Pensions Bulletin 2013/07

14 February 2013

Pensions Regulator tries again to tackle the pension liberators

The Pensions Regulator has today launched yet another awareness campaign against pension liberation schemes, amidst reports that they have become much more prevalent since 2008. In the last four years an estimated £400m has been given to these vehicles, involving thousands of individuals. Quite often individuals have been seeking early access to their pension savings, but ended up suffering substantial commission payments instead and exceptionally large tax charges as a result of the payments being unauthorised.

In a multi-agency approach, the Pensions Regulator has released the following support materials, each of which contains a scorpion logo:

- a two-page warning note – that the Regulator would like to see administrators and pension providers include in the information they provide to members who request a pension transfer;
- a more detailed information leaflet – that is intended to assist members in understanding what may well happen should they take up an offer; and
- an action pack for pension professionals – which includes a checklist and examples of what to look out for.

A 60 minute webinar is also to be held on 20 March 2013.

The Regulator is asking pensions administrators to carry out an appropriate level of due diligence on each transfer request and if the warning signs of liberation are detected to engage further with the member and delay the transfer. Where concerns remain they are asked to contact the "Action Fraud" helpline.

Although there has been no change to the law that gives most members a virtually unfettered right to take a transfer value to another HM Revenue & Customs registered pension scheme, the Regulator is now making it clear that where liberation concerns can be evidenced, this would be a relevant factor in determining whether it takes action against the scheme for non-payment of the transfer value.

Comment

This is a much clearer statement from the Regulator than we have had in the past and will be welcomed by those processing transfer requests whose suspicions are aroused.

The additional due diligence will lead to increased administration costs, but it seems that this is a price that needs to be paid. Schemes will also need to tread ever so carefully when explaining their concerns. It is all very well to have a well-evidenced suspicion, but it can be dangerous to communicate that explicitly other than to the authorities.

What has not been cracked is whether schemes can refuse to pay the money over. The Regulator may not trouble the scheme for failure to comply with the law, but would the Ombudsman or the Courts be so forgiving?

Action on GMP inequalities on hold until 2014

The Pensions Minister, Steve Webb, has confirmed that steps to make schemes address their GMP inequalities will now be announced in 2014; not this year (as had previously been anticipated).

This is because the Department for Work and Pensions (DWP) is looking at easier ways in which schemes can address the issue in the light of concerns being expressed at the DWP's preferred method. This is expected to involve the publication of guidance on using GMP conversion to address GMP inequalities – such guidance to be drawn up taking into account the views of pension experts.

Comment

The issue has not gone away but its deferral for a year, offering the possibility of a less painful solution, is welcome.

MPs demand that restrictions on NEST are lifted

It is the "very strong view" of the Work and Pensions Select Committee of MPs that the Department for Work and Pensions (DWP) should lift the NEST contributions cap and transfer restrictions now and not wait until 2017.

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The Committee was responding as the closing date approached for the call for evidence from the DWP (see Pensions Bulletin 2013/06) which in turn had been driven by a report published by the Committee. The response repeats the initial arguments and also incorporates some arguments arising from the experience of the first few months of auto-enrolment, including:

- Where NEST was not appropriate for schemes' higher earners it was expected many companies would enrol lower earners in NEST and higher earners with an alternative provider. This has not often been the case as employers seek a single provider able to accommodate all their earners.
- Because of the restrictions (and employers not opting for NEST as a result) many employees were not being offered the best value scheme available.

As to whether the DWP can proceed with easements a key point seems to be whether the restrictions were necessary to meet the state aid rules of the European Commission (EC). These seek to prevent a market participant from being unfairly advantaged by receiving state aid (as NEST has done). The Committee (and it would also seem the Pensions Minister) is hopeful that NEST's "public service obligation" to accept all individuals automatically enrolled into it should be enough to meet these requirements, but as the Government cited these restrictions when seeking EC approval, it seems that it will need to go to Europe again before delivering any relaxation.

Government to consult on automatic enrolment changes

The Department for Work and Pensions (DWP) has confirmed that next month it will consult on proposals to make the process of automatic enrolment simpler.

The DWP says that, based on feedback it has received since implementation, areas that could be improved include making assessment of the workforce easier, making it easier for money purchase schemes to show they meet the scheme quality requirements and removing the duty to enrol particular groups (eg those who have benefits protected for lifetime allowance purposes).

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