course.

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