Legal update ——— January 2019

Pensions
What should you look out for in 2019?

As ever in the pensions world, the new year brings yet more change and challenges for both employers and trustees. We've looked at the key trends and developments we expect to see and the questions clients are asking.

1. Auto-enrolment increases

From April 2019, the minimum overall contribution will increase from 5% of qualifying earnings (of which employers must pay at least 2%) to 8% of qualifying earnings (of which employers must pay at least 3%). Employers should let members know in advance and consider if they need to consult with staff on the change (which will largely depend on staff terms and the scheme rules).

2. GMP equalisation

For defined benefit schemes that provide guaranteed minimum pensions (GMPs), a significant proportion of time will be spent analysing the impact of the recent High Court judgments which clarified that occupational pension schemes must not discriminate between men and women, including in relation to the effect of the provision of GMPs. This is a complex area and trustees and employers will need to take advice on their next steps. We expect the DWP to issue guidance on best practice and for further clarification from the courts on remaining areas of uncertainty.

3. De-risking

De-risking will continue as a priority for employers who face ever increasing pension liabilities; some of the most popular options are likely to be:

- *Closure to future accrual*. There are only a handful of defined benefit schemes still open and more of these will inevitably stop providing ongoing accrual. Increasingly, to mitigate the risks, we are seeing closures being implemented by varying members' terms rather than by scheme amendment.

- *Transfers to "Consolidator Schemes" and "Superfunds".* These are the new kids on the block and only a couple have come to market to date. The key attraction is that by transferring their scheme's assets and liabilities to one of these privately funded arrangements, employers can fully offload their obligations for less than it would cost to secure the liabilities with an insurance company under a buy in /buy out contract. The trustees must agree to the transfer and other conditions must be met but this will be a viable option for certain employers.

- *Buy in /buy outs.* We expect the popularity of securing scheme liabilities under an insurance policy to continue in 2019 as insurers continue to compete for this market and offer favourable quotes in the context of an ever continuing low interest rate environment.

- *Transfer out exercises*. Although the introduction of the industry code of practice on incentive exercises has made it harder in some cases to implement these exercises, for many of our clients they have been hugely successful. Where the take up rate is high, not only will liabilities be reduced significantly but winding up the scheme may become a viable option.

- *Severing final salary linkage*. We are increasingly advising employers of schemes that are closed to future pensionable service but still calculate benefits by reference to member's salary at the point they leave service on how to cut that final salary link. This could be a key issue in 2019. We are aware that for a number of employers of a large industry wide multi-employer scheme removing the final salary link is now at the top of their to do list.

Published by
Trowers & Hamlins

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

www.trowers.com

4. Strategic analysis of benefits

Many of our employer clients are taking a strategic look at the effectiveness of their staff benefit packages and the value for money they offer. From a pensions perspective, more employees are being hit by the lifetime allowance and annual allowance, particularly since the introduction of the money purchase annual allowance and tapering for high earners. On top of that, as the "money purchase" generation reach retirement their pension pots are simply not going to be enough. This is impacting business, including on how long staff are working before retiring and employee relations.

Employers are actively exploring alternatives, including the benefits of "collective defined contribution pension schemes". These offer members more security than a traditional defined contribution scheme without any obligation on the employer to foot the bill. We also expect employers to continue to focus on the governance and quality of the defined contribution arrangements they offer.

5. Public Sector Schemes

The headline development is the Ministry of Housing, Communities and Local Government's consultation to introduce Fair Deal for Local Government Pension Scheme (LGPS) employees who are compulsorily transferred under an outsourcing services agreement to a contractor /third party provider.

If the proposed changes go ahead, contractors will no longer be able to offer transferring staff a broadly comparable scheme. Instead, staff transferred from the local authority must be allowed to continue to accrue benefits under the LGPS. Whilst contractors could still become admission bodies in the LGPS, they could also adopt a "deemed employer" approach where the local authority remains the employer for pension purposes.

The changes also clarify the pensions risks (in particular of "exit payments") where LGPS scheme employers are involved in mergers or takeovers that involve the transfer of pension scheme assets and liabilities. This could provide some welcome certainty to employers seeking to restructure their organisations. The consultation runs until 4 April 2019, so the revised regulations will not be finalised until later this year.

If you would like any information or to discuss anything in this bulletin please do get in touch with one of our team (details below).

For more information please contact

Martin McFall
Partner
t +44 (0)20 7423 8778
e mmcfall@trowers.com

Diane Preston
Partner
t +44 (0)20 7423 8264
e dpreston@trowers.com

Rebecca McKay
Partner
t +44 (0)20 7423 8341
e rmckay@trowers.com

Deborah Shumate
Senior Associate
t +44 (0)20 7423 8113
e dshumate@trowers.com