ARTHUR COX

Group Briefing

June 2019

Pensions Summer Update

Ireland Client Service Law Firm of the Year 2018
Chambers Europe Awards

Ireland Law Firm of the Year 2018
International Financial Law Review (IFLR) Europe Awards

Advised on Equity Deal of the Year 2018 – Allied Irish Banks IPO
International Financial Law Review (IFLR) Europe Awards

Ireland Law Firm of the Year 2018
Who's Who Legal

Ireland Law Firm of the Year 2017
Chambers Europe Awards

Best Firm in Ireland 2018, 2017 & 2016
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2018, 2017 & 2016
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2018, 2017 & 2016
Europe Women in Business Law Awards

Best National Firm for Minority Women Lawyers 2018
Europe Women in Business Law Awards

IORP II (DIRECTIVE (EU) 2016/2341) ("IORP II")

The deadline for transposition and implementation of IORP II was 13 January 2019. The Government has indicated that IORP II will be implemented in Ireland through secondary legislation and Codes of Practice to be published by the Pensions Authority (the "PA"). The transposition has been delayed not least by judicial review proceedings relating to single member schemes. While the Department is working towards transposition as early as possible it would appear that there will be further delay in implementation.

The European Insurance and Occupational Pensions Authority ("EIOPA") has published a report (available **here**) that provides some helpful guidance on the implementation of IORP II in the absence of domestic implementing legislation and Codes of Practice. The report considers some of the practicalities required under IORP II, such as the design of information documents, and seeks to promote consistent practices.

A summary of the main issues for trustees to consider arising from IORP II was included in our Winter Update (available **here**).

BREXIT CONTINGENCY PLANNING FOR PENSION FUNDS

Transfer of personal data between Ireland and the UK

The European Data Protection Board ("EDBP") adopted an information note on 12 February 2019 on data transfers under the General Data Protection Regulation in the event of a "no deal" Brexit. In the absence of an agreement setting out alternative agreements, the transfer of personal data from Ireland to the UK will require specific safeguards to be put in place. The EDPB has recommended that those who transfer personal data to the UK should begin to prepare for a "no deal" Brexit by identifying what processes require a data transfer to the UK, determining the appropriate instrument to be put in place and updating internal documentation to accurately reflect the flow of data and inform data subjects.

CASE LAW: BARNARDO'S V BUCKINGHAMSHIRE AND OTHERS [2018] UKSC 55

In deciding how best to interpret the trust deed and rules of a scheme and the weight to be placed on relevant interpretative tools, the UK Supreme Court held that, given the particular characteristics of a pension scheme (established by a formal legal document and designed to operate in the long term free from pressure of time and conflicting commercial interests, a deed confers rights on individuals who may have joined the scheme many years after its initiation and who may not have access to expert legal advice), greater weight is to be placed on draftsmanship than on the factual matrix of a case. The court held that it was not relevant that the "Retail Prices Index" had fallen from public favour in the UK as a means of assessing the cost of living since the drafting of the scheme rules in 1991 in circumstances where the relevant provision was not subsequently amended and updated. The court held it was not legitimate to rely on hindsight as a way to assess the commercial sense of a provision. The case is an important reminder to keep scheme deeds and rules up to date.

LUMP SUM BENEFITS AND COMMUTATION

On 13 March 2019, the Revenue Commissioners published a revised chapter 7.4 of the Tax and Duty Pensions Manual. The revised draft reflects amended limits for the payment of lump-sum benefits in the context of trivial pension amounts, which has increased from €20,000 to €30,000.

PENSIONS AUTHORITY: REVIEW OF 2018 STATISTICS RELATING TO DEFINED BENEFIT SCHEMES

The PA has published a summary of data relating to defined benefit ("DB") schemes to help increase the general understanding of the sector. The PA notes that it is concerned about the level of risk borne by DB schemes and the effect this has on the likelihood of paying benefits as they fall due, especially for younger members.

582 DB schemes were subject to the funding standard in 2018. These schemes had total funding standard liabilities of €58.2bn and total assets of €65.6bn. The number of pensioners increased by 3% and there was a reduction of 1% in the number of active and deferred members.

The PA notes that on transposition of IORP II, trustees will be obliged to conduct a periodic Own Risk Assessment and to incorporate the results of such assessment into their strategic decisions.

PENSIONS AUTHORITY: REGULATORY ACTIVITY AND 2018 OUTPUTS AT A GLANCE

In March, the PA's report on its 2018 activity provided an insight into the enforcement activities of its office by highlighting:

- 62 new investigations opened into various alleged breaches of the Pensions Act (from deductions and non-remittance of pension contributions to failure to reply to a statutory request for information);
- 49 engagement meetings were held with defined benefit and defined contribution scheme trustees in order to ensure that trustees were performing their obligations and to introduce improved governance standards into trusteeship;
- 179 desk-based audits were carried out during the year on both PRSA and occupational pension schemes' disclosure documentation;
- all bar six of the 127 defined benefit schemes who are subject to the funding standard and were not in compliance with the standard as at 31 December 2018 have agreed or are in the process of submitting funding proposals designed to bring the scheme into compliance with the standard; and
- two protected disclosures were received from individuals regarding alleged breaches of the Pensions Act in relation to access to a PRSA and are still being processed.

The PA also brought successful prosecutions in 2018 against a company for failure to remit employee pension contributions within the statutory timeframe and a sole trader for failure to comply with a statutory request for documentation detailing contribution payments. Commenting on the convictions, the PA said that the outcome of these cases should "act as a warning to all employers".

EUROPEAN MARKET INFRASTRUCTURE REGULATION ("EMIR") REFIT

The EMIR is to be amended with changes that could come into force as early as May 2019. The changes relax some of the current obligations for smaller derivatives users, who will become exempt from the current clearing obligation that is in place for OTC derivative contracts. Some pension scheme arrangements transacting OTC derivatives (usually currency hedging contracts) may be deemed to be small financial counterparties and therefore would benefit from the clearing exemption. The existing temporary exemption from the clearing obligation for pension scheme arrangements will be extended for a further two years.

2019 REPORTING REQUIREMENTS FOR PENSION SCHEMES		
AUTHORITY	**COMPLIANCE**	**REPORTING DEADLINE**
European Central Bank	Mandatory	December 2019
EIOPA	Mandatory	9 December 2019 (for schemes subject to detailed reporting) 19 May 2020 (for schemes subject to reduced reporting)
EIOPA Stress Test	Voluntary. PA has contacted trustees of larger schemes directly to request their participation.	19 June 2019

WHAT SHOULD TRUSTEES DO NOW TO ENSURE COMPLIANCE WITH REPORTING REQUIREMENTS?

- Check whether your scheme is subject to detailed or reduced reporting. List of schemes subject to detailed reporting is available **here**.
- Write to registered administrators seeking confirmation that they can meet reporting deadlines and requesting that registered administrators identify any difficulties they foresee in complying with reporting requirements and any associated fees.

KEY CONTACTS

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