

90 Days - June 2012

### Abbreviations commonly used in 90 Days

**CARE:** Career Average Revalued Earnings

**CPI:** Consumer Prices Index

**DB:** Defined Benefit

**DC:** Defined Contribution

**DWP:** Department for Work and Pensions

**PPF:** Pension Protection Fund

**RPI:** Retail Prices Index

**TPR:** The Pensions Regulator

**TUPE:** the Transfer of Undertakings Protection of Employment Regulations 2006

## Pensions Reform

### New Code of Practice on Incentive Exercises

- In November 2011, Steve Webb, the Pensions Minister, tasked an industry working group with improving the standard of incentive exercises ("IEs"), "while preserving [them] as a legitimate tool for sponsors to help manage the liabilities in their [DB] pension schemes". The result, a non-statutory code of "good practice" (the "Code"), was published on 8 June 2012.<sup>1</sup>
- Broadly, the Code deals with two types of IE, transfer exercises (e.g. a transfer out of a DB scheme on an enhanced basis) and modification exercises (e.g. a pension increase exchange<sup>2</sup>).
- The Code consists of seven principles each of which is supported by detailed information on how it should be applied, including a specific procedure for providing financial advice and guidance.
- An as yet unidentified body will own, maintain and monitor compliance with the Code, using information gathered from the industry and by TPR. If there is evidence of "significant departures" from the Code, it might recommend that legislation is introduced.

## Pensions Reform

### Automatic enrolment

- In line with the thresholds for tax and National Insurance, for 2012/13:
  - the earnings trigger for automatic enrolment is set at £8,105; and
  - where this trigger is reached, contributions will be payable on qualifying earnings between £5,564 and £42,475.
- The DWP has consulted on changes to the implementation timetable for smaller employers<sup>3</sup> and arrangements for phasing in minimum contributions for all employers. The Government's response is awaited.
- Employers may bring forward their auto-enrolment staging date by notifying TPR in writing at least one calendar month before the new (earlier date) and providing specified information. Any change is final.
- The Government intends to allow CARE schemes to be used as "qualifying schemes", so long as they provide a prescribed minimum rate of revaluation.

<sup>1</sup> Please see our Alert: "[New Code of Practice on Incentive Exercises](#)" dated 11 June 2012

<sup>2</sup> These involve an enhancement to pension income in return for surrendering all or part of future discretionary pension increases

<sup>3</sup> Those with less than 250 workers in their PAYE scheme

## Pensions Reform

### State pension

- The Government has announced that early in the next Parliament it will introduce a single tier state pension (initially of approximately £140 per week).
- Also, an "automatic mechanism" will allow future increases in State Pension Age ("SPA") to take into account improvements in longevity.
- A White Paper on the state pension reforms is due to be published in the spring, with proposals on increasing SPA to follow in the summer.

## Pensions Reform

### Budget 2012

- The 2012 Budget announced amendments to the Finance Bill 2012.<sup>4</sup> These included technical amendments to the legislation on "scheme pays" and further amendments to the provisions on asset-backed contributions ("ABCs").<sup>5</sup>
- On 14 June 2012, HMRC published [draft guidance](#) on the availability of upfront tax relief for employers who contribute to registered pension schemes using ABC arrangements on or after 29 November 2011.
- The 2012 Budget also announced that the Finance Bill 2013 will include provisions to:
  - align the tax rules on the payment of bridging pensions with forthcoming changes to SPA;
  - ensure that the rules surrounding fixed protection work as intended;
  - amend tax legislation to address the abolition of DC contracting-out; and
  - ensure that arrangements under which an employer contribution is paid to a registered pension scheme for an employee's spouse or family member (as part of a flexible remuneration package) cannot be used to obtain tax or national insurance advantages for either the employee or the employer.

## PPF

### Miscellaneous

- For the financial year beginning 1 April 2012, the PPF's compensation cap is £34,049.84 (up from £33,219.36) and the levy ceiling is £918,854,855.
- With the 29 June deadline for certification of full block transfers<sup>6</sup> approaching, the PPF has issued a [user guide](#) to help schemes understand when such a transfer has taken place and how to certify it.
- The PPF has published its [strategic plan](#) for 2012. Its objectives include managing schemes through assessment and wind-up in a timely and efficient manner, and meeting its funding target.

<sup>4</sup> The official title of this Bill (which was published on 29 March 2012) is the Finance (No.4) Bill

<sup>5</sup> Please see our Alert: "[Budget 2012: the pensions story](#)" dated 22 March 2012

<sup>6</sup> Where 100% of assets and liabilities have been transferred out of the scheme

## TPR

### Statement on scheme funding

- In April 2012, TPR published the [first](#) in its new series of annual statements on scheme funding.<sup>7</sup>
- Aimed at providing guidance for trustees of DB schemes who are going through the valuation process, the statement sets out TPR's views of "acceptable approaches" to scheme funding in the current economic climate.
- Emphasising that "there is sufficient flexibility within the funding framework" to address current market volatility and the resulting challenges this brings, TPR expects that the majority of schemes and employers "will be able to manage their deficits within current plans".

## TPR

### Miscellaneous

- TPR has issued several publications in the last three months, including:
  - its sixth [governance survey](#);
  - a [report](#) detailing the key findings of its third record keeping survey;
  - its [corporate plan](#) for 2012-2015; and
  - [materials](#) to support providers and employers in delivering good DC pensions.
- TPR has also published reports on its actions in relation to the [Unig](#) and [BMI](#) pension schemes (although the pension scheme in both instances entered the PPF, the sponsoring employers' businesses survived). In both cases, it concluded that it was unable to use its anti-avoidance powers.

## Cases Round-up

### *Danks v Qinetiq Holdings Limited v Pocock*<sup>8</sup>

- The scheme's trust deed and rules required pensions in payment and deferment to be increased "on 1 April each year by an amount equal to the percentage increase in the Index..". "Index" was defined as "[RPI] or any other suitable cost of living index selected by the Trustees".
- The judge concluded that this wording did not afford members a right to a specified increase or revaluation. An entitlement only arose when the increase/revaluation actually occurred.
- This meant the trustees could adopt CPI instead of RPI in respect of future increases without section 67 of the Pensions Act 1995 (protection of accrued rights) applying to the change.

<sup>7</sup> Please see our Alert: "[Funding in a cold climate – TPR's first annual statement](#)" dated 27 April 2012

<sup>8</sup> [2012] EWHC 570 (Ch)

## Cases Round-up

*Proctor & Gamble Company v Svenska Cellulosa Aktibolaget and another*<sup>9</sup>

- A sale and purchase agreement provided for an adjustment to be made to the purchase price of a business in respect of any pension obligations which transferred from the seller to the buyer as a result of TUPE.
- Broadly, TUPE transfers all the seller's obligations to the transferring employees to the buyer, except those relating to an occupational pension scheme in respect of "benefits for old age, invalidity or survivors".
- But, two ECJ decisions<sup>10</sup> indicate that liability for early retirement benefits under an occupational pension scheme do transfer under TUPE as they do not fall within the exemption.
- On the facts, the court concluded that members' entitlements to have early retirement benefits considered in good faith transferred to the buyer under TUPE.
- But, the buyer would only be liable for pension benefits paid between age 55 and normal retirement date in excess of those met by the member's deferred pension in the seller's scheme.

## Cases Round-up

*Bradbury v British Broadcasting Corporation*<sup>11</sup>

- Faced with a need to reduce pension liabilities, the BBC decided to introduce a cap on increases in pensionable pay.
- It was made clear to members that any future pay increase would be offered on the basis that it would, for pension purposes, be limited to 1%. If a member did not agree to those terms, they would not get an increase (at least not above 1%). No corresponding amendment was made to the scheme's trust deed and rules.
- The judge confirmed that, subject to the employer's implied duty of good faith, an agreement by a member to accept a pay rise on the basis that only part of it will be pensionable is binding on the member and will override the pension scheme's rules if necessary.

<sup>9</sup> [2012] EWHC 1257 (Ch)

<sup>10</sup> Beckmann [2002] 64 PBLR and Martin [2003] 85 PBLR

<sup>11</sup> [2012] EWHC 1369 (Ch)