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PENSIONS SNAPSHOT

OVERVIEW

Pensions and the Budget 2024.

The pensions aspects of the 2024 Budget, perhaps unsurprisingly, built upon the government's recent emphasis on (i) encouraging the investment of pension fund assets in UK productive finance; (ii) value for money and improving returns for savers; and (iii) consolidation.

Defined benefit schemes - new options for well-funded and underfunded schemes

Proposals put forward by the government in a recent consultation may result in new end-games for both well-funded and underfunded schemes. We may see the smaller, less well-funded schemes in the future look to a public consolidator that the government is looking to establish. For well-funded schemes, we may see a trend against buyout with more schemes being run off, and being utilised as an investment vehicle in the meantime as a result of the government's plans to allow sponsors and members to share in any investment outperformance of scheme assets.

Lifetime allowance abolition - pension commencement excess lump sum

The Finance Act 2024 has now received Royal Assent, and HMRC have also published Regulations amending certain aspects of the Finance Act 2024, in particular regarding the

Pension Commencement Excess Lump Sum ("PCELS").

The Regulator makes strategic shift in its oversight of the workplace pensions market

From April, the Pensions Regulator ("**Regulator**") will create three new regulatory functions which protect, enhance and innovate in savers' interests. The three regulatory functions are: Regulatory Compliance, Market Oversight and Strategy, Policy and Analysis.

Pension scheme regulations overridden following member being provided with incorrect information - Pensions Ombudsman Ms E

This case is rare instance of statutory regulations being successfully overridden by an estoppel by representation.

IN DETAIL

Pensions and the Budget 2024

The pensions aspects of the 2024 Budget, perhaps unsurprisingly, built upon the government's recent emphasis on (i) encouraging the investment of pension fund assets in UK productive finance; (ii) value for money and improving returns for savers; and (iii) consolidation.

PENSION FUND INVESTMENTS

The government will bring forward requirements for defined contribution ("DC") pension schemes to publicly disclose their asset allocation. This will include the allocation of investments in UK equities. The Chancellor's announcement on 2 March on further pension reform suggested that this would be achieved by 2027. The FCA will consult on requirements in the spring and the government is also looking to introduce equivalent requirements for the Local Government Pension Scheme from April 2024.

If these measures do not result in an increase in allocations of UK equities in pension scheme investments, the government will consider taking further action.

VALUE FOR MONEY

The upcoming value for money pensions framework will highlight schemes which focus on short-term cost savings over long-term investment outcome. The FCA and Regulator will be given additional regulatory powers to close schemes to new employers and even wind-up schemes which are consistently offering poor value for money.

LIFETIME PROVIDER

The Budget also confirmed that the government remains committed to looking at a lifetime provider model for DC schemes in the longer term. This is despite the mixed views from the industry on such an approach.

For more detail, please see our [briefing](#) on this topic.

Defined benefit schemes - new options for well-funded and underfunded schemes

We have seen emphasis by the government in looking to pension schemes to improve investment in the UK economy. The government issued a call for evidence in July 2023 on options for defined benefit schemes. In response to this, the government committed to a further consultation on measures to make surplus extraction easier and to discuss establishing a public sector consolidator. This has culminated in the [most recent DWP consultation](#) where the DWP is looking for views on (i) encouraging

productive asset investment by making surplus extraction easier; and (ii) a public consolidator for certain defined benefit pension schemes.

SURPLUS EXTRACTION

Last year the government looked at making it more attractive for employers to extract surplus from defined benefit pension schemes by committing to reduce the rate of tax payments by employers on a refund of surplus from 35% to 25%. The hope is that if employers and members can share in strong investment returns, it may promote investment in productive assets.

The most recent consultation builds upon this by proposing:

- + a statutory override to ensure all schemes can extract surplus where certain funding levels are reached; and
- + simplifying the process for trustees making one-off payments to members.

The government is keen to ensure that surplus extraction will not put member benefits at risk. As a result, it is proposed schemes would need to be fully funded on the low dependency funding basis plus either a fixed margin (for example 105% funding on a low depending basis) or a variable margin based on the investment risk taken by the scheme in order to extract surplus. A further option is, in return for a higher PPF levy, the PPF providing 100% compensation.

PUBLIC SECTOR CONSOLIDATOR

The government is also intending to establish a public sector consolidator which will be administered by the PPF by 2026.

There will not initially be specific eligibility criteria, but the consolidator will be particularly aimed at schemes who are smaller and less well funded and therefore not on track for buyout or attractive to commercial consolidators. The expectation would be for the consolidator to invest part of its fund in high-growth UK assets.

As a result, we may see the smaller, less well-funded schemes in the future look to the public consolidator. For well-funded schemes, we may see a trend against buyout with more schemes being run off, and being utilised as an investment vehicle in the meantime.

The consultation closes on 19 April 2024.

Lifetime allowance abolition – pension commencement excess lump sum

The Finance Act 2024 has now received Royal Assent, and HMRC have also published Regulations amending certain aspects of the Finance Act 2024, in particular regarding the PCELS. As initially drafted in the Finance Act 2024, a PCELS could only be taken once a member had used up all of their lump sum allowance ("LSA"), the standard amount of which is £268,275. The Regulations, however, will change this to allow a member to take it if a member has used up either their LSA or their lump sum and death benefit ("LS&DBA"), the standard amount of which is £1,073,100. This might occur, for example, if a member has taken a serious ill-health lump sum benefit which has exhausted their LS&DBA, but not a pension commencement lump sum, and therefore their LSA remains intact. The PCELS would, if the conditions for that payment are satisfied, therefore allow the member to take an additional lump sum. Any amount taken as a PCELS is taxed at the member's marginal rate of income tax.

The Finance Act 2024 also provided that a PCELS could only be paid up to the 'permitted maximum' amount. Again, the amending Regulations removed this concept of 'permitted maximum'.

Whilst schemes do not have to allow members to take a PCELS, the Finance Act 2024 contains a provision which will incorporate a PCELS payment into the rules of a scheme which currently permits a lifetime allowance excess lump sum.

The Regulator makes strategic shift in its oversight of the workplace pensions market

The Regulator is making organisational changes to reinforce its strategic shift in overseeing the workplace pensions market.

From April, the Regulator will create three new regulatory functions which protect, enhance and innovate in savers' interests. The three regulatory functions are: Regulatory Compliance, Market Oversight and Strategy, Policy and Analysis. These will be supported and enabled by essential functions such as Operations, Digital, Data and Technology, and People.

As the pensions landscape is rapidly evolving towards a competitive marketplace of fewer, larger schemes, the Regulator is taking these steps to make sure pensions continue to deliver good outcomes for savers while strengthening its regulatory grip.

Pension scheme regulations overridden following member being provided with incorrect information – Pensions Ombudsman Ms E

This case is rare instance of statutory regulations being successfully overridden by an estoppel by representation. The claimant was the cohabitee of a deceased member of the Local Government Pension Scheme. The Local Government Pension Scheme Regulations 1997 as amended (the "**1997 Regulations**") provided that a survivor's pension would be payable after the death of a member to their spouse. They also provided that this pension would be provided to a cohabiting partner, but only if the member was still an active member after April 2008.

Having received a terminal diagnosis, the member called a pensions service provider, Local Pensions Partnership ("**LPP**"), to confirm whether the pension would be payable after his death to his partner, whom he had not married. He was told that a pension would be payable to her, and specifically that it would be payable in spite of the fact that he was not married to her.

After his death, his partner attempted to claim the pension and was informed that she was not eligible for the pension as the member had left active service before 2008. In the claim, LPP argued that the member was 'against marriage in principle' and so would not have married the claimant even if correctly advised for the fact that the survivor's pension could only be paid to a spouse. The claimant provided extensive written evidence demonstrating that the member would have married her in order to ensure she was provided for financially. The couple had also taken out a loan in reliance of the fact that the survivor's pension would come into payment to the claimant after the member's death. In the absence of the survivor's pension, the claimant claimed she had suffered financial hardship as she had had to cover outgoings with her own limited savings instead.

The Ombudsman noted that the call between LPP and the member had been misleading to an extent that constituted maladministration, but that LPP and the London Pensions Fund Authority had a duty to follow the 1997 Regulations, under which no survivor's pension WH payable. However, although the claimant, who was self represented, had not raised the argument herself, the Ombudsman held that an estoppel by representation defence applied. LPP had made a clear and unambiguous representation that the survivor's pension would be payable to the claimant, giving them a reasonable expectation that the survivor's pension would be payable to her. It was reasonably foreseeable that the member would rely on LPP's statement without requesting a follow up confirmation in writing, particularly in view of the significant deterioration in his health following the phone call. Finally, the member had acted on the incorrect information to the claimant's detriment. As for the question of unconscionability, the Ombudsman held that the claimant lost all ability to mitigate her loss on the death of the member.

The ombudsman therefore directed that sums equal to the survivor's pension be paid to the claimant as though she were actually entitled to it, with interest applied to pension arrears. an award of £2,000 was also made in respect of the severe distress the maladministration caused.

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