

News on Pensions

FEBRUARY 2015

Trivial commutation = incentive exercise?

The Incentive Exercise Monitoring Board (IEMB) has [issued a statement](#) suggesting that their [Code of Practice](#) on incentive exercises applies to one-off trivial commutation and small pot lump sum exercises.

The Code of Practice (see News on Pensions – July 2012) is a voluntary code, produced by the pensions industry. Trustees and employers are not legally obliged to comply, although not doing so could leave them open to criticism by members or The Pensions Regulator (TPR).

The original objective of the Code of Practice was to ensure that all incentive exercises are carried out fairly and transparently and that communications are balanced and easily understood. The code set out a definition of incentive exercises:

“An Incentive Exercise is an invitation or inducement provided to a member to change the form of their accrued defined benefit rights in a UK registered pension scheme, which meets both of the following tests:

- One objective of providing the invitation or inducement is to reduce risk or cost for the pension scheme or sponsor(s); and
- The invitation or inducement is not ordinarily available to members of the pension scheme.”

In certain circumstances, appropriate independent financial advice should be paid for by the employer as part of the incentive exercise.

Following an increase in the limits defining ‘triviality’ (see [News on Pensions – April 2014](#)), a number of schemes and employers have been considering running exercises offering trivial commutation to newly-eligible members.

Where an individual’s overall pension benefits in all arrangements are valued at less than £30,000 (previously £18,000) any or all of these can be ‘trivially commuted’ for a lump sum payment. Where a member’s benefit in any one single arrangement is valued at less than £10,000 (previously £2,000) this can be taken as a ‘small-pot lump sum’.

The IEMB’s statement suggests that the Code applies to one-off trivial commutation and small pot lump sum exercises, in particular because they meet the part of the definition of incentive exercises where ‘the invitation is not ordinarily available to members of the pension scheme’.

However, it does not apply to ‘business as usual’ activity - for example where trivial commutation is offered as an option on an individual basis at retirement, or where members are not being given a choice.

A major review of the Code is planned later in 2015. Trustees and employers who have already begun a trivial commutation exercise should seek further advice on the implications of continuing. Our briefing note, [‘Budget Flexibilities and Incentive Exercises’](#) considers this further, and also summarises the key issues for trustees to consider in relation to other incentive exercises and the flexibilities introduced in the 2014 Budget.

[READ OUR BUDGET FLEXIBILITIES
AND INCENTIVE EXERCISES >](#)

Pensions Ombudsman: update

Pensions liberation

The Pensions Ombudsman has [published](#) details of three cases relating to pensions liberation (in relation to three different parties). Each case related to a scheme that refused to process a transfer out request from a member because of their suspicions about the receiving scheme.

The Ombudsman found that that in each case the member did not have a statutory right to a transfer and so the providers had not breached their statutory duty to make a transfer. However, in all cases the Ombudsman noted that the providers had not actually carried out an analysis to establish whether the member was entitled to a transfer.

In two of these cases the members were not entitled to a transfer because the receiving schemes did not meet the definition of an 'occupational pension scheme'. The third did meet this definition, but the member was not technically an 'earner' in relation to the scheme and so again no statutory right existed. However, in this case the Ombudsman also noted that the provider had discretion to pay a transfer even when there was no statutory right, and so instructed them to consider making the transfer.

Meanwhile, The Pensions Advisory Service and The Association of British Insurers [have launched](#) a 'collaborative social media campaign' to help raise consumer awareness about the risks and consequences of pension scams.

Late retirement factors

The Deputy Pensions Ombudsman has partly upheld a complaint from a member where there was a change to the method and the late retirement factors used to calculate his [late retirement pension](#). The Deputy Pensions Ombudsman noted that although there was no requirement to have informed the member of the change, the retirement illustration should have stated that the benefits were subject to the Trust Deed and Rules and that the method of calculating the late retirement pension could change.

Where trustees are issuing statements to members which illustrate retirement benefits, care should be taken to point out where the factors used could change in future.

Pension overpayments

The High Court has sided with the Pensions Ombudsman in the case of [Webber v Department for Education](#) – meaning that the onus will be on members to check that the benefits they have received are correct and to make efforts to return any over-payments. In this case, the Claimant had 'turned a blind eye' to the overpayments received.

The ruling also set out that the scheme could not claim back overpayments made more than six years before the complaint was made to the Pensions Ombudsman.

Ill-health pensions

The Pensions Ombudsman has directed the trustees of a scheme to [review an application for an ill health pension](#) after the medical evidence they obtained 'did not allow them to decide whether, on the balance of probability, the member would be able to return to work, merely that it was possible that he could'.

When awarding ill-health pensions, trustees should ensure they obtain sufficient and appropriate information from medical practitioners before making their decision.

Auto-enrolment – latest from TPR

TPR is [writing](#) to all small and micro employers giving them key information on auto-enrolment, including confirmation of when their auto-enrolment requirements first apply. The letters will be in addition to reminders sent to employers twelve months ahead of their staging date.

TPR has published its sixth annual [report on defined contribution \(DC\) scheme returns](#) which shows that, because of auto-enrolment, DC memberships now exceed active defined benefit (DB) memberships.

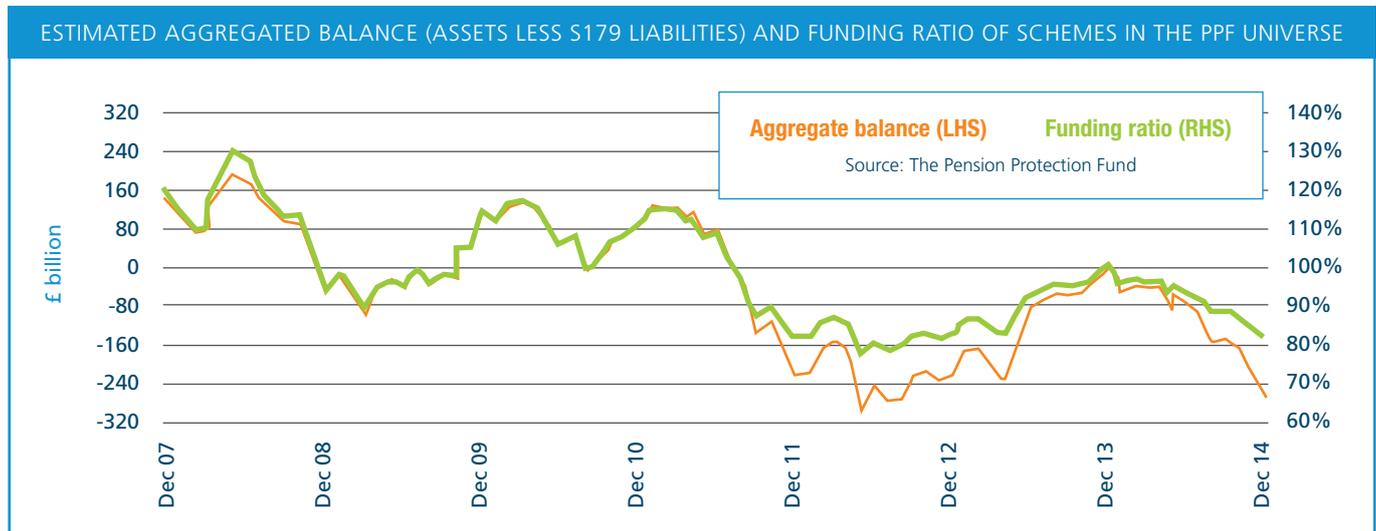
TPR [statistics](#) also show that 169 employers have been fined for failing to comply with their auto-enrolment duties, out of the more than 30,000 employers who had begun auto-enrolling during 2014.

PPF: 7800 index

The [January 2015 update](#) of the PPF's 7800 index of schemes' funding (on the s179 basis) has been published.

The aggregate deficit of the 6,057 schemes in the index is estimated to have increased over the month to £266.3 billion at the end of December 2014 (there was an aggregate deficit of £221.1 billion at the end of November 2014).

The funding ratio decreased from 84.8% to 82.3%. There were 4,936 schemes in deficit and 1,121 schemes in surplus.



Other News

Pension savings in bankruptcy

The High Court has ruled that bankrupting practitioners [cannot force a person to draw down their pension](#) to pay off debts, contrary to a High Court ruling in an earlier, similar case.

The individual concerned was declared bankrupt at 58 and had benefits built up in a number of pension arrangements, from which he had not yet retired. The funds were valued at around £1 million and so creditors were keen for the courts to be able to access the funds in order to meet their claims. The individual, however, wanted to protect these funds to form an inheritance for his children.

In the earlier case [Raithatha v Williamson], the courts had ruled that once an individual had reached the arrangement's minimum pension age, the individual had 'become entitled' to that pension income and an 'income payments order' could be made as part of bankruptcy proceedings. (It should be noted that this case was settled before any order could be effected). In this case [Horton v Henry], the judge decided not to follow Raithatha v Williamson as he disagreed with the reasoning. He decided that Mr Henry was not 'entitled' to any particular sums of money until he actually applied to receive them. Moreover, the judge noted that the court had no power to force Mr Henry to apply to receive his pension.

The case is expected to be referred to the Court of Appeal.

TPR: Funding code of practice survey

In June 2014, TPR published its revised DB funding code of practice. Alongside the funding code, TPR publishes annual DB funding statements (with associated analysis) providing market commentary and direction for schemes with upcoming valuations.

TPR has now published the findings from a recent [survey](#) to determine the extent to which the messages in its updated code of practice and funding statements have reached the intended audiences and were understood. The research has found that awareness was high among actuaries and trustees but lower among sponsoring employers.

99% of the trustees surveyed said they had an open and transparent relationship with their sponsoring employers. 96% of sponsoring employers agreed.

FCA: Second line of defence

The Financial Conduct Authority (FCA) has announced plans for a '[second line of defence](#)' for people accessing their DC pension savings after April 2015. Pension providers regulated by the FCA (e.g. personal pension providers) will be required to ask consumers about key aspects of the circumstances that relate to the decision they are making about their pension pot. Providers will then be required to pass on certain 'risk warnings' in response to the responses received. Providers are also required to highlight the availability of the Government's new Pension Wise scheme and that regulated advice can be obtained. The Department for Work and Pensions (DWP) is liaising with TPR over potential similar requirements for trust-based schemes.

PPF: Contingent assets

The PPF has produced a [briefing note](#) highlighting issues for trustees to be aware of in relation to certifying guarantor strength for 'Type A' contingent assets. The PPF has recently introduced more stringent requirements intended to 'improve the quality of contingent assets', and to ensure the guarantor is able to support the scheme if called upon. The PPF has said that it is "vital for trustees to get the process right to ensure they don't see guarantees rejected, particularly where certifying for a different amount or using a stronger guarantor could have seen the risk reduction recognised".

Further information

On our website:

You may find the following recent blog posts and information sheets interesting:

- [Guidance for trustees as TPR consults on DB to DC transfers](#)
- [Companies with early 2015 year ends could face 30% increase in liabilities](#)
- [PPF levies: all change?](#)
- [Current Pensions Issues Winter 2014 - 15](#)

Seminars: DB to DC Transfers

Freedom and choice in pensions is already transforming DC pensions, but how will it impact DB schemes? Our seminars, during March 2015 (in Cheltenham, Birmingham, Leeds, Liverpool and London) will explore the issues around DC reforms and the new requirement for members to have received advice before transferring, in particular:

- how much research do trustees need to do about a transferee's advisors and receiving scheme?
- where transfers are discretionary, what factors should trustees bear in mind?
- how might transfer volumes impact on future funding levels and cashflow?
- should all members approaching retirement be given transfer quotes in future?
- should employers be seeking to promote transfer options, and how should trustees respond?
- do scheme transfer and commutation factors need to be set differently in future?

For further details, please see our [website](#).

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact us via the following:

✉ info@barnett-waddingham.co.uk

☎ 0207 776 2200

🖱 www.barnett-waddingham.co.uk



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