



Recent developments in pensions

24 January 2017

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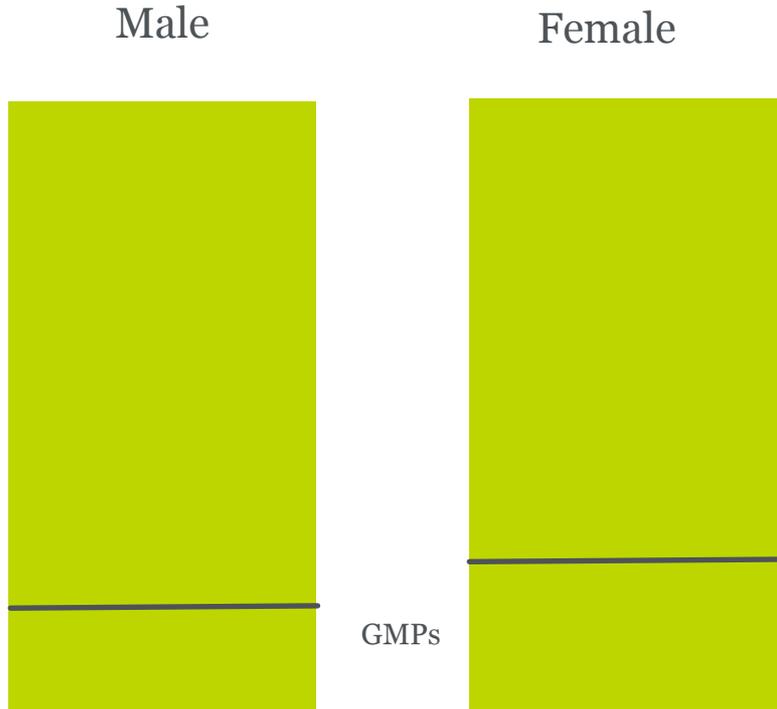
Equalisation of GMPs and other contracting-out developments

Duncan Buchanan

24 January 2017



What is a Guaranteed Minimum Pension?



- Contracted out 1978-1997
- Females get higher GMP payable from age 60 (65m)
- Underpin roughly equal to SERPS
- Schemes tend to increase GMPs differently to "excess"
- Means unequal benefits m vs f when in payment
- Difference amplified for early leavers (fixed rate)
- Inequality in GMPs required by legislation
- Barber case 17 May 1990
- Schemes done little to address the issue (except on winding up)

Government involvement

January 2012 draft regulations

- Would require year by year comparison
- Concern that method proposed was unduly onerous

New proposed methodology

- Industry working group - 10 step process for schemes wanting to equalise
- Compares **value** of future expected cash flow for benefits accrued in period 17 May 1990 (Barber) to 5 April 1997 (GMP and excess)
- Member gets higher value (male/female) then "**sausage machined**"
- GMP converted under legislation (amendments needed)
- Notify members before and after conversion

The Sausage Machine

Start Point



Equalisation Phase



Conversion Phase

Male Member

- Deferred – age 58
- Projected pension at NRA - **£13,736**
- GMP at NRA = £1,760
- Actuarial value = **£263,584**

"Amount A" - Male

Value (78-97) = £132,613

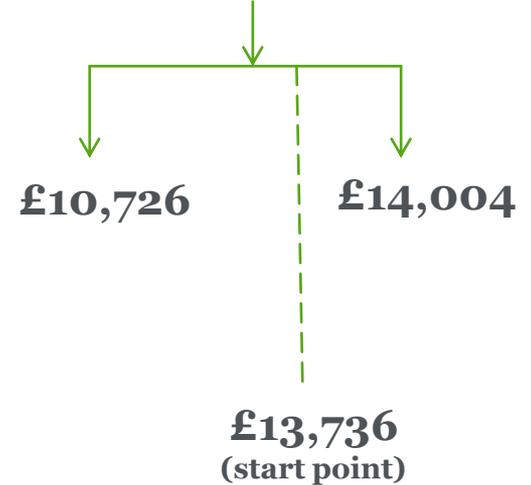
"Amount B" – Female 1990-97

Actuarial value of (78-90 male) + (90-97 female) =
£132,753

Difference = **£140**

"Equalised" Value =
£263,724

£263,724 "Equalised" value



**Increase in liabilities:
£140** (plus expenses)

Other contracting out issues

Contributions Equivalent Premiums (CEPs)

- Scheme reconciliation service thrown up cases where CEP due but time limits for payment expired
- HMRC to have discretion to extend notification and payment periods

Review of fixed rate revaluation following end of pensionable service

- 4.75% if leave 6 April 2016 to 5 April 2017
- 4% if leave on or after 6 April 2017

Bulk transfers of c/o rights without consent to scheme which never been contracted-out

- "working with stakeholders"
- Changes to legislation not before autumn 2017

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The Pension Schemes Bill: the impact on NAME schemes

Claire Southern

24 January 2017



Overview of the Pension Schemes Bill and NAME Scheme



Overview of the session

What is a Master Trust?

Authorisation of Master Trusts

What is a NAME scheme?

Master Trust legislation application to NAME schemes

What to do?

What is a Master Trust?



What is a Master Trust?

- Developed in response to auto-enrolment
- Used by employers who do not want to run their own defined contribution schemes
- Commercial provider sets up a defined contribution pension scheme that numbers of unrelated employers sign up to – benefits are provided to their employees
- Similar concept to a GPP but crucially: occupational pension scheme not a personal pension scheme
- Under the supervision of tPR not the FCA

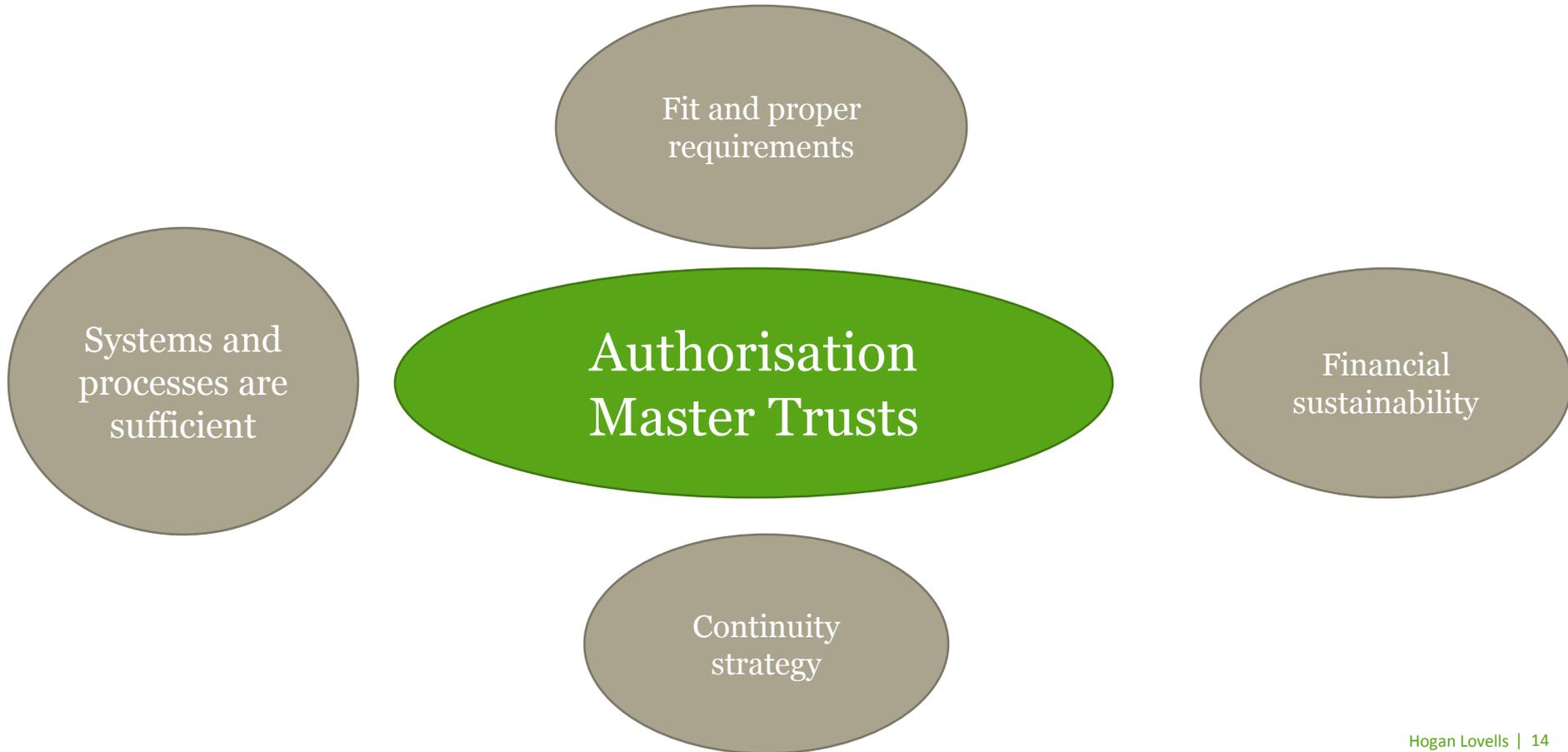


What is a Master Trust?

- Concerns expressed about the arrangements
- Number of small master trust arrangements
 - Are they sustainable?
 - What happens if they fail?
- New system that contemplates:
 - Application for "authorisation" as a master trust
 - On-going compliance requirements
 - Additional filings with tPR



Authorisation of Master Trusts



Authorisation of Master Trusts

- Master Trusts defined widely under the legislation:
 - Occupational pension scheme
 - Multi-employer – not "connected"
 - Provide money purchase benefits
 - Not an exempted public service scheme



#34536935

What is a NAME scheme?

Non

Associated

Multi

Employer

- Also known as "industry-wide" schemes
- Employers who are not in the same group company, come together to provide collective pension benefits for people in the same industry
- Eg: coal, rail, electricity, dock workers, pilots, universities etc
- Most provide defined benefits but will have defined contribution AVCs alongside

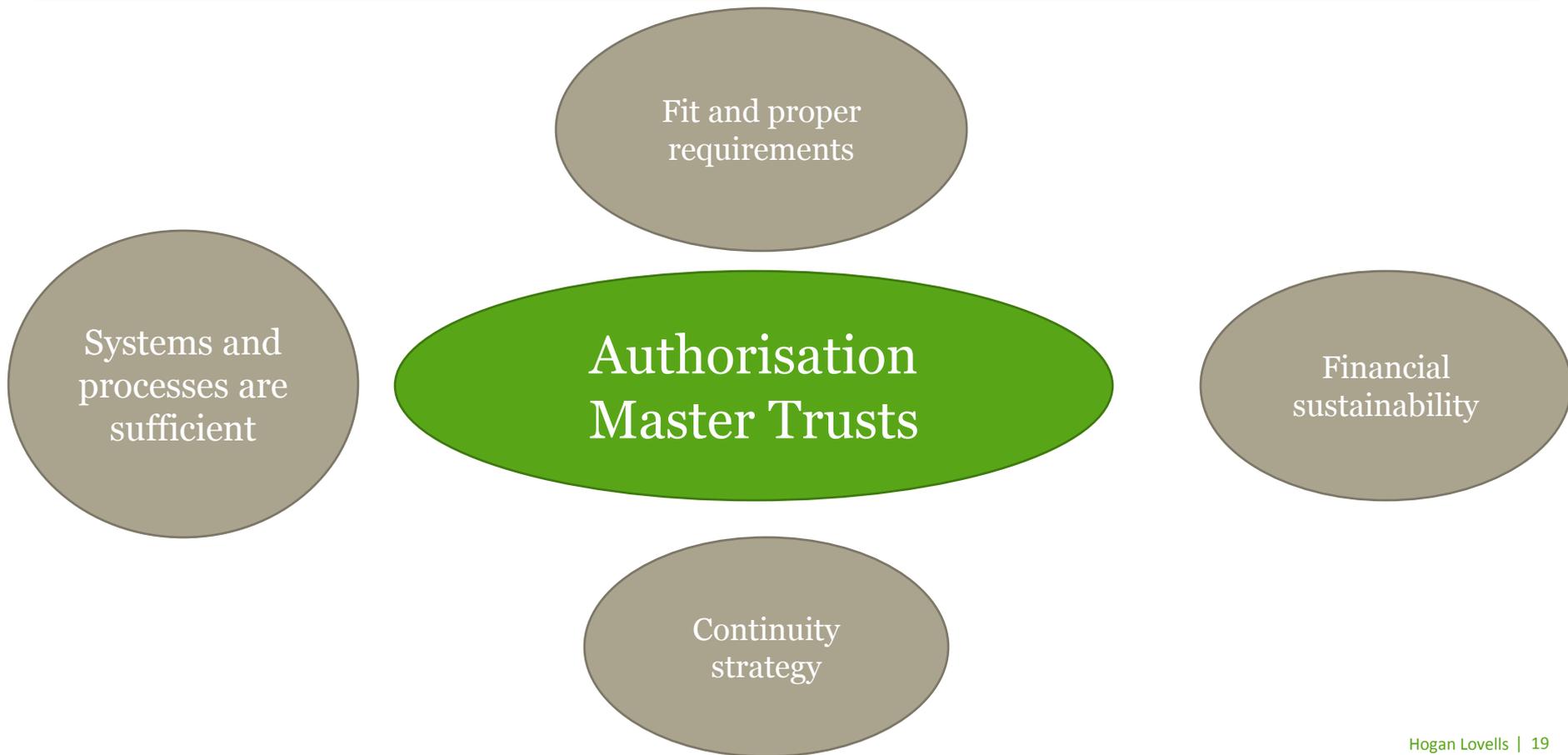
Master Trusts

NAME
Schemes

Application of master trust legislation to NAME schemes

- Attempts to exclude NAME Schemes from Master Trust legislation
- Power to dis-apply in regulation
- Minister has stated an intention to dis-apply some or all of the provisions for NAME Schemes with AVCs

Application of master trust legislation to NAME schemes



Application of master trust legislation to NAME schemes

Fit and Proper Requirements – tPR must be convinced

Trustees/managers

Establisher

Anyone with power
to vary or appoint
others

"Scheme funder"
and "Scheme
Strategist"

Implications for NAME Schemes

- Trustees/managers should be fine BUT
- Employers potentially covered?

Application of master trust legislation to NAME schemes

Systems and processes – tPR must be convinced

Business strategy is sound:
business plan prepared by
"Scheme Strategist"

Financial resources: set up;
running costs; end of life

"Scheme Funder": separate
legal entity; liable to fund if
admin charges inadequate;
only master trust activities;
capital and liquidity

Implications for NAME Schemes

- Already subject to Pensions Act 2004 funding requirements
- Costs and administrative burden
- Who will be a "scheme funder"?

Application of master trust legislation to NAME schemes

Systems and processes – tPR must be convinced



Implications for NAME Schemes

- Already subject to regime
- Costs and administrative burden

Application of master trust legislation to NAME schemes

Continuity – tPR must be convinced

Trigger events:
wind-up; scheme
funder
insolvency;
withdrawal of
authorisation;
trustee decides
risk of failure

Continuity option
1 (withdraw
authorisation):
Transfer and
wind-up

Continuity option
2:
Resolution of
trigger event

Continuity plan

Implications for NAME Schemes

- Ties trustees hands

Application of master trust legislation to NAME schemes

Filings – must be submitted to tPR

Scheme
accounts

Scheme
funder
accounts

Business
plan

Continuity
plan

- **Information regime – tPR has power to request information**

Notification regime – must be submitted to tPR

What to do?

Wait and see . . .

From 20 October
2016: trigger events
notified

Royal assent:
notification
requirements;
information requests

Commencement
date; 6 months to
apply for
authorisation

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The Pension Schemes Bill: the impact on NAME schemes

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New proposals for combatting pension scams

Beth Sheehan

24 January 2017



New proposals for combatting pension scams

The Government is consulting on a package of measures aimed at further tackling pension scams.

Evidence shows that more direct intervention is needed to protect pension savings:

- Citizens Advice have calculated that 10.9m consumers have received unsolicited contact about their pensions since April 2015.
- There were 30,000 DC transfers in 2015/16 representing £1bn of assets. Industry estimates suggest that fraudsters could be behind as many as 1 in 10 pension transfer requests.
- Individuals reported nearly £19m in suspected pension liberation fraud between April 2015 and March 2016 – twice as much for the same period in 2014/2015.

What is a pension scam?

The marketing of products and arrangements and successful or unsuccessful attempts by the scammer to:

- release funds from an HMRC registered pension scheme, often resulting in a tax charge that is not anticipated by the member;
- persuade individuals over 55 to flexibly access their pension savings in order to invest in appropriate investments; or
- persuade individuals under age 55 to transfer their pension savings in order to investing appropriate investments,

where the scammer has misled the individual in relation to the nature of, or risks attached to, the purported investment(s) of their appropriateness for that individual investor.

Proposal 1: ban on cold calling

Aims to simplify the anti-fraud message to the public – you will never be cold-called about your pension

Proposes ban on all cold calls "in relation to pensions", includes:

- Offers of free pension reviews
- Inducements to transfer or release funds
- Promotions of retirement income products

Enforced by the ICO – power to impose civil sanctions & fines of up to £500k on firms located/operating from the UK

"Legitimate interactions" are excluded, i.e. where the call has been expressly consented to or is from a current pension provider

Proposal 2: limiting statutory transfer right

Concerns raised by many trustees and schemes that current legislation provides little scope to refuse a transfer which appears to be a scam

If member has a statutory right to transfer, they can insist on the transfer being made

Proposal is that the statutory right to transfer will only exist where the receiving scheme is:

- A personal pension scheme operated by FCA authorised entity
- OPS with demonstrable genuine employment link, inc. evidence of regular earnings; or
- An authorised master trust

Alternative approach: statutory discharge forms and cooling off period

Proposal 3: making it harder to open fraudulent schemes

Many fraudulent schemes are able to register with HMRC, implying legitimacy

Changes have been made to the tax registration process but does more need to be done?

Proposal is that only active (non-dormant) companies can be used for scheme registrations to make it harder for schemes to be registered for fraudulent purposes

Next steps

Consultation ends 13
February

Next steps to be ready
for 2017 budget

Be aware – scammers
may seek to make the
most of time available
until these measures
come into effect

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New proposals for combatting pension scams

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What's new from the Treasury/HMRC?

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Introduction

- Money Purchase Annual Allowance consultation
- Salary sacrifice consultation
- Draft Finance Bill 2017
- HMRC newsletters

Money purchase annual allowance

Consultation to reduce Money Purchase Annual Allowance (individuals accessing flexible benefits)

- Reduction from £10,000 to £4,000
- To be applied from 6 April 2017

Applies to individuals who have accessed flexible benefits from a pension arrangement through a lump sum.

Consultation paper asks:

- Would reduction minimise recycling of pension savings while allowing successful AE roll-out?
- Any groups to be disproportionately affected by reduced allowance?

Consultation closes on 15 February 2017.

Salary sacrifice consultation

Autumn Statement confirmed:

- NI and income tax advantages to be removed
- **Except in relation to** pensions (and pensions advice)
- to have effect from April 2017

Salary sacrifice consultation ended 5 December 2016

Consultation part of wider review of Benefits In Kind

Draft Finance Bill 2017: advice provisions

- HMRC has commenced technical consultation on draft Finance Bill 2017
- Exemption from income tax for provision of "relevant pensions advice" to employee or former employee
- Relevant pensions advice = information or advice in connection with:
 - The person's pension arrangements; or
 - Use of the person's pension funds
- Details include:
 - Up to £500 per year
 - Exemption applies in relation to each employer / former employer
 - Must be provided to employer's employees generally (or employees at particular location); OR
 - Open to employer's employees generally who meet ill health condition or within 5 years of minimum pension age / protected pension age

Draft Finance Bill: overseas pensions

- Foreign pensions and lump sums to be brought fully into tax for UK residents – will be taxed to same extent as benefits from domestic pension arrangements
- Specialist pension arrangements ("Section 615 schemes") will be closed to new savings
- Lump sums to former UK-residents from overseas funds:
 - remain subject to UK tax for 10 years after leaving
 - (increased from 5 years currently)
- Eligibility criteria for non-UK schemes to qualify as overseas schemes will be updated

HMRC Newsletter 80

Lifetime allowance charge protection – online application service launched

Covers claims for both FP 2016 and IP 2016, plus individual protection 2014

HMRC developing look-up service for administrators to check lifetime allowance status of members - late 2016

HMRC Newsletter 81

Serious ill health lump sums over 75 – 45% tax charge replaced with tax at marginal rate

Secondary annuities – Pension Wise guidance pilot exercises

Lifetime allowance – look up service postponed to later in 2016. Administrator's expected to keep checking members' protection status before payments.

Annual allowance – beta version of calculator launched – incorporates transitional AA rules for 2015-16

Lifetime allowance protections – effective dates

- **IP2016 and FP2016** – 6 April 2016 or when became active following loss of earlier LA protection
- **IP2014** – 6 April 2014 or when became active following loss of earlier LA protection

Annual allowance

- 2012 and 2013 tax years will be added to beta version of annual allowance calculator
- Expected mid-November 2016

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Recent cases and Ombudsman's determinations

Matthew Bullen

24 January 2017



Agenda

- Mr X (PO-9889)
 - Interest on late payment of benefits following discovery of an equalisation issue
- Barnardo's v Buckinghamshire [2016] EWCA Civ 1064
 - RPI / CPI
- Horton v Henry [2016] EWCA Civ 989
 - Access to a bankrupt's pension rights

Mr X (Robins Davies and Little Group)

Equalisation – interest on late payment

- A failure to equalise properly was discovered during a PPF assessment period.
- Mr X had 5 years' accrual with NRD 60, rather than with NRD 62.
- Mr X retired in 1999. Trustees calculated that he had been underpaid just under £19,000 since retirement.
- Trustees paid the shortfall in 2015, without interest.

Mr X

- Deputy PO held that Mr X had no entitlement to interest.
- The additional pension payment was an “additional unexpected benefit”.
- Trustees had treated all affected members in the same way, and their approach was "entirely reasonable".
- Trustees had taken into account:
 - the fact that the scheme was in PPF assessment;
 - the impact payment of interest would have on other members;
 - the fact that the scheme rules made no reference to adjusting payments for interest, and the Trustees had received legal advice that there was no obligation to award interest.

Barnardo's v Buckinghamshire

High Court's decision (July 2015)

- Application to Court by the Trustees for directions on the interpretation of the scheme rules.
- On-going deficit as at 2013 of £113m.
- The issue for the Court:
 - Did the Trustees have the power under the rules to substitute CPI for RPI as the relevant index for revaluation and indexation purposes?
- Employer (Bernardo's) said "yes"; representative members said "no".

Barnardo's v Buckinghamshire: High Court's decision

- The rules provided for indexation/ revaluation by lesser of 5% and RPI.
- RPI defined in rule 53.
- Did this mean:
 - RPI or any index that replaces RPI and is adopted by the trustees; or
 - RPI or any index that is adopted by the trustees as a replacement for RPI?
- High Court held the rules did not permit the trustees to switch from RPI to CPI, as long as RPI remained an officially published index.

RULE 53

“Retail Prices Index means the General Index of Retail Prices published by the Department of Employment or any replacement adopted by the Trustees without prejudicing Approval.”

Barnardo's v Buckinghamshire

Court of Appeal's decision (November 2016)

- The employer appealed.
- Court of Appeal, by a majority, upheld the High Court's decision, dismissing the employer's appeal.
- "Replacement" of RPI must precede "adoption" by trustees.

Barnardo's v Buckinghamshire: Cross-appeal

- Representative members' cross appeal: even if the trustees did have power to change to CPI, s67 would bite.
- The Court of Appeal rejected this unanimously.
- There was no "default" rule that RPI applied.
- It was therefore not possible to say that a member had an accrued right to an increase measured in any particular way.
- *Danks v QinetiQ* and *Arcadia* were applied.
- An application has been made to the Supreme Court for permission to appeal.

Horton v Henry – access to bankrupt's pension

- Trustee applied to High Court for an income payments order.
- The issue boiled down to when, per s310(7), a bankrupt becomes “entitled” to their pension?
- In 2012, the High Court decided in *Raithatha v Williamson* that an undrawn pension could be made subject to an IPO and the Court could order the bankrupt to make election to drawdown,
- The Court declined to follow *Raithatha*: “entitled” suggests a pension in payment under which definite amounts have become payable.

Section 310(7) Insolvency Act 1986

“...income of bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled...”

Horton v Henry

- The Trustee appealed to the Court of Appeal.
- The appeal was dismissed.
- If the Trustee's arguments were correct, the Court would have to determine the precise nature of the election it would require the bankrupt to make.
 - There were no criteria in the relevant statutes as to how that exercise would be carried out.
 - The absence of such statutory criteria was a "formidable obstacle" to the Trustee's case.

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Other recent developments

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House of Commons: report on DB schemes

Green Paper expected early 2017

Recommendations: moral hazard powers

- tPR should issue guidance and test powers more frequently
- Compulsory clearance for some corporate transactions
- "nuclear deterrent": tPR power to issue punitive fines

Recommendations: regulatory intervention

- Proactivity from tPR
- Variable frequency of valuations
- 9 months to submit valuation and recovery plan

Recommendations: dealing with stressed schemes

- Alternatives to "insolvency or full benefits"
- More effective use of regulated apportionment arrangements (RAAs)
 - Easier to meet insolvency threshold
 - Shorten 28 day notice period
- Restructuring accrued pensions where in members' interests
- Allowing changes to scheme indexation, perhaps on conditional basis
- Broader winding up power for tPR

Recommendations: governance

- Greater information powers for trustees
- Incentivise good governance through PPF levy
- Encourage consolidation (including aggregator fund), removing regulatory and other barriers
- Ease commutation of small DB entitlements

DC transfers without consent: call for evidence - issues



- "broadly, no less favourable" requirement
 - Unsuitable for transfers of DC benefits?
 - Should quality check still be required?
- Requirement for relationship between transferring and receiving scheme
 - Can prevent transfers of orphaned benefits
 - Introduce conditions to allow transfer to well-governed scheme?
- Different processes for benefits with guarantee attached?

Early exit charges : response to consultation

Cap on exit charges for members 55 to NRA accessing pension pot early (expected October 2017)

Apply to all charges which a member would not face if transaction at scheme's agreed pension age

Intended cap:

- 1% for existing members; and
- 0% for new members

Increased contributions for existing member – subject to 1% cap

Early exit charges cont'd

Where scheme rules/existing contracts state charges are <1% - increases prohibited

Exclusions from cap: market value adjustments and terminal bonuses unless guarantee/"reasonable expectation"

Primary duty to comply on person who applies charge

Similar cap on PPS charges expected in force 31 March 2017

IORP II Directive

Revised IORP Directive in force: national law by January 2019

Fit and proper persons

"qualifications, knowledge and experience are collectively adequate"

Required functions include internal control and risk management

EU-wide solvency requirements - **not** included

Full funding for cross-border schemes

Overseas transfers: call for evidence

Concerns over appropriateness of requiring overseas residents to take advice from a UK-based adviser

Any alternative process only to apply to members with safeguarded benefits, already/moving overseas and transferring to QROPS

Anti-avoidance "residency test" would be needed

Overseas transfers cont'd

- **Proposed alternatives:**

Removing advice safeguard

- restoring pre-April 2015 process – where advice not required by country of residence/receiving scheme

Permitting advice in the overseas member's country

- members would need to demonstrate advice taken from independent/qualified adviser. How to ensure standard met?

Permitting advice in third country

- where member not resident – where no suitable local adviser/appropriate regulatory regime. Risk of scams/difficulty of financial redress

Other developments

- tPR: 21st Century Trusteeship
 - Drive to improve standards, including tougher enforcement and encouraging consolidation
 - "Fit and proper" regime in future?
- Law Commission: call for evidence
 - Legal / regulatory barriers to DC social investment, especially where funds chosen by members
- Single financial guidance body
 - Not before autumn 2018
- Further extension of EMIR (central clearing obligations)
 - Until 16 August 2018

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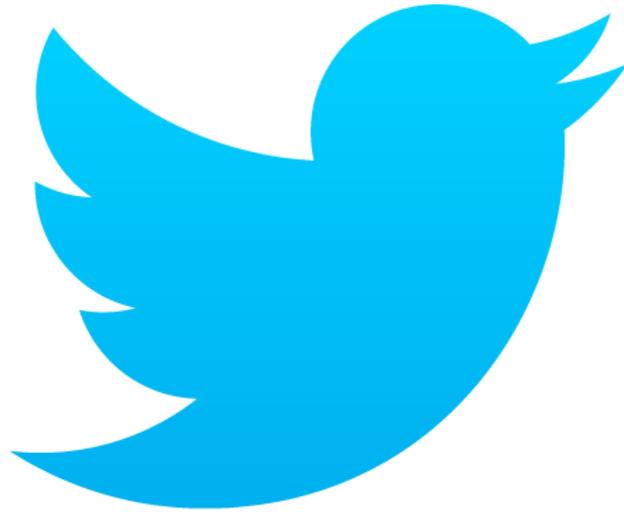
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