PENSION NEWS UPDATE (DECEMBER 2021)

Conditions for Transfer regulations

1. In order to attempt to combat pension scams, provisions were included in the Pension Schemes Act 2021 to give trustees the power to restrict the right to a statutory transfer, unless prescribed conditions are met. Following a consultation earlier in the year, the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 were published on 8 November 2021 and came into force on 30 November 2021.

2. Under the Regulations a member only retains a statutory right to a transfer if one of two conditions is satisfied:

   2.1. **First condition**: The receiving scheme is either a public sector scheme, an authorised (and listed) master trust, or an authorised (and listed) collective money purchase scheme.

   2.2. **Second Condition**: There are no "red flags" present to indicate the member may be at risk of a pension scam.

3. In addition, as part of the second condition, if there are any "amber flags" present, a member must take pension transfer scams guidance from MoneyHelper and provide evidence that they have done so. If this guidance is not taken, this becomes a "red flag".

4. As part of the regulations, there is a requirement to request and receive evidence from the member to demonstrate that there is an employment link where the transfer is to an occupational pension scheme. If a transfer is to a qualifying recognised overseas pension scheme (QROPS) either evidence to demonstrate overseas residency or an employment link is required.

5. Further information about the new regulations and what are the red and amber flags is included in TPR guidance, which was also published on 8 November 2021.

6. Railpen's processes and communications have been reviewed and are being updated to reflect the new requirements. In addition, the Trustee has updated its delegated authorities to allow Railpen to decide if red or amber flags are present and whether a transfer value payment can proceed or not.

Review of the Fraud Compensation Levy ceiling

7. On 1 November 2021, DWP published a consultation that proposes an increase to the Fraud Compensation Levy (FCL) ceiling from the levy year 2022/2023 onwards, to reflect an increase in pension scam-related claims.

8. The Fraud Compensation Fund (FCF), set up in 2004, is designed to compensate pension schemes that suffer losses as a result of an offence involving dishonesty, and where the employer has become insolvent or is unlikely to continue as a going concern. The levy is collected from occupational defined benefit and hybrid pension schemes, occupational defined contribution pension scheme and authorised master trusts, to pay the members of the eligible schemes.

9. The FCL rate is charged on a sliding scale depending on the membership. The maximum FCL rate that schemes currently pay is £0.75 per member for DB, hybrid and DC pensions schemes; and £0.30 per member for master trusts.

10. Due to an increase in claims, the FCF has to ask DWP for a loan to cover the claim cost as the levy revenue would not be enough to fund all potential claims. The DWP states that preserving the current levy ceiling is not a realistic option and proposes to increase the maximum rate of FCL to £1.80 per member for DB, hybrid and DC pensions schemes; and to £0.75 per member for master trusts.

11. The consultation closes on 10 December 2021.

Autumn Budget 2021

12. The Chancellor delivered the Autumn Budget on 27 October 2021. The main pensions-related items were as follows:

12.1. The government announced that it would consult on changes to the regulatory charge cap for defined contribution pension schemes with the aim of allowing pension schemes to invest in a broader range of assets. The charge cap (currently 0.75%) is the highest possible fee that can be levied on the default arrangement of certain defined contribution pension schemes. On 30 November 2021, the Department for Work and Pensions (DWP) published the consultation, which included proposals to extend the list of charges excluded from the pensions charge cap, in particular well-designed performance fees that are paid when an asset manager exceeds pre-determined performance targets. The consultation closes on 18 January 2022.

12.2. The government announced a change intended to fix an anomaly that can affect low-earning members of occupational pension schemes who earn less than the personal allowance. Depending on the method a scheme uses to provide tax-relief, there can be differences in a member’s take-home pay. From 2024/25 onwards, top-up payments will be made to low-earners who are members of schemes that use a net pay arrangement. This will impact any members of the RPS or BTPFSF who earn less than the personal allowance and do not pay income tax.

12.3. The government confirmed the earnings element of the “Triple Lock” will be suspended in 2022/23 meaning the State Pension will increase by the higher of CPI or 2.5%. CPI inflation for September 2021 was 3.1%, therefore the State Pension will rise by 3.1% from April 2022. Although the House of Lords backed an amendment to reinstate the earnings link on a different basis, the House of Commons voted against the amendment, so the suspension of triple lock will go ahead for 2022/23.

