Pensions
Management
Institute

Core Unit 2 – Regulation of Retirement Provision

Mock Examination Notes

(Time recommended – 1 hour)

1. Identify three statutory duties with which trustees must comply.

(5 marks)

Answer should include:

A description of three of the following:

- Duty of care. The Trustee Act 2000 imposes a statutory duty of care on trustees in certain circumstances. Where this statutory duty applies, a trustee must "exercise such care and skill as is reasonable in the circumstances", having regard to:
    - any special knowledge or experience that the trustee has or holds himself out as having; and
    - where the person acts as a trustee during a business or profession, any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession
- Payment of tax. Under the Finance Act 2004, the 'Scheme Administrator' is responsible for accounting to HMRC for certain tax charges that are imposed under the Act (e.g. the lifetime allowance charge). In most instances, the trustees of a pension scheme will be the 'Scheme Administrator' for the purposes of the Finance Act 2004
- Disclosure. As well as the general duty of disclosure, pension scheme trustees have a duty to disclose certain documents and information to scheme members, prospective members, beneficiaries and recognised trade unions under section 41 of the Pensions Act 1995, section 113 of the Pension Schemes Act 1993 and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013
- Notifiable events. Trustees of pension schemes potentially eligible for the PPF have a duty to make a report to TPR when events occur in relation to their scheme (these are generally referred to as "notifiable events")

- Statement of investment principles (where the scheme has 100 or more members)
- Actuarial valuations (DB schemes) prepare actuarial valuations in respect of their scheme at least once every three years (and actuarial reports for the intervening years)
- Payment schedule / schedule of contributions - ensure that a payment schedule is prepared in the case of a defined contribution scheme or a schedule of contributions is prepared in the case of a defined benefit scheme and ensure that payments are made in accordance with that schedule
- Recovery Plan where a defined benefit scheme has a deficit on a statutory funding objective basis
- Member Nominated Trustees / Directors - ensure that at least one third of the trustees are member-nominated trustees (or member-nominated directors where there is a corporate trustee
- Internal Dispute Resolution Procedure
- Pay cash equivalent transfer values to members entitled to them
- Report material breaches of law to the TPR
- Operate a bank account separate from that of the employer

2. Outline the role of the Pension Protection Fund (PPF)

(5 marks)

Answer should cover:

- PPF came into effect from 6 April 2005
- Applies to both DB and hybrid schemes – not DC
- Qualifying solvency event and not sufficient scheme assets to fully buy out benefits scheme will go into PPF
- PPF provides compensation
- 100% if over NPA / ill-health or survivor's pension
- Otherwise, 90%% of accrued benefits, which depends on the member's age at the date of commencement of benefits
- Subject to an overall cap. For the year commencing 1 April 2020 the compensation cap is £ 43,081.46 p.a. (giving actual compensation of £38,773.31) for benefits commencing at 65 and £34,749.68p.a. (£31,274.71) for benefits commencing at age 60. There is also CPI indexation, capped at 2.5%, on compensation attributable to benefits earned through service after 5 April 1997, and a 50% spouse's benefit on death. Since 6 April 2017, the maximum benefits payable to those with long service (21 years or more) in a scheme that entered the PPF have been increased. For these members, the cap is increased by 3% for each full year of pensionable service above 20 years, up to a maximum of double the standard cap

- Limited indexation of benefits. On 6 September 2018, The European court of Justice (ECJ) ruled that PPF compensation levels could not be less than 50% of the originally accrued benefit. Indexation for benefits accrued before 1997 will also be required. This change is likely to affect a small number of members, with PPF liabilities increasing by about £215 million. In June 2020, a High Court Judgment ruled that the PPF's age-related compensation caps constituted a form of age discrimination. The longer-term implications of this ruling are as not clear

3. Identify the various ways in which an employer can reduce the amount of any section 75 debt that it has to pay.

(10 marks)

Answer should cover:

- If S75 debt triggered on or after 6 April 2008
- Debt payable by a departing employer can be reduced by entering
- A withdrawal arrangement -an arrangement which is entered into between a scheme's trustees, the departing employer and a guarantor under which part of the departing employer's debt is guaranteed by a guarantor and which: • specifies the amount the departing employer must pay and when (the amount payable must be at least the employer's share of the scheme's deficit calculated on a statutory funding objective basis (as opposed to a buy-out basis), which may still be a material cost) • specifies the amount that the guarantor(s) are liable for • specifies who will meet the expenses in connection with the arrangement The trustees can only enter into a withdrawal arrangement where they are satisfied that the remaining employers are reasonably likely to be able to fund the scheme to meet its statutory funding objective. The trustees must also be satisfied that, at the date of the agreement, the guarantors have sufficient financial resources to be likely to be able to pay the guaranteed amount
- An approved withdrawal arrangement is like a withdrawal arrangement, but it requires regulatory approval. Significantly, under an approved withdrawal arrangement the departing employer agrees to pay less than its share of the scheme's deficit calculated on a statutory funding objective basis. TPR cannot approve the approved withdrawal arrangement unless: • the amount that the departing employer agrees to pay under the arrangement is less than its share of the scheme's deficit calculated on a statutory funding objective basis (if it was equal to or higher than this amount the parties could simply enter into a withdrawal arrangement) • the trustees have notified TPR that they are satisfied that the remaining employers are reasonably likely to be able to fund the scheme to meet its statutory funding objective • TPR is satisfied that it is reasonable to approve the arrangement taking into account such matters as it considers relevant

- A scheme apportionment arrangement is an arrangement under a scheme's rules that provides for the departing employer to pay an amount other than its "liability share". Where the departing employer pays less than the "liability share" then the shortfall is apportioned amongst one or more of the remaining participating employers. The trustees, the departing employer and the remaining employer(s) must consent. The scheme's trustees can only agree to a scheme apportionment arrangement if they are satisfied that: • the remaining employers will be reasonably likely to be able to fund the scheme to meet its statutory funding objective • there is no adverse effect on the security of member' benefits.
- A flexible apportionment arrangement is like a scheme apportionment arrangement. The key feature of a flexible apportionment arrangement is that the departing employer's "liabilities" are transferred to one or more of the remaining employers and no debt is treated as due from the departing employer. The trustees, the departing employer and the employers taking on responsibility for the liabilities must consent to the arrangement in writing. The trustees must also be satisfied that: • the remaining employers will be reasonably likely to be able to fund the scheme to meet its statutory funding objective • there is no adverse effect on the security of members' benefits A flexible apportionment arrangement is only available where the scheme is not being wound up or in a PPF assessment period and the trustees are satisfied that a PPF assessment period is unlikely to begin in the next 12 months.
- A regulated apportionment arrangement is like a scheme apportionment arrangement. However, it can only be put in place where trustees think that there is a reasonable likelihood of their scheme going into a PPF assessment period within the next 12 months or where an assessment period has already commenced but not ended. Where an assessment period has not commenced, the trustees and the affected employer(s) must consent to the arrangement. The arrangement and any amendments made to it must have regulator and PPF approval.
- Under certain circumstances the departing employer may also be able to benefit from a "relevant transfer deduction" Where, as part of a corporate transaction, there is going to be a bulk transfer of the assets and liabilities that are attributable to a departing employer from the departing employer's former scheme into a new scheme, the departing employer may be able to obtain the benefit of a "relevant transfer deduction". Essentially, a relevant transfer deduction has the effect of reducing the amount of the debt that is payable by the departing employer. Where all the assets and liabilities that are attributable to the departing employer are transferred into a new scheme, the debt will usually be reduced to nil. In order to benefit from a relevant transfer deduction, the transfer must take place within 12 months after the effective date used to calculate the section 75 debt or, in the case of an approved withdrawal arrangement, such longer period as TPR permits.

4. **Outline the Lifetime Allowance and its development in recent years**

(5 marks)

Answer should cover:

- Allowance of total pension rights a member may accrue in their life in a tax favourable environment
- Introduced at £1.5 million for 2006/7, gradually increasing to £1.8 million for 2010/11
- Gradually decreased from £1.8 million for 2011/12 to £1 million from 2016/17
- Rising again to £1,073,100 for 2020/21
- Transitional arrangements giving protection
- Fixed. The Finance Act 2011 reduced the Lifetime Allowance in 2012/13 and subsequent years to £1.5m. Individuals could elect to continue to be subject to the higher £1.8m limit previously in place (so called 'fixed protection') but only if they ceased active membership of all registered schemes before 6 April 2012
- Primary, available only if the value of all of a person's pension rights exceeded the Standard Lifetime Allowance at A-Day (£1.5 million)
- Enhanced, a person may register for Enhanced Protection regardless of the size of his pension rights at A-Day. After having registered, the value of any DC rights can grow without limit and without attracting tax charges. DB rights are permitted to increase broadly in line with salary or RPI, or at a fixed 5% p.a
- Individual. A further reduction to £1m from the tax year 2016/2017 was announced in the 2015 Budget, with index-linking to be introduced from April 2018. Additional protections (individual protection 2016 and fixed protection 2016) were introduced in the Finance Act 2016.
- If benefits exceed lifetime allowance additional tax payable – Lifetime Allowance Charge

5. **Identify three exemptions to age discrimination legislation that are relevant for pension schemes.**

(5 Marks)

Answer should cover:

A description of three of the following:

- minimum and maximum ages for admission to a scheme
- minimum level of pensionable pay (not above LEL)
- age related criteria in actuarial calculations
- minimum entitlement age for benefits
- specified ages for drawing benefits early without reduction or late with an enhancement

- ill health pensions based on prospective service
- age related contributions to occupational DC or workplace personal pension schemes where the aim is to equalise benefits or make them more nearly equal

6. Outline what trustees must do in order to comply with the requirements of the Pensions Act 2004 in respect of Trustee Knowledge and Understanding.
(5 marks)

Answer should cover:

- The TKU requirement, must have appropriate knowledge and understanding of Law relating to pensions and trusts; and
- Principles relating to scheme funding and investment of scheme assets
- Must also be conversant with their scheme's governing documents including:
    - the trust deed and rules
    - any statement of investment principles
    - any statement of funding principles; and
    - any other documents relating to the administration of the scheme (e.g., agreements relating to scheme funding, minutes of trustee meetings, the internal dispute resolution procedure, the scheme's conflicts of interest policy, and announcements and member communications)
- Trustees need to undertake regular training and keep a record of the training that they receive. TPR has produced an online "Trustee Toolkit" training programme which is available through TPR's website
- New trustees have a six month "grace period" to get up to speed

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7. **Explain 'Scheme Pays.'**

(5 marks)

Answer should cover:

- Member is liable to an Annual Allowance Charge (AAC)
- Member can request scheme pay charge on their behalf subject to certain conditions:
    - Member's AAC liability for the tax year must exceed £2,000
    - The member's pension input amount under the scheme must exceed the Annual Allowance.
      and
    - The member must make an irrevocable declaration made in a prescribed form. The deadline for this is 31 July after the end of the following tax year.

8. Where the member has an Annual Allowance liability but one or more of the above conditions is not satisfied, the scheme can decide voluntarily to pay the member's charge on his behalf and reduce the member's benefit entitlement accordingly

8. **Outline the main features of the Pension Regulator's Guidance on Record Keeping.**

(10 marks)

Answer should cover:

TPR published detailed regulatory guidance in 2010 aimed at trustees, providers and administrators on the testing and measurement of member data. The guidance categorises the data into three types:

- Common Data – this is data that is necessary and applicable to all members of all schemes. Its absence is likely to mean that the member cannot be identified or traced, or their benefits calculated with any degree of certainty (for example name, date of birth, sex, address, membership status).
- Conditional Data – the nature of this data is will vary from scheme to scheme and will depend on many factors including scheme type and design, a member's status in the scheme, system design and events that have occurred during their membership of the scheme.

- Numerical Data – numerical information regarding members' records that will help put the results of other measures into perspective.

Trustees/managers should ensure that a data review exercise is carried out at least once a year, including an assessment of the accuracy and completeness of the above types of data. They are required to put in place a data improvement plan to address poor quality data. Such a plan should have a defined end date within a reasonable timeframe.