

14 January 2019

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.

New PPF guidance on restructuring | Reminder: pensions cold-calling ban now in force | Master trust update | Outsourcing: consultation on Fair Deal in the LGPS | Seminar: a stronger Pensions Regulator: new risks for UK corporates?

New PPF guidance on restructuring

The Pension Protection Fund (PPF) has published revised [guidance](#) on its approach to employer restructuring situations (that is, where an employer may be allowed to restructure and carry on trading while the PPF takes on the employer's pension scheme). The guidance emphasises that these situations are very rare, and highlights the stringency of the criteria applied by the PPF to ensure that proposals are only supported where insolvency is otherwise inevitable, and where the deal provides a significantly better return for the scheme than would be the case without the arrangement. The PPF has added a new principle that it will consider the overall viability of the restructuring proposal, and strengthened requirements for the payment of costs by the party seeking the restructuring. The PPF also expects that:

- scheme trustees, assisted by professional advisers, will have fully analysed the circumstances of the scheme and the employer to identify whether the Pensions Regulator's (TPR) moral hazard powers could be used; and
- all creditors facing a shortfall in an insolvency will take part in the restructuring and will not be in a better position than the pension scheme after a pension liability reduction restructuring.

The illustrative case study has been revised and expanded (based on the previous scenario).

The PPF has also published [revised versions](#) of its restructuring and insolvency guidance notes – the existing notes have been renumbered and separate notes added on the PPF's legal standing and approach to the governance of insolvency proceedings, how PPF drift arises and should be addressed, and the appointment of independent trustees. A further note, on situations involving new or successor schemes, is expected in the coming months.

Reminder: pensions cold-calling ban now in force

On 9 January 2019, the [ban on pensions cold calls](#) came into effect. Trustees and managers of occupational and personal pension schemes are exempt from the ban, provided that the recipient consents to such calls or there is an existing client relationship such that the recipient might reasonably expect to receive cold calls (and has been given the opportunity to refuse them) – there is

no exemption for third-party administrators. The ban is not expected to be relevant in relation to most occupational schemes as they do not generally undertake such calls.

Trustees and administrators may wish to remind members that any unsolicited call they now receive about their pension from another source is illegal and may be a scam.

To read more, see [WNTW](#), 21 December 2018.

Master trust update

TPR's latest [figures](#) on the master trust market show that, as at 31 December 2018, three additional master trusts have exited the market, and there have been five further applications for authorisation. 49 schemes are expected to either apply for authorisation or trigger their exit from the market in the short-term.

Outsourcing: consultation on Fair Deal in the LGPS

The government is [consulting](#) on changes to pension provision where there is an outsourcing of services by a Local Government Pension Scheme (LGPS) employer. The government previously consulted on this issue in 2016: it has now released a further consultation together with draft regulations. The proposals include:

- **Providing 'protected transferees' with continued access to the LGPS** – this applies to eligible persons employed by a 'Fair Deal employer' (that is, an LGPS employer with the exception of certain education bodies and admission bodies) immediately prior to the compulsory transfer of their employment. It would no longer be an option for a contractor to provide access for these persons to a broadly comparable scheme instead of the LGPS. Out-of-scope staff may be treated as protected transferees, provided that the relevant conditions are met and the LGPS employer and the contractor agree to do so.
- **Transitional arrangements** for persons currently protected under an existing Direction. On the re-tender of a contract under the Direction, these persons will gain the right to LGPS membership and to transfer benefits from a broadly comparable scheme into the LGPS.
- Provisions on **contractual risk-sharing** ('pass-through') between the LGPS employer and the contractor. When an employee is compulsorily transferred from their Fair Deal employer, the former employer would have the option of remaining the 'deemed employer' for the transferred staff (although it would still be possible to require a provider to have 'full' employer responsibilities). Subject to contractual provision, the contractor would not have full scheme employer responsibilities and the Fair Deal employer would retain the majority of scheme employer responsibilities (including contributions and funding risk). The contractor would have obligations to provide information to the Fair Deal employer, and would also remain responsible for making various decisions with cost implications (e.g., in relation to ill-health and redundancy). The government also believes these arrangements may give contractors greater flexibility in the negotiations around price and risk sharing. Guidance for Fair Deal employers is expected from the Scheme Advisory Board.

The consultation closes on 4 April 2019. There is no indication of the proposed timing for these changes.

Seminar: a stronger Pensions Regulator: new risks for UK corporates?

The government intends to strengthen the Pensions Regulator and make changes to scheme funding rules. Partner Neil Bowden and Counsel Jessica Kerslake will discuss the proposed changes, their implications for corporates and M&A activity, and expected timing at our free lunchtime client seminar on Wednesday 6 February 2019. Click [here](#) for more information, and to register to attend.

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