
NEWSLETTER NO 73
APRIL 2018

CHAIRMAN'S UPDATE

Firstly, I would apologise for the fact that this newsletter is being issued a little later than we would have preferred. Members might be aware that the AMPS website has experienced some technical difficulties of late, such that the Committee's normal means of issuing communications to members has not been available. Rather than leave the newsletter pending, the Committee has made arrangements for the newsletter to be distributed via direct e-mail.

Members will be aware of the correspondence which the Committee instigated with the Financial Services Compensation Scheme, earlier this year, following the FSCS's announcement to the effect that three SIPP operators had been declared in default, in consequence of what the FSCS described as "concern over failings within the SIPP industry".

Correspondence from earlier this year, as published on the AMPS website, showed the FSCS to recognising a "civil liability" against SIPP operators. This was repeated at a meeting that the AMPS Committee subsequently held with Mark Neale and James Darbyshire, both of FSCS, during which the Committee heard that claims might be accepted on the "balance of probability" that the courts would rule against a SIPP operator in the given circumstances. Sight of legal advice given to FSCS was requested, but this request was denied.

The concept of "civil liability" will be considered in greater detail at the 2018 AMPS conference, to be held on Tuesday 22 May, at which James Darbyshire of FSCS has agreed to speak. Members should of course feel free to question the FSCS on any matter that is not clear to them.

Another matter to have occupied attention of late is the apparent need for registered pension schemes to submit information to HMRC's 'Trust Registration Service', where liability to certain taxes has arisen. The background to this expectation has already been addressed in a number of news and forum postings on the AMPS website; I will not rehearse those here. Also expressed, within the AMPS website and by the AMPS Committee to HMRC, has been the shared exasperation, amongst AMPS members, in regard to factors including the following:

- That HMRC guidance relating to the TRS continues to exist only in draft form.
- That Pension Schemes Services had not engaged with AMPS in regard to concerns as to the extent of the requirements, or indeed whether the requirements apply at all.
- That Pension Schemes Services seemed to be encouraging some AMPS members to delay registering schemes with TRS, pending some further announcement.
- That HMRC, having extended the registration deadline to 5 March 2018, were unwilling to offer further extension despite factors such as those considered above.
- That the administrative burden placed on pension scheme trustees seems disproportionate and inappropriate, given the supervision and information-gathering that already applies to registered pension schemes.

The AMPS Committee and a representative of the Association of Pension Lawyers have engaged in a conference call with representatives of HMRC Trusts and HMRC Pension Schemes Services, and more recently have attended a meeting at HMRC's offices in London. HMRC seem keen to explore the prospect that requirements of the TRS might be able to be accommodated within existing reporting channels including the nascent 'Pensions Online Digital Service' (PODS); though it is recognised that the latter was not designed to meet the expectations of the former and so leaves the prospect that certain factors specific to TRS will not be able to be accommodated within PODS unless it can be developed further. A challenge both for HMRC and for reportable trusts is to ensure that the legal requirements for which the TRS was designed are met.

The meeting ended with action points for HMRC, including the prospect of a letter to the AMPS Committee in which means of facilitating registration requirements might be explored.

In the meantime, it should be expected that HMRC will issue penalty notices where registrations which should have been submitted by 5 March 2018 are carried out after that date. The AMPS Committee will be pleased to learn of members' experiences in regard to appeals relating to penalties arising from late registrations, should there be any late registrations. It might be that some form of collective representation will be helpful, both in seeking to reaffirm members' difficulties and in seeking to reduce HMRC's workload in the assessing of appeals. Whether HMRC will be able to consider collective representation in regard to individual penalties is another matter.

Further updates will follow on the TRS issue, including at the AMPS conference.

Staying with HMRC, I should comment that HMRC's new powers of de-registration, for occupational pension schemes which have a corporate sponsoring employer that has been dormant for a continuous period of one month in the year leading to the date of a de-registration decision, took effect from 6 April 2018. The AMPS Committee made representations to HM Treasury, HMRC and, for information purposes for reason of its involvement in the pension scams consultation, the Department for Work and Pensions, shortly after the policy was announced. The Treasury sought to assure us that, "the purpose of the proposed legislative change is to help tackle pension scams and not to close down occupational pension schemes which have a legitimate sponsoring employer that has since ceased trading". Whilst that might seem reassuring, I know that concern persists as to how, having been endowed with new powers, HMRC might exercise control in their discharge. I would not expect HMRC to deviate from their preference for expressing that any case will be considered by its facts and circumstances, but I will be very interested to learn of members' experiences in regard to any such cases. As ever, the AMPS Committee will be on hand to take up representations on behalf of the industry, where there is concern as to how powers are being used.

At the start of this update, I made reference to the distributing of this newsletter via direct e-mail. A similar means of communication was employed for the purpose of issuing the agenda for the aforementioned AMPS conference. As stated above, the conference is to be held on Tuesday 22 May, at the Royal College of Physicians in London. The agenda can be viewed if one clicks [here](#), and there is a further link below to the registration site. The conference will address matters of current concern to SSAS practitioners and to SIPP operators, and I look forward to seeing those who are able to attend.

[Click Here to Register for this Event](#)

Zachary Gallagher
Chairman

FCA SUBCOMMITTEE UPDATE

Consultations

Since the last newsletter, committee have submitted consultation responses to both CP 17/36 (FSCS compensation) and CP17/39 (Quarterly consultation no 19) dealing with referrals to the Pension Ombudsman. Both of these responses can be found on the AMPS website.

Related consultations on the FSCS were issued at the very start of the year CP18/01 and CP18/2. These respectively concerned the alignment of payment periods for the payments making up the levies and the management expenses levy limit. No response to either consultation was issued.

Consultation papers CP17/38 (regulatory fees), CP17/40 CP17/41 and CP17/42 have since been published by the FCA with the latter three relating to the Senior Manager & Certification regime. AMPS has not responded to these papers although they were reviewed.

A number of AMPS committee members attended an FCA briefing on the latest round of Senior Manager consultation papers. It is understood that the regime will likely come into effect for insurers on 10th December 2018 with non-insured firms being affected late 2019.

Consultation paper CP18/3 Consultation on SME access to FOS has been issued which the committee are considering. The consultation closes on 22nd April.

As well as a number of consultation papers being issued, FCA has also issued a number of policy statements. Member firms might be interested in PS17/25 FAMR implementation part II. This sets out finalised guidance for dealing with insistent clients. In the last week, the FCA has issued a policy statement (PS18/06) and consultation paper (CP18/07) on pension transfers. These are highly topical papers and worth a read for those seeking to understand where the FCA direction of travel is in this area.

A discussion paper (DP18/1) on non-workplace pensions has been issued by the FCA. SIPP fall under this definition and AMPS will be considering how best to respond to the questions raised. The FCA is looking for quantitative data to inform the industry view on non-workplace pensions. A webinar hosted by the FCA took place on 22nd March following cancellation of an earlier meeting. The webinar highlighted areas that the FCA would particularly like feedback on.

Another discussion paper (DP18/2) has been issued titled 'Transforming Culture in Financial Services'. This is a collection of 'stories' from financial services companies and their view on culture and how they go about delivering this within individual firms.

The FCA have issued two follow up documents under the umbrella of the FCA mission. These are entitled 'FCA Mission: Our Approach to Supervision' and 'FCA Mission: Our Approach to Enforcement'. Whilst not telling firms anything new it is helpful to have standalone documents on these topics. A further document on Market Integrity is also expected.

FCA have mentioned that they are considering a SIPP operator forum although this is very much in the early stages of planning. If there are particular topics that firms would like to see covered then please let committee members know. Questions or comments can be submitted to either zachary.gallagher@berkeleyburke.com or geoff.buck@dapco.co.uk.

As a standing note, firms are reminded that Quarterly Consultation No 18 CP17/32 consulted on changes to assumptions used in deterministic projections. With effect from 1st August the proposal is for the inflation assumption to be reduced by 0.5% along with the earnings assumption. The existing flanking rate of $\pm 3\%$ will remain unchanged. AMPS will confirm to members when the change has been confirmed.

Wind Down Planning Guide (WDPG)

Back in June 2017 through Newsletter 70, we highlighted the FCA's wind down planning guide. This is described by the FCA as not being mandatory and therefore essentially a best practice piece of work.

However, the Committee is aware that a number of firms have recently been contacted by the FCA requesting copies of any wind down planning guides that firms have and supporting documentation too. AMPS was not consulted on the request and had no idea that it was coming or how many firms might receive such a request. Given that this is not a mandatory document we find the FCA approach disappointing.

We do not know the thinking behind the request or what additional further activity this might prompt but we are attempting to establish this through our liaison channels. In the meantime, firms that haven't received such a request may wish to review the guidance and consider their next steps.

<https://www.handbook.fca.org.uk/handbook/WDPG.pdf>

Pensions Ombudsman

The committee continues to attend regular industry meetings with the Pension Ombudsman (PO). These provide an update on caseload (up 20% on last year) and work the Ombudsman office is doing to manage backlogs which are now ringfenced and at a low level. Interestingly the PO cited that only 2% of open cases related to pension liberation.

The PO also discussed plans for the office and discussed the recent change to the Memorandum of Understanding between his office and that of FOS.

The Pension Ombudsman office has now completed a move to Canary Wharf with a new address of 10 South Colonnade, Canary Wharf, E14 4PU. This move is being carried out in tandem with a new case management system and an IT refresh programme which has already been started. The PO mentioned that there is a new 0800 telephone number for complainants to access (0800 917 4487).

In regards to the Memorandum of Understanding (MOU), the Ombudsman highlighted that this was a long time coming and would be subject to review after 12 months. The PO acknowledged that there was some overlap particularly with SIPP's and so any feedback members can give in light of the new MOU will be useful for the next industry meeting (likely around June/July).

The March handbook notice from the FCA provided their response to consultation CP17/39 in relation to signposting to the Pensions Ombudsman in complaint response letters. This guidance takes effect from 1st April 2018.

GDPR

The Information Commissioner's Office (ICO) continue to issue consultations and hold relevant webinars on the subject. There is a Data Protection Practitioners' Conference being held in April. A joint press release between the FCA and the ICO has been issued <https://www.fca.org.uk/news/statements/fca-and-ico-publish-joint-update-gdpr>

tPR

The FCA and the Pensions Regulator have announced that they will be working on a joint pensions regulatory strategy. There are a series of workshops across the country to discuss this and provide more details. A number of AMPS committee members will be in attendance.

<http://www.thepensionsregulator.gov.uk/doc-library/tpr-and-fca-our-strategy-for-pensions.aspx>

Minimum Energy Efficiency Standards (MEES)

Member firms allowing property investments in their schemes are reminded that on 1 April 2018, Minimum Energy Efficiency Standards (MEES) restrictions on let properties took legal effect. These standards will apply to any properties that have a building with a means of providing an energy supply that is to be let. The effect of MEES is that it will become unlawful for commercial landlords to let premises falling below a certain level of energy efficiency, as measured by the Energy Performance Certificate (EPC) regime.

As of 1 April a property with an EPC rating below an E will not be able to be let without either complying with scheduled improvement works to improve the rating or, in relation to certain buildings that will never be able to achieve a higher efficiency rating, obtaining an exemption.

The main exemptions include where the landlord has been unable to obtain the necessary consents to carry out the improvement works, where the improvements would cause a reduction on the value

of the property by more than 5% and where installation of wall insulation would damage the fabric of the building.

Exemptions are time limited to five years at best, following which they must be reapplied for and in order to benefit from an exemption a landlord will need to undertake relevant energy efficiency improvements, which are works that pay for themselves through energy bill savings over a seven-year period.

The MEES restrictions will apply to any new lease put in place on or after 1 April 2018, which includes the extension or renewal of an existing lease. Furthermore, from 1 April 2023 the restrictions will be extended to apply to all let properties.

If a landlord lets property in breach of the MEES regulations the landlord will risk substantial financial penalties and being 'named and shamed' on a publicly accessible register. The penalty for a breach continuing for three months or more is the greater of £10,000 or 20% of the rateable value of the property, subject to a cap of £150,000.

TECHNICAL SUBCOMMITTEE UPDATE

HMRC Pension Schemes Newsletters

Four further HMRC newsletters have been issued since the date of publication of the previous AMPS newsletter:

<https://www.gov.uk/government/publications/pension-schemes-newsletter-94-december-2017>

<https://www.gov.uk/government/publications/pension-schemes-newsletter-95-january-2018>

<https://www.gov.uk/government/publications/pension-schemes-newsletter-96-february-2018>

<https://www.gov.uk/government/publications/pension-schemes-newsletter-97-march-2018>

Amongst the subjects is reference to relief at source for Scottish residents, HMRC's plans for the new Pensions Online Digital Service for new scheme registrations from April 2018 and reporting of non-taxable death benefits.

In addition to the standard Pension Schemes Newsletters, HMRC have also published a number of standalone newsletters to deal with queries raised by scheme administrators relating to the operation of relief at source for Scottish income tax, links to these are below:

<https://www.gov.uk/government/publications/pension-schemes-relief-at-source-for-scottish-income-tax-newsletter-december-2017>

<https://www.gov.uk/guidance/check-a-pension-scheme-members-residency-status-for-relief-at-source>

<https://www.gov.uk/government/publications/pension-schemes-relief-at-source-for-scottish-income-tax-newsletter-february-2018>

Further newsletters relating to transfers to overseas pension schemes and registering new pension schemes using the new Pensions Online Digital Service have also published, links below:

<https://www.gov.uk/guidance/overseas-pensions-pension-transfers>

<https://www.gov.uk/government/publications/pension-schemes-manage-and-register-pension-schemes-service-newsletter-april-2018>

2. The Registered Pension Schemes (Relief at Source) (Amendment) Regulation 2018

From 30 November 2017 until 31 December 2017 HMRC ran a short consultation draft regulations and changes to the Registered Pension Schemes (Relief at Source) regulations. The draft regulations require scheme administrators to submit the annual return of individual information (commonly known as the RPSMCOMM 100) within 3 months after the end of the tax year. This is to ensure that HMRC can advise administrators of the correct rate of tax relief to apply to members' contributions following the introduction of the Scottish rate of income tax (SRIT).

Changes to the filing deadline had been discussed in SRIT workshops run by HMRC and were therefore not wholly unexpected. However, changes to the process and interest charge for excess relief claims contained in the draft regulations were not widely expected. Links to regulations, associated guidance and draft forms are given below:

<https://www.gov.uk/government/consultations/the-registered-pension-schemes-relief-at-sourceamendment-regulations-2018>

<https://www.gov.uk/government/publications/pensions-tax-changes-to-administration-of-relief-at-source>

<https://www.gov.uk/government/publications/pension-schemes-registered-pension-schemes-relief-at-source-interim-claims-apss-105>

<https://www.gov.uk/government/publications/pension-schemes-registered-pension-schemes-relief-at-source-annual-claims-apss-106>

<https://www.gov.uk/guidance/tell-hmrc-youve-claimed-too-much-relief-at-source-for-pension-scheme-members>

<https://www.gov.uk/government/publications/rps-electronic-flat-text-file-specifications>

<https://www.gov.uk/government/publications/hmrc-rps-ras-spreadsheet>

EVENT DATES FOR DIARIES

22 May 2018: AMPS Annual Conference – Royal College of Physicians

16 October 2018: AMPS Compliance & Technical Seminar plus AGM – Royal College of Physicians

CONTACT

The AMPS Newsletter is compiled by Zoe Smith, AMPS Committee member. AMPS member firms are welcome to contact Zoe with any items which they would like to be considered for bringing to member firms' attention. Zoe can be reached at zoe.smith@barnett-waddingham.co.uk
