from 2014 to 2022 – flexible access and Pension Wise

The Taxation of Pensions Act 2014, s1 and sch 1, introduced, from 6 April 2015, pension flexibility for members of money purchase pension schemes on reaching the normal minimum pension age (55, but will be 57 from 6 April 2028). Members were given and still have the following options:

- a lifetime annuity;
- flexi-access drawdown, under which there are no limits how much or how little a member could take each year; or
- a lump sum payment, under which the whole of the fund could be drawn down as n uncrystallised funds pension lump sum, without buying an annuity or putting the fund into draw down.

The 25% tax free pension commencement lump sum is available under each option: it is enough that the member becomes entitled to a pension. Even if the risk of members' blowing the whole of their funds on a Lamborghini might be frivolous, the risk of members being misled by bad advice and fraud or simply lack of understanding was and remains serious. Therefore the TPA 2014 inserted regs 14ZA to 14ZE into the Registered Pension Schemes (Provision of Information) Regulations 2006, SI 2006/567. Regulation 14ZA, as an example, is headed "Information provided to member by scheme administrator where it appears member may be first flexibly accessing pension rights". Broadly speaking, the trustees or managers of pension schemes are required to inform members, who are considering flexible drawdown, of the availability of a free and impartial service giving pension guidance, which they should access, and that they should consider taking independent advice.

In preparation for this requirement, HM Treasury announced on 12 January 2015 the name, Pension Wise, and logo of the new pensions guidance service, which has its own website, and on 16 September 2015 announced that responsibility for Pension Wise would move to the Department for Work and Pensions by the end of the financial year.

2022 – a stronger nudge

In 2021 the DWP held a consultation, a "Stronger Nudge to pension guidance" about draft regulations to implement the Financial Guidance and Claims Act 2018 s19 (Occupational pension schemes: requirements to refer members to guidance etc), which inserted s113B of the Pension Schemes Act 1993), requiring the Secretary of State to make regulations requiring the trustees of an occupational pension scheme to ensure that (a) members

Roderick Ramage
BSc(Econ) solicitor
authorised and regulated by the Solicitors' Regulation Authority number 231800
Copehale, Coppenhall, Stafford, ST18 9BW
01785-223030, roderick.ramage@law-office.co.uk, www.law-office.co.uk

and their dependants are referred to “appropriate pensions guidance” when they apply to transfer or to start to receive benefits under the scheme and (b) they, the trustees, have either received or opted out of the guidance, before proceeding with the application.

The regulations which have been made are the Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022, SI 2022/30 were brought into force on 1 June 2022, to amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, SI 2013/2734, including the substitution of the following for the definition in the 2013 regulations.

> “pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc. about flexible benefits under pension schemes);

The Financial Conduct Authority’s rules about the stronger nudge to pensions guidance are its handbook as Practice Statement PS21/21.

Under the 2013 Disclosure Regulations as amended, trustees must offer to book a Pension Wise appointment for the member before actioning the member’s application to start to receive or to transfer his or her benefits and must not action the requests. If the member accepts, the trustees must take reasonable steps to book an appointment. They must give the member details how to book an appointment if either the member does not accept the offer or the trustees are unable to book a suitable appointment. They may implement the member’s application only if they have received confirmation that the member has either received guidance or has given an opt-out notification.

Stronger nudge does not apply if the member is under age 50 or if the reason is not for the purpose of receiving flexible benefits, eg it is to consolidate benefits.

The FCA Handbook PS21/21 is much the same, but with the difference that the member may notify his or her opt-out when applying to start benefits or transfer, while an opt-out under the 2013 Disclosure Regulations must be made in a communication made solely for the purpose of opting out.

The agreed relationship between the FCA and TPR is set out in their joint regulatory strategy for pensions on TPR’s website under the heading “FCA and TPR joint strategy”. An approximate division of their regulatory functions is that (with little regard to the PSA 1993 s1 definitions) TPR is responsible for occupational (including GGPs(!) and public service schemes, and the FCA for contract pensions eg SIPP and personal pensions and functions such as financial advice and income products eg annuities.

END