SQUIRE PATTON BOGGS

Hot Topics in Pensions

Autumn 2020

Pensions law is complicated and subject to frequent change. Conversely, other areas of law feel a little outdated. In our Autumn Hot Topics, alongside the latest developments in UK pensions, we explore some UK legislation that may surprise you. Have you inadvertently fallen foul of any of these offences?

1. The Pensions Regulator Firing on All Cannons

The Pensions Regulator (TPR) has reinstated more requirements that were relaxed at the beginning of the COVID-19 pandemic. From 1 January 2021, it asks trustees and pensions providers to report the late payment of money purchase contributions that are 90 days outstanding (instead of the temporary 150 days allowance). From 1 October 2020, TPR will revert to reviewing defined contribution (DC) chairs' statements and will start to enforce the requirement for schemes to submit audited accounts and investment statement reviews. TPR expects to be granted additional powers in the near future, but this will not extend to firing a cannon within 300 yards of your house (this remains illegal).

2. Data Protection – Suited and Booted

Since 1313, legislation has prohibited MPs from wearing armour in the Houses of Parliament (although dress codes have evolved). Shields also proved unpopular in the Court of Justice of the EU, which ruled that those transferring personal data from the EU to the US cannot rely upon the EU-US Privacy Shield Framework. Additional assessments should also be undertaken if Standard Contractual Clauses or Binding Corporate Rules are used to protect transfers of personal data outside the EEA (to the US or elsewhere). Trustees should consult their data maps and seek advice if scheme personal data can be accessed from outside the EEA.

3. Dusting off the Minimum Pension Age

In response to a question, John Glen (economic secretary to the Treasury) has confirmed that from 2028, the minimum pension age for drawing benefits will increase from age 55 to 57. While there is currently no legislation to this effect, it would be good governance for trustees to warn members that a change is expected and to check scheme rules and booklets in due course. If the government is having a tidy-up, we hope that MPs are aware that it is an offence to shake their rugs in the street (unless it is a doormat and it is before 8am).

4. Implementation Statements – Do Not Fall Foul of Requirements

The legislation relating to implementation statements could be described as "muddy". From 1 October 2020, trustees of most DC and defined benefit (DB) schemes are required to produce a statement, reporting on the implementation of certain aspects of their statement of investment principles. From 1 October 2020, the implementation statement for a DC/hybrid scheme must be publicly available online, but the practical timing requirements are complex. If in doubt, take legal advice. In another muddy area of law, did you know that it is an offence to dump manure on the village green? The churchwarden may seek damages!

5. Climate Change Proposals – Laying New Decking

Need new garden decking? Get it delivered! It is an offence to carry planks of wood along a pavement. The government's consultation on taking action on climate change proposes setting new foundations for occupational schemes with assets of more than £1 billion, authorised master trusts and authorised collective money purchase schemes. Trustees would be required to have effective governance and targets in place for the assessment and management of climate risks and opportunities. The consultation also ties in with amendments made to the pension schemes bill enabling mandatory compliance with the recommendations of the Taskforce on Climate-related Financial Disclosures.

6. Counting the Cost of DC

The Department for Work and Pensions (DWP) has issued a consultation covering a broad spectrum of DC governance and investment issues, including barriers to investing in illiquid assets. To improve member outcomes, a new annual value for member assessment is proposed for schemes with DC assets of less than £100 million that have been operating for at least three years. If a scheme does not deliver good overall value, it will normally be expected to consolidate into a larger scheme. On the subject of money, did you know that it is against the law to melt any coins that have been legal tender in the UK since 1969?

7. GMP Equalisation – Sobering Thoughts

HMRC's recent newsletter addressed tax issues relating to lump sum payments where guaranteed minimum pension (GMP) equalisation adjustments are due. The GMP Equalisation Working Group issued guidance on preparing scheme data for equalisation, and guidance on communications for schemes planning a GMP equalisation exercise. We await HMRC guidance on GMP conversion, and the latest court ruling in the *Lloyds* litigation. Unfortunately, there are no plans to clarify the interpretation of GMP conversion legislation. Other legislation can be equally tricky to apply – such as the Licensing Act 1872, which provides that penalties may be imposed on anyone drunk on licensed premises.

8. Communication Requirements – Blowing in the Wind

Be careful when flying your kite in London – you may be guilty of "nuisance" under the Metropolitan Police Act 1839. Draft regulatory materials are blowing pensions communications in unexpected directions. Firstly, the Financial Conduct Authority's draft transfers and conversion guidance raises questions about whether pensions transfer communications, particularly illustrative transfer values, could be construed as providing advice. Secondly, the draft direct marketing code issued by the Information Commissioner's Office casts doubt on whether certain member communications could be classed as direct marketing.

9. TPO Hooks Into Transfer Delays

Recent decisions from The Pensions Ombudsman (TPO) illustrate the importance of processing transfer requests and queries promptly – TPO will sniff out anything that smells fishy. In one case, compensation was payable when, as a result of delays, a member could not invest in the FTSE100 immediately after the Brexit referendum result, and in another case, a member missed the opportunity to accept a transfer value quotation because queries about a missing quotation were not addressed. On another fishy subject, it is an offence under the Salmon Act 1986 to handle a salmon in suspicious circumstances – we are not codding you! Does wearing a face mask count as suspicious?

10. Pensions Developments – Jockeying for Position

TPR has been overwhelmed by the positive industry response to its diversity and inclusion project (more expected soon) and by a record level of responses to its DB funding consultation. Separately, the Pensions Dashboards Programme plans to issue an initial version of data standards by the end of 2020. Pensions minister Guy Opperman expects the pension schemes bill to be enacted by the end of 2020 in spite of competing government priorities. We expect that Mr Opperman will enjoy a celebratory pint of real ale (although, as an amateur jockey, he will know that limits apply whilst in charge of his horse).

General Disclaimer

Readers will understand that our broad statements of non-pensions law are included in this publication for the purposes of humour. In some cases, these laws apply in specific areas of the UK and have wider context. The Pensions team does not have specialist knowledge of the law relating to the firing of cannons (by TPR or any other body).

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39435/09/20