

Kirsty Bartlett
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- “Top 10” legal hot topics
- High level
- Pick out key points for actuaries
- 20-30 minutes
- Plenty of time for questions



Hot topic 1: DB transfers post freedom & choice

- Still permitted
- Extension to statutory rights?
- Appropriate independent advice needed if taking benefits flexibly
 - Threshold
 - How demonstrate advice taken?
- Higher incidence?
- Selection against the scheme?
- Funding / cash flow impact?
- Changes to transfer basis
 - Allowing for known facts about the member
 - Appropriate assumptions
- TPR due to update guidance
- Incentives code applies to bulk exercises



Hot topic 2: Pensions scams

- Updated / refreshed TPR guidance
- Do trustees *have* to pay transfer value?
- Remember ability to ask TPR for more time
- First PO decisions
 - Critical to check receiving plan is OPS
 - Must warn member of risks
 - Sense that statutory transfer entitlement is absolute
 - Lots more decisions to come (don't know when)
- New industry Code of Practice



Hot topic 3: PPF contingent assets

- 31 March 2015 is looming fast!
- New certification for PCG (Type A)
 - “Reasonable enquiry” required
 - Specified amount of recovery (covenant advice?)
 - PPF will look at impact on guarantor’s gearing
- Asset backed contributions (any asset) can be recognised
 - Detailed PPF guidance
 - Valuation and legal advice required (Trustee and PPF)
- Some mortgages can be excluded
- Impact of having large numbers of part time employees can be reduced
- Legal advice on last man standing status by 29 May



Hot topic 4: New MP benefits definition

- (Eventual) response to *Imperial Home Decor*
- Applies to PA95 and PA04 not FA04 (or freedom & choice)
- Key is that the funding must always be enough to provide the benefits (no deficit)
 - Guaranteed investment returns
 - Under- / over-pin benefits
 - Schrodinger's cat!
- Retrospective application...
 - ... but strong transitional protection
 - Only revisit past administration if winding-up
- Some changes in practice for future
 - Member communications / disclosure
 - Funding and accounting



Hot topic 5: Recovering overpayments

- Starting-point: duty to pay correct benefits
- Tax issues if do not recover?
- Specific scheme rule?
- Use of augmentation power
- Recent cases
 - PO cases – *Dunne* and *McClean*
 - *Webber v Dept. of Education*



Hot topic 6: Managing benefit changes

- *IBM* and the duty of good faith
 - Very fact-specific
 - Be even more aware of past communications or commitments
- Changes to employment law collective consultation thresholds
 - 20-99 affected employees: 30 days
 - 100+ affected employees: 45 days
- Trustee role in amendments
 - Fiduciary duties
 - *South West Trains*
- Freedom and choice flexibilities
 - Trustee statutory override
 - Automatic impact on DC AVCs



Hot topic 7: End of contracting-out

- Driver of yet more benefit change
 - Not in the public sector
 - Not for “protected persons”
 - Broadly comparable schemes?
- Unilateral statutory employer amendment power
- Restricted scope (offset additional cost only)
- Actuarial certification needed
 - Not necessarily from the scheme actuary
- Will scheme amendment power be used instead / as well?
 - Trustee role if so
- Consultation with affected members



(No news yet on timing for GMP equalisation.)

- Multiple new obligations from April 2015
 - TPR's 31 "quality features"
 - Charge caps for default funds if AE compliant
 - More monitoring of investment performance
 - Assessment of fitness for purpose
 - Audit of legacy schemes
- Some requirements apply to DC AVCs
- Chairman's governance statement
 - Form on TPR website
 - Questionnaire to assist with completion
- New questions on annual scheme return

"The other thing that I did not fully grasp is the extent of the problem—I mean, 38 different sorts of charge? I knew there were plenty, but occasionally you think it takes a special sort of genius to find 38 different ways of taking people's money off them. Perhaps I am naïve, but the scale of it was striking—the tens of billions and so on."

Steve Webb MP, giving evidence to the
Work and Pensions Committee on
12 January 2015

Hot topic 9: Small pots

- Trivial commutation
 - Increased thresholds
 - Only from DB plans
 - More changes to qualification from April 2015
 - Application of incentives Code of Practice?
- Short service refunds
 - “Prohibited” from October 2015
 - Amend scheme rules
- “Pot follows member”
 - October 2016?
 - Automatic?



Hot topic 10: IORP update

- Revised IORP II directive published March 2014
- Holistic balance sheet
- Funding requirements back on the table?
- “Fit and proper person” requirements
- Impact on administration and communications
- Cross-border schemes – regulator approval of transfer of assets and liabilities



- The pace of change is not slowing
- More than “just” freedom & choice on the agenda
- Huge variety of legal issues for every type of scheme to grapple with



Any questions?

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■ Office locations

■ Country desks and strategic alliances

