HYMANS ROBERTSON

Current issues

February 2025

Articles this month:

Sharing the wealth

The Government has confirmed plans to liberalize '*how well-funded, occupational defined benefit pension funds that are performing well will be able to invest their surplus funds.*' The press release says that the Government will provide policy details in the spring, as part of its response to the February – April 2024 consultation exercise on *Options for Defined Benefits*.

For now, the message is that—

> '*Where trustees agree to share a portion of scheme surplus with a sponsoring employer, the employer may choose to invest these funds in their core business... and/or provide additional benefits to members of the pension scheme.*'

It seems that there will be a statutory override allowing scheme rule changes, subject to trustee and employer agreement and fiduciary-duty considerations. More speculatively, there is some indication that the measure of surplus that the Government is working with is a low-dependency funding basis (LDFB), as described in the recent funding and investment strategy reforms, rather than a (more stringent) buy-out basis. The £160bn surplus figure quoted in the press release matches the Pensions Regulator's estimate of the LDFB surplus in the private-sector DB system at the end of September 2024. The Regulator published the estimate to coincide with the Government's announcement, saying that the Department for Work and Pensions had requested updated statistics '*to inform private pension policy.*'

Easier surplus sharing was at top of our wish list for 2025, so naturally we welcome the emergence of this development so early in the year. It's a key requirement for unleashing the full sustainable growth potential of UK pensions assets. Careful implementation will, however, be essential.

Going, going... gone?

The Pension Protection Fund (PPF) has finalized its policy on the 2025/26 levies. In response to consultation feedback, and positive noises from the Government on the prospects for legislative amendment, it has cut the levy estimate from £100m to £45m. The Levy Policy Statement says that, '*Overall, 99.7 per cent of schemes will see a reduction in total levy—with an average decrease of around 55 per cent—and the average levy as a proportion of liabilities falling from 0.011 per cent to 0.006 per cent.*'

The PPF has also given itself scope to reset the estimate (and therefore the levies) to zero if enough progress is made toward legislative reform over the course of this year, and is '*prepared to be flexible regarding the timing of invoicing to allow as much time as* [reasonably possible] *for the situation to become clear.*' The Department for Work and Pensions subsequently confirmed that '*The Government is considering proposals to allow the Pension Protection Fund greater flexibility to reduce the levy it collects from pension schemes by relaxing restrictions.*'

Links to the usual levy policy appendices, on matters such as deficit-reduction contributions and contingent assets, are available on the PPF's website.

We said in our response to the levy consultation that the PPF should reduce the estimate to £45m. It's great to know that it's listening to feedback from the industry.

No movement on AE thresholds

The Department for Work and Pensions (DWP) has reviewed the auto-enrolment earnings trigger and qualifying earnings band for 2025/26 and has chosen to retain the current levels. The earnings trigger for 2025/26 will be £10,000 and the qualifying earnings band will be £6,240 to £50,270.

The earnings trigger sets the level at which jobholders must be automatically enrolled into a qualifying pension scheme and the qualifying earnings band dictates the earnings on which minimum contributions are based.

The P*ensions (Extension of Automatic Enrolment) 2023 Act*, which received Royal Assent in September 2023, gives the Government the power to widen the criteria for auto-enrolment by lowering the age at which jobholders become eligible for auto-enrolment and to reduce or remove the lower limit of the qualifying earnings band. The DWP has previously said that it intends to consult on the detailed implementation of these measures, however there was no specific mention of this in the Government's analysis or the Pension Minister's statement.

Ringing the changes?

Torsten Bell has replaced Emma Reynolds in the historically unusual dual role that she held as Pensions Minister and Parliamentary Secretary at His Majesty's Treasury. Reynolds has been promoted to Economic Secretary to the Treasury. The mini-reshuffle/game of ministerial musical chairs was prompted by the resignation of former Economic Secretary Tulip Siddiq.

Bell was the Chief Executive of the Resolution Foundation think-tank from 2015 to 2024, in which capacity he regularly commented on tax and State pensions policy. At different points during those years he expressed sympathy with proposals to reform contributions tax-relief, advocated bringing pensions savings back into the scope of inheritance tax, endorsed a £40,000 cap on tax-free cash, and suggested replacement of the 'triple lock' with a 'smoothed earnings link' (hard to explain in one line, but more of a double lock with a twist).

It will be interesting to see how Bell's ideas influence policy now that he's got his hands on the levers of power (to whatever extent that's true for a Pensions Minister), and how they might develop once he's faced with the realities and compromises of being (and staying) in government.

It's spelled 'Counsel'

The Scheme Advisory Board for the Local Government Pension Scheme (LGPS) in England and Wales has published an update to Counsel's opinion on the investment duties of administering authorities (AAs). It focuses especially on the factors that AAs can (or in some cases should) take into account when making decisions.

Nigel Giffin, KC, originally provided the Local Government Association with his opinion on the matter in 2014. Most notably, he concluded that non-financial factors could play a part in investment decisions as long as there was no risk of significant financial detriment to the pension fund, and the AA didn't put its own interests over those of other scheme employers, or prioritize its views above those of employers and members.

In November 2024, the Government published its *Fit for the Future* consultation paper on reforms to LGPS investment and governance. It proposes, amongst other things, that all investments be made (or at least managed) via the relevant LGPS asset pool, and that AAs delegate implementation of their investment strategies to—and obtain key strategy advice from—that pool. The strategy would also have to establish a target for local investment.

On the instruction of the LGA, Giffin has now updated his opinion, taking account of developments in the intervening period. In addition to the consultation proposals, he considers the Law Commission's paper, *Fiduciary Duties of Investment Intermediaries* (2014), the Government's statutory *Guidance on Preparing and Maintaining an Investment Strategy Statement* (2016), and the Supreme Court's ruling in the *Palestine Solidarity Campaign*[1] case.

The KC concludes that, in the period since his original opinion, '*the basic legal position has become more certain... but has not materially changed.'* He also judges that a policy of investing with the aim of benefitting the wider economy (whether local or national) is probably based on a non-financial factor; and that climate-related considerations could fall into either camp. Expert advice is likely to be a necessity.

The SAB says that it will work with AAs on whether to request additional advice on specific points.

For our views on the Fit for the Future *consultation proposals, see the* response *on our website.*

Dashboards standards nearing destination

The Pensions Dashboards Programme (PDP) has released updated draft reporting standards for pension providers and schemes. The standards outline the requirements for generating, recording and reporting operational information to the Money and Pensions Service (MaPS).

Since the last version, published in November 2022, there have been a couple of notable changes:

- the introduction of a two-phase approach, with schemes and providers initially (from April 2025) required only to keep records, and the additional duty to send data to MaPS deferred until a later date; and
- the removal of some operational monitoring requirements due to feedback that they would have been overly onerous.

The draft standards have also been updated to make minor changes and correct errors. A change log published with the draft sets out amendments since the previous version. There's also a corrections log that will collate details of known issues with and corrections to the current version of the standards.

The PDP doesn't expect to make any significant changes to the draft reporting standards before asking the Department for Work and Pensions to approve them, and it expects to publish the final standards in the first quarter of 2025. It will also release details of the IT aspects of data reporting.

The Pensions Regulator has updated its own guidance on pensions dashboards to take account of industry feedback and bring it in line with external developments.

Breaking up is hard to do

As part of a project reviewing financial remedy orders on divorce, the Law Commission in England and Wales has identified potential reforms to the way in which pensions are treated, and to the use of sharing orders. If taken up by the Government, there could be implications for pensions administration.

The Commission describes what it has published as a 'scoping report'. What it means is that the reforms that it discusses aren't firm recommendations for change. Rather, the Commission is seeking the Government's agreement that reform is desirable, and asking for some direction as to what form it should take.

What's wrong with the existing rules?

The Commission says that current law fails to '*provide a cohesive framework in which parties to a divorce or dissolution can expect fair and sufficiently certain outcomes*' (the question that it set out to answer, per the terms of reference for the project).

Financial arrangements

On the general subject of financial remedy orders, the Commission observes that much of the law exists in the form of judicial precedents, rather than statute, and that the courts have considerable discretion. Those factors, it says, make it difficult for couples to predict the financial end results of their divorces.

The report outlines four possible responses. The first would take the principles that have been established by case law and codify them in statutory form. The second model for reform, which the Commission calls ‘codification plus’, would supplement that first approach by making additional changes to deal with uncertainties, and perhaps also constrain judicial discretion. The third option is termed ‘guided discretion’ and would involve setting principles and objectives for the courts’ use of their powers. The fourth possibility is the establishment of a default regime via explicit rules that would govern the financial consequences of divorce.

Pensions

The Commission devotes Chapter 10 of the report to the subject of pensions. It concludes that their importance is often not fully recognized, and that even when they are considered they are often dealt with unsatisfactorily, for example by offsetting values against other matrimonial property.

Possible solutions are put forward. The law could be changed to specify that pensions must be considered. More radically, pensions sharing could be made automatic unless couples opt out. Taking that idea even further, another possible variation would additionally make equal sharing the default outcome.

The Commission also suggests some reforms that it thinks might streamline the system, to help it deal with the increase in pension sharing orders that could be expected as a result of the foregoing changes. It has heard from people concerned about delays and obstacles to the process of implementing pension shares. One proposal is that the four-month implementation period could begin as soon as the pension scheme is notified about the order, so that the timetable is not extended by late requests for additional information.

The report also mentions the problem of ‘moving target syndrome’, in which financial settlements are devised on the basis of benefit valuations that have changed by the time the share is implemented. It arises because pension sharing orders in England and Wales must be expressed as percentages of the value of members’ pensions. It is suggested that the issue might be dealt with by allowing orders that instead specify fixed-sum shares, as permitted in Scotland (although the Commission notes that the practice comes with its own risks).

What happens next?

If the Government follows protocol, it should issue an interim response within six months of the report’s publication, and its full response should come within a year.

This is not the most pressing concern for pension trustees and administrators, but it’s one to keep an eye on, because of the potential effect on the volume of pension sharing orders that they will have to apply. We imagine that eyebrows will be raised, to say the very least, at the suggestion that the implementation clock could begin ticking before schemes are supplied with full information.

Exemption extension

His Majesty's Treasury has reported on the outcome of its review of the 'temporary' (spoiler alert: ironic use of quotation marks) exemption of pension funds from the obligation to clear certain derivative contracts through central counterparties. It has concluded that the exemption, which was due to expire on 18 June 2025, should be maintained, and will bring forward legislation to that end.

The Treasury has decided to retain the exemption '*for the longer-term*', and consequently that the forthcoming amendments, via secondary legislation, should not set any further time limit for its continuation. However, it says that it will keep the policy under review, and may reassess its decision if market changes or wider reforms change the value of mandatory central clearing for pension schemes.

And Finally…

The *Women's State Pension Age (Ombudsman Report and Compensation Scheme) Bill* had its First Reading in Parliament on 28 January 2025. It's an attempt to force the Department for Work and Pensions to come up with a compensation scheme for those women to whom State pensionable age rises were somewhat lazily communicated. The proposal was brought forward as a Private Member's Bill (PMB) by the SNP's Stephen Flynn, under the Ten Minute Rule. That means that it has a snowball's chance in Hell—even worse prospects than a Ballot PMB[1]—without Government support (which it seems unlikely to garner, absent a coup), so really it's just a way of ensuring debate on the subject.

AF is regularly fascinated by the Heath Robinson nature of our Parliamentary processes. According to the Hansard Society guide to Ten Minute Rule Bills:

> *'If the House supports the bill then the MP promoting it must go to the bar of the House with a 'dummy bill' (provided by the Public Bill Office), bow towards the Speaker's chair, walk five paces and bow again, before bowing a third and final time before the ceremonial Mace. He or she must then present the 'dummy bill' to the Clerk at the Table*.'

That seems like an awful lot of choreographed bowing to manage—it led *AF* to wonder if anyone's ever clumsily head-butted the Mace. The Society's guide doesn't say whether that dummy bill is ever just the phrase '*This is utterly humiliating*' written over and over in ink made from the MP's tears and the ashes of his or her self-respect...

[1] Involves picking numbered balls out of a fish bowl, like in bingo.