ALLEN & OVERY

20 January 2020

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.

Reminder: changes to margin rules for OTC derivatives | BHS: Chappell required to pay £9.5m to schemes | Latest HMRC newsletters

Reminder: changes to margin rules for OTC derivatives

You may have seen recent industry press coverage, based on our recent guide, about how changes to margin requirements for certain derivatives contracts will affect some pension schemes. It's important to identify in good time whether your scheme is in scope for the initial margin requirements and, if so, how to prepare – please see our guide to find out more.

BHS: Chappell required to pay £9.5m to schemes

The Pensions Regulator (TPR) has published its decision requiring Dominic Chappell to pay approximately £9.5m to two BHS pension schemes. As TPR has stayed its investigation into Retail Acquisitions Limited (RAL), the purchaser of BHS, this appears to mark the end of TPR's anti-avoidance investigation into the acquisition.

Although Chappell did not formally respond to the Warning Notice, or participate in the proceedings before the Determinations Panel, the decision still contains some points of interest. These include:

- The relevance of settlements with other parties: the Panel held that third party settlements could be relevant to whether it was reasonable to issue a contribution notice (CN) – here, the settlement in relation to regulatory action against Sir Philip Green could not eliminate detriment caused by Chappell's conduct, and the amount ordered in the CNs would still leave the schemes in deficit, so the settlement did not detract from the reasonableness of the CNs.
- The amount of the CNs (by reference to the value extracted from BHS): around £2.4m was paid in fees to professional advisers for advice on the acquisition of BHS and the Panel acknowledged that acquisition costs may, in an ordinary commercial context, be loaded onto an acquired business when the business is viable. However, as 'there was never a realistic prospect that the post-Sale BHS business would be viable', these amounts had been value extracted from BHS for the benefit predominantly of Chappell. The other amounts taken into account in calculating the £9.5m were payments made directly or indirectly to Chappell, or which appeared to be for his (or his family's) benefit, and payments made between the sale and administration to other directors of RAL, BHS and BHS's parent company (and in one case, to a director's wife).

Latest HMRC newsletters

HMRC has published a further Countdown bulletin (no. 51) for administrators dealing with GMP reconciliation issues. This provides further information about the allocation by HMRC of payments made in respect of members, and includes instructions and a template for administrators. Schemes should consider, based on HMRC's recent briefings, whether they wish to make a full or part payment (or revise a previous position on this) and, where requested, confirm their decision with HMRC. HMRC has said that rapid responses will allow it to allocate payments and issue final data cuts promptly (although it has not yet published a revised data cut timeline). The deadline for action by administrators is 13 March 2020.

HMRC's latest Managing Pension Schemes Newsletter contains a detailed update on the rollout of the Managing Pension Schemes service, including steps that administrators and practitioners need to take before schemes are migrated to the new service. HMRC is also asking to be notified of scheme wind-ups so that these schemes are not migrated across to the new service.

HMRC had previously said that it was planning to publish guidance and a progress update on GMP equalisation (expected in December), but the latest newsletters do not cover these issues.

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