First Actuarial briefing for trade unions Q4 2021

In our final briefing of 2021, we take a look at the next round of pensions-related legislation passing through Parliament and provide you with an update on the British Steel Pension Scheme's FCA investigation.

We also look at management fees charged to new and small DC pension pots and the newly imposed requirements for trustees when considering transfer out requests.

In brief: Autumn Budget 2021

The Chancellor, Rishi Sunak, delivered the Autumn Budget in October. While relatively light on pensions content, there are still a couple of points of interest.

There has been a long-standing problem with pensions tax relief which means low earners in "net pay" schemes lose out. In "net pay" pension schemes, pension contributions are deducted from gross salary before tax is deducted, providing tax relief on the contributions automatically. Issues arise when employees do not earn enough to pay income tax but are still making pension contributions. These employees will effectively receive no tax relief, so pay at least 20% more for their pension than a higher earning colleague. On the other hand, employees in a "relief at source" pension scheme would receive tax relief regardless of whether they pay income tax, creating a situation where employees in similar situations are getting different levels of tax relief.

Government has pledged to 'top-up' contributions for affected members by 20% from 2024-25, but this feels like a temporary fudge rather than a permanent fix. Despite being described as a 'top-up', the payment will in fact be made directly to the affected member, averaging around £53.

The budget also announced a consultation on the charge cap of 0.75% for the default auto-enrolment fund for DC pensions. The cap is designed to prevent schemes from selecting default funds with high management costs. However, it restricts the trustee's ability to invest in certain assets such as infrastructure – where Government is keen to encourage investment.

The consultation aims to determine how such investment can be facilitated without compromising on protecting members from unfair charges. It closes on 18 January 2022, and you can respond by clicking here.

Finance Bill in Parliament (round two!)

Government published the Finance (No. 2) Bill on 4 November 2021. The Bill follows its predecessor, the Finance Act 2021, in overhauling several areas of finance law.

For the pension's world, the Bill will enshrine in law the increased Normal Minimum Pension Age of 57 from 6 April 2028. Members exempt from the increase will be members of the firefighters', police and armed forces pension schemes, and those with a protected minimum pension age in their workplace pension scheme.

Protected minimum pension ages will apply to current members (and prospective members up to 5 April 2023) whose scheme rules on 11 February 2021 gave members an absolute right to access benefits from an earlier age than 57.

Following the McCloud judgement in 2018, where the High Court made a finding of age discrimination in post-2015 public sector pension build-up, the Finance (No. 2) Bill will also make changes to Scheme Pays reporting.

As benefits built up may retrospectively change whenever a McCloud remedy is put into action, members may also retrospectively breach their Annual Allowance (AA) from previous years. To prevent scheme administrators breaching the current Scheme Pays reporting deadline of 16 months after the tax year in which the AA charge becomes apparent, the Bill will change the deadline so that administrators have 3 months from the date of being notified of an AA charge being payable.

Lords fail to save "triple lock"

As mentioned in our Q3 briefing, Government was planning to introduce a bill modifying the triple lock (the mechanism by which the state pension increases each year in line with the highest of prices, earnings or 2.5%) to temporarily exclude the average increase in earnings. This was following a concern that a post-pandemic rise in average wages would have led to state pensions increasing by 8%.

There was an attempt by the House of Lords to save the triple lock, by restoring the link to average earnings.

As expected, this was voted down by the House of Commons.

FCA steels for government audit

Government's National Audit Office (NAO) has announced that it will investigate the Financial Conduct Authority (FCA) over the British Steel Pension Scheme (BSPS) debacle.

In 2017, a struggling Tata Steel decoupled the BSPS from its business. Members were able to transfer to a new BSPS defined benefit scheme or leave their benefits in the old scheme and be transitioned into the Pension Protection Fund. It wasn't made clear to members which would be in their best interests, with "woefully inadequate" communications being "unable to provide basic facts" according to the Parliamentary Work and Pensions Committee.

The situation was further complicated by a third option: members had a statutory right to transfer their pension out of the BSPS. While this was not in the best interests of most members, many were attracted by the prospect.

This created ideal conditions for some opportunistic financial advisors to step in and exploit members, encouraging inappropriate transfers that were not in the member's interests.

Over 8,000 members collectively transferred £2.8bn of assets from the BSPS in the major mis-selling scandal.

The FCA is now set to consult in the first half of 2022 on establishing a redress scheme for affected former BSPS members. It intends to require financial advisors to review the advice they provided to individuals and, if this advice is found to be inappropriate, pay compensation to any impacted members.

Fairer fees for Fledging Pension Pots

There is now confirmation from Government that plans to limit the erosion of the smallest defined contribution (DC) pots - valued at £100 or less - will be brought into effect from 6 April 2022.

Applying to both active and deferred members, charge structures in the default funds of DC schemes (used widely to meet an employer's minimum auto enrolment obligations) are changing in an attempt to prevent the smallest pots being shrunk by flat fees.

Under the new legislation, pots valued at less than £100 will be exempt from all flat charges. In addition, pots falling below the £100 threshold as a result of fees will also be protected.

As a caveat however, individuals holding multiple pots with the same pension provider will be added together and valued as one to see if a flat fee charge is allowed.

These changes have come following a consultation paper from May 2021 issued by the DWP, which also asked if "combination charges" should be outlawed in DC default funds to simplify the fee structure, putting all fees on one basis. Given the significance of any change however, no decision on this matter has been made as of yet.

Troublesome Transfers

Measures introduced in Section 125 of the Pension Schemes Act 2021 have now come into force.

In an attempt to clamp down on pension scams - which are thought to have claimed £2million in savings in the first half of this year alone - trustees are now able to prevent a transfer request provided they see evidence of "red flags".

In short, for a statutory transfer to take place, it must now meet one of the two following conditions:

1. The trustees of the transferring scheme must confirm, beyond reasonable doubt, that the receiving scheme is either a public service scheme, an authorised master trust, or a collective money purchase scheme.

2. If the first condition is not met, the trustees of the transferring scheme must check for an employment link, evidence of an overseas residency and red and amber flags before proceeding with the transfer.

Examples of warning signs include situations where the member cannot show an employment link with the new scheme or prove overseas residency if looking to transfer abroad (both amber flags). If a member has been offered an incentive to switch schemes, this would be an immediate red flag. A full list of red and amber flags can be found on the Pensions Regulator website.

Guy Opperman, the Minister for Pensions, hopes these new regulations will put trustees "in the driving seat when it comes to pension transfers".

Pensions fun fact!

In our last briefing, we asked…

To the nearest million, how many people in the UK are now saving into a pension scheme?

1m 3m 6m 10m 30m

Answer to Q3 2021: £6m

Question Q4 2021:

Which country has the world's largest pension scheme?

France China UK USA Japan

How First Actuarial can help

First Actuarial is a nationwide firm of pensions actuaries and consultants, helping trade unions with all their pensions issues.

We can help support trade unions negotiate with employers; lobby government; resolve problems within specific schemes; and explain any changes or choices members have to make. We also provide administration, actuarial and investment services to a large number of trade unions' own schemes.

If you or any of your colleagues would like to receive future briefings but are not on our circulation list, please visit https://e.firstactuarial.co.uk/p/6TA-958/your-preferences to sign up and select "Pensions for Trade Unions" under the topics of particular interest banner.

We welcome feedback on any of the issues covered and suggestions for issues that should be covered in the future.

If you'd like more information on any of the issues contained in the briefing, please contact:

Hilary Salt
hilary.salt@firstactuarial.co.uk
0161 348 7441

Charlotte White
charlotte.white@firstactuarial.co.uk
0161 348 7439

From all of us at First Actuarial, we wish you a Merry Christmas and a Happy New Year!