



This is a round-up of topical issues in November 2009

Court rules against relying on the PPF

A test case involving the Ilford Pension Scheme (its sponsor, the photographic firm, is in administration) addressed whether it is appropriate for trustees to consider the PPF when making decisions. The case was taken to the High Court by Independent Trustee Services, the Scheme's trustee.

The Court ruled on 10 November 2009 that it is inappropriate to exploit the availability of compensation from the PPF when making decisions about a scheme's future, although it also confirmed that trustees do not have a duty to take the interests of the PPF into account as it is not a scheme beneficiary.

The outcome of the case will be particularly relevant for the trustees of schemes that are less than 100% funded on the PPF's valuation measures as these are liable to enter the PPF should the scheme's sponsor become insolvent.

ACTION: Trustees and employers may wish to seek advice on how the ruling affects them.

Trustee found guilty of breaching Data Protection Act

The Information Commissioner's Office ruled in November 2009 that a trustee body was in breach of the Data Protection Act after the loss of unencrypted membership data when a laptop was stolen from its software provider.

ACTION: Trustees may wish to check that their service-providers and advisers have adequate policies and procedures in place for protecting their members' personal data.

Scheme governance campaign launched

The Pensions Regulator issued a statement ["Good governance – keeping pensions safe"](#) to trustees on 24 November 2009 and simultaneously launched a campaign aimed at encouraging good governance and administration and better management of scheme risks. The statement cites the Regulator's latest [Governance survey](#), released on the same day, shows certain areas of improvement but also that gaps persist, particularly in smaller schemes.

The Regulator wants trustees of trust-based schemes to:

- ensure they meet the trustee knowledge and understanding (TKU) requirements and use the Trustee toolkit (or participate in other appropriate training)
- ensure adequate internal controls are in place
- know the quality of their membership records and have a concrete plan in place if improvement is required
- remember they are accountable for the services provided by administrators, advisers, and others, have a formal process for their appointment, and know the activities they perform for them
- if their scheme is winding up, to complete the process within the two-year framework set by the Regulator.

The Regulator aims to help those who run schemes by various means.

ACTION: Trustees should review their TKU requirements and governance procedures.

Regulator publishes analysis of recovery periods

The Pension Regulator's latest [analysis of recovery plans](#), covering valuations with an effective date up to 21 September 2008, was published on 10 November 2009.

It shows an increase both in the length of recovery plans and in the use of back-end loading. The Regulator said "We urge trustees to continue to take a prudent approach to assessing schemes' technical provisions, to maintain an honest and open dialogue with employers, and to remain aware of the changing economic situation as they focus on the long term interests of scheme members".

ACTIONS: Trustees should continue to focus on making sound decisions in the long-term interests of scheme members, which includes not jeopardising the sponsor's future viability.

Employers should ensure they have access to independent advice to help them balance trustees' funding demands with their ongoing business needs.

PPF issues consultation on changes to measurement of insolvency risk

A consultation paper on the measurement of insolvency risk was published by the PPF on 9 November 2009. This reflects industry feedback and a review of methodology and insolvency probabilities carried out earlier this year by Dun & Bradstreet (D&B).

The consultation ran until 14 December 2009.

Changes already made by D&B are to make increased use of interim financial statements for quoted companies and to give greater weight to changes in payment behaviour, so as to pick up sudden changes in circumstances.

Proposed changes include:

- D&B asking for appropriate evidence when employers seek changes to industry sector or geographic region
- D&B introducing a new "nationwide" attribute for businesses with branches in three or more different UK regions

- D&B collecting accounts from the Charity Commission's website rather than relying on non-commercial sponsors providing their accounts themselves
- D&B excluding PPF-compliant contingent assets when judging whether charges on a company's assets have a negative effect on insolvency risk
- when assessing the failure score of a subsidiary whose ultimate parent company is at substantial risk of failure, the score is limited to (at best) the score of the parent.

The PPF plans to confirm its proposals in early 2010, in time for employers to address any issues with their rating before the 31 March 2010 cut-off date for the failure scores that will feed into the calculation of the risk-based levy for 2011/12.

ACTION: Given the potential sensitivity of PPF levies to D&B ratings, employers and trustees should continue to monitor developments, assess how they are likely to be affected when more details are known and then take action to reduce their levy.

PADA publishes key findings from investment consultation

The Personal Accounts Delivery Authority (PADA) had issued a discussion paper [“Building personal accounts: designing an investment approach”](#) on 7 May 2009 to support consultation.

PADA published its [key findings](#) on 25 November 2009. These do not set out PADA’s recommendations as it is continuing a programme of work to determine these and undertaking further research and analysis to address some of the issues raised, such as the overarching investment objective and behavioural attitudes to loss. PADA will consult again over the next few months.

ACTION: Employers should start thinking about the impact the introduction of Personal Accounts and automatic enrolment will have on them and the design of their pension arrangements.

Deeds of amendment overturned

Recent Court cases have highlighted the importance of scheme amendments being made in strict accordance with the scheme’s amendment powers (eg by failing to obtain actuarial certification where required).

As a result, the effects of amendments made years ago (eg to equalise pension ages between men and women) have been reversed, leaving the scheme with an unexpectedly large deficit and the sponsor having to find extra contributions. In other cases lower compensation has been paid where the scheme has entered the PPF.

ACTION: Trustees and employers may wish to check whether past amendments were made appropriately and take remedial action if necessary and ensure any future amendments comply with requisite procedures.

Christmas approaches

We would like to wish our readers a very merry Christmas and a prosperous New Year.

ACTION: Have a great time!

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