

Coronavirus and considerations for employers with DC pension schemes

Since the restrictions were introduced to combat the spread of coronavirus, employers have understandably been focused on the implications for their businesses. This includes considering the impacts for their defined contribution (DC) pension scheme, alongside the Government's Coronavirus Job Retention Scheme, and more general issues linked to ongoing auto-enrolment compliance.

Here we provide some examples of issues uncovered and actions which we have seen employers taking.



Contribution options



Budgeting



Retaining life assurance



Salary sacrifice



Case study 1 - Contribution options for furloughed employees

The employer is looking to furlough a significant proportion of the workforce for 1 – 3 months. They have a group personal pension where the company and the employee each pay a minimum of 5% of basic pay (ie 10% total).

If employees are furloughed (ie they remain employed and are being paid), pension contributions must continue. The 'default' position is therefore that the company and employee both continue to pay 5% of the reduced furloughed pay. Under the Coronavirus Job Retention Scheme (CJRS) rules, the employer can reclaim the cost of the minimum employer pension contributions required under automatic enrolment legislation.

This employer, like many others, has a more generous contribution structure than the legal minimum, and is therefore only partially reimbursed by the CJRS. In addition, employees could find it difficult to maintain their contribution payments given they are on reduced earnings.

Options considered:

- Continue with the existing contribution scales, and top-up the amount which is not provided through the furloughing system
- Introduce a lower contribution scale for the scheme which is more akin to the legal minimum, which members can opt into if they wish
- Consult on changes to the core contributions available in the scheme (using standard 60 day consultation requirements for changes to terms and conditions)
- Utilise regulatory easements announced by the Pensions Regulator on 9 April whereby the Regulator confirmed it will not currently take regulatory action for employers who reduce DC pension contributions (to auto-enrolment minimum levels) if:
 - a. The reduction only affects furloughed employees.
 - b. It is only for the period over which they are furloughed.
 - c. Affected employees and their representatives have been written to, describing the intended change.

Following our advice and analysis and after seeking legal input, the employer in this case has chosen the latter option due to relatively severe cashflow constraints during the Covid-19 period. The administrator has been made aware of the new contribution position, and processes have been adapted to ensure reductions in contributions revert to the previous levels at the end of the furloughed period.

LCP Comments

Under CJRS rules companies can reclaim the cost of minimum employer pension contributions required under automatic enrolment legislation. This means companies are able to reclaim 3% of furloughed pay on a Qualifying Earnings basis (ie between £520 and £2,500 per month), but no more. Where employees have variable earnings, HMRC guidance details how this can be determined for claiming under the CJRS.

To reclaim the pension contributions under the CJRS, there is an administrative requirement to calculate Qualifying Earnings for all furloughed employees even where a different pensionable pay is used for core ongoing contributions.

If companies wish to reduce contributions on a mandatory basis (without employee choice), for

example down to the minimum legal amount (3% of Qualifying Earnings) so that contributions are fully reimbursed by the CJRS, then this would be a change of terms and conditions and would normally require an employee consultation (for employers with more than 50 employees). However, the Pensions Regulator announced 9 April 2020 that it will not currently take regulatory action in these circumstances if no consultation is performed, provided the conditions referenced in the case study above are met.

Any decisions relating to contributions should consider the longer-term impact on members. The less that goes into their retirement pots, the less they will have to retire on.



Case study 2 – Budgeting for increased overtime and bonuses

The employer is seeing a dramatic and reasonably time-critical up-turn in business due to the coronavirus environment, and is reliant on noticeably increased overtime, as well as wanting to reward staff for their support via special bonuses.

In this case, the pension scheme contributions for some members are based on the auto-enrolment minimum “Qualifying Earnings” – under which overtime and bonuses are all pensionable.

After consulting with LCP the employer has factored in the pension costs within its budgeting, and also communicated to members that the overtime and bonus payments will be subject to the standard pension deductions to avoid any surprises.

LCP comments

If an employer pays a bonus to staff, or increases overtime, the amounts payable will be pensionable when pension contributions are based on Qualifying Earnings.

If bonuses and overtime are paid to staff because of exceptional circumstances, then careful planning is needed to make sure all the implications are understood (including employees understanding that the increased payments will be subject to pension deductions).



Case study 3 – Retaining life assurance

The employer is looking to furlough some employees. The employer provides a core life assurance benefit based on a multiple of salary to all staff, regardless of membership of their pension scheme. However, the definition of salary for the purposes of the life assurance benefit is the salary immediately prior to death. As the employer will only be paying 80% of the employee's salary whilst furloughed, the

life assurance by default would be reduced accordingly.

LCP agreed with the client's insurer how to revise the definition of salary for the purposes of the life assurance whilst furloughed, and following clarifications of the membership in question, the position has been resolved to make employees no worse off.

LCP comments

Some employers' life assurance benefits and dependants' pensions are linked to the pension scheme membership; for example, lower lump sum multiples can sometimes be paid if the employee is not in the pension scheme or if the employee chooses to pay pension contributions at a lower scale to core scales. Pension scheme membership should be monitored for any increase in leavers / opt outs and communications should be issued to remind employees about this valuable benefit. Employers could of course also change the benefit to make it available to all, regardless of the pension scheme membership, if this is an appropriate solution in the circumstances.



Case study 4 – Avoiding surprises linked to salary sacrifice

The employer is planning in case it needs to furlough some employees at a later date. Its DC pension scheme is operated on a salary sacrifice basis and contributions are based on base pay with the minimum contribution 3% employee / 6% employer.

LCP confirmed that salary sacrifice payments made by the employer are a non-cash benefit under a contractual agreement with the employee and they are not the employee's pay. Due to its contract wording, the employer is likely to be obliged to continue with the same level of its contributions regardless of the employee's pay reducing whilst furloughed, and this can only be amended after 12 months.

Whilst no formal decisions on furloughing has been taken yet, the employer noted that LCP confirmed that HMRC had updated their guidance issued on 9 April 2020 that coronavirus could be treated as a 'life event', without which salary sacrifice schemes otherwise only allow members to make a change to their salary sacrifice choices once a year. They have however also noted that payments under the CJRS are normally based on wages as at 28 February 2020 which will still bring some communication work with members if the decision is to proceed.

LCP comments

Employers will need to check the wording of the salary sacrifice agreements in employee contracts to see what ability they have to amend/stop the salary sacrifice. It might be that the current salary sacrifice is fixed to a 12-month period and that as a default they can only amend contributions at the end of that 12-month period.

HMRC confirmed in their updated guidance issued on 9 April 2020 that coronavirus could be treated as a 'life event', however it may not be in a members' interest to opt out of salary sacrifice and they can't do this retrospectively, so in practice any change would only be for future pay.

A consequence of salary sacrifice is that the employee salary is lower than it would have otherwise been and therefore the employer can only claim 80% of this lower wage (subject to the cap of £2,500 per month) as at 28 February 2020. Unless the employer tops up the salary, the employee could be worse off whilst furloughed, in cash terms, than a similar employee who was not in the salary sacrifice scheme.

In salary sacrifice cases it is important to check what the actual salary sacrifice agreement the employee has signed up to says, and seek legal advice about the impact on pension contributions for furloughed employees.

Other areas which employers need to consider which are linked to DC scheme membership



What happens if employees are off sick?

Auto-enrolment legislation requires Statutory Sick Pay (SSP) to be treated as part of Qualifying Earnings, or as part of basic pay under certification. Employers will need to continue deducting contributions from the members' salaries in respect of these amounts accordingly.



What if an employee decides to stop making contributions, should the employer still pay in?

For most GPP schemes, unless a contractual obligation exists within the employee's contract of employment, the employer is not obliged to pay into pension if the employee ceases their payments. The employer can however choose to maintain their payments. The employer must not encourage the employee to cease payments.

For trust-based schemes, the scheme rules should be checked to see whether the employer payments can also stop if employees cease contributing, but again the employer can choose to maintain their payments.

Where the employer is in receipt of CJRS for furloughed workers, the amount can include an allowance for the minimum 3% employer contribution on a Qualifying Earnings basis. There is a requirement that the 3% employer contribution is paid into the pension scheme, irrespective of what the employee chooses to do.



What about higher earners?

If high earners have been furloughed and the employer is not topping up their salary this could mean they'll no longer be subject to pensions tax under the Tapering Annual Allowance and may mean employers need to review high earner policies or communicate to these members specifically.



Taking on short term staff / new hires

Care is needed to make sure systems and processes are in place to adapt to any influx of new auto-enrolments.



Legacy or other contribution structures

Care is needed with any populations with special rights to consider how these employees could be impacted. For example, some employees may be on transitional DC rates / cash in lieu agreements (eg resulting from a relatively recent DB closure, or an acquisition).

Want to find out more?

If you would like further information, please visit our [DC & financial wellbeing](#) page or contact one of the people below.

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