

One of the valuable services that Aries Insight offers our members is the [Aries Help Desk](#). Aries members can ask us any technical questions they have come up against and we will undertake any research needed and provide a response.

We then capture these replies in the Aries Pensions System as a “technical queries database”, so that other Aries members can also benefit from this research. (All queries are, of course, suitably anonymised.)

We recently analysed our bank of queries to identify the areas that generate the most queries, including identifying the “top ten” topics causing difficulties. Perhaps unsurprisingly, this includes issues with the Annual Allowance, disclosure and divorce.

For this Insight, we look at a few recent queries that have been raised with us, some of which are recurring queries (so they are an issue for many of our members).

### Disclosure – providing information via a website

Over the last few years, there has been an increasing trend for pension schemes to provide members with information via a website. Indeed, there are now various provisions that require schemes to make certain information available, free of charge, on a publicly accessible website.

We are often asked what the position is for a scheme that wants to (but is not required to) provide information via a website, for example the

annual summary funding statement, rather than the traditional method of posting this out to all members and beneficiaries (known as the recipients).

The requirement for certain schemes to provide an annual summary funding statement arises under Regulation 15 of *The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013* [SI 2013/2734] (“the Disclosure Regulations”). This is not, however, one of the documents that schemes are required to publish on a website, so the “old” rules for providing information via a website apply.

In essence, where information is made available on a website, the scheme must:

- For any recipient who was a member / beneficiary of the scheme on 1 December 2010, and for whom information was not provided by e-mail / on a website (“electronic communication”) before that date, the scheme must, before providing information electronically, write to the recipient to advise them that the scheme intends to provide information electronically and notify them of their right to opt out of electronic communication.
- When the scheme intends to make information available electronically (e.g. on a website), the scheme must satisfy itself that that communication has been designed so that recipients will be able to access, store or print the information, taking into account the requirements of disabled people.

- The first time information is made available via a website, the scheme must send each recipient a notice stating that the information is available on the website, together with the website address, details of where on the website the information may be read and an explanation of how it may be read.
- By default, each time new information is added to the website (e.g. the next year’s summary funding statement), the scheme must send another notice to each recipient covering the above information.
- The requirement to provide subsequent notifications each time new information is added to the website can be avoided where the scheme has provided the recipient with at least two notices requesting the recipient’s e-mail address (unless the scheme does not have the facility to e-mail documents to that address) and stating that the recipient can opt out of electronic communication. Then the scheme must then send the recipient a third notice that repeats the above requirement and also says that future information will be made available via a website and that no future notifications will be provided. If, however, the recipient does provide their e-mail address, the scheme will still have to notify the recipient (presumably by e-mail) each time new information is added to the website. In addition, if any recipient opts out of electronic communication, then the information would have to be posted to them instead.

[Regs 26 – 28, SI 2013/2734]

Although the query here specifically concerned the publication of the annual summary funding statement, the above process applies to other information that is required under the Disclosure Regulations where there is no strict requirement to provide that information via a website.

### **Pension Credits and the Appropriate Independent Advice requirement**

Another recurring query concerns an ex-spouse being awarded a pension credit against a member's benefits where:

- the member's benefits are defined benefits in nature,
- the ex-spouse is intending to take an external transfer of the pension credit to a money purchase arrangement, and
- the amount of the pension credit exceeds £30,000.

The question here is whether or not the ex-spouse is required to obtain "appropriate independent advice" before the external transfer of the pension credit can proceed?

The appropriate independent advice requirement arises under Section 48 of the *Pension Schemes Act 2015* and applies where a member of the scheme has subsisting rights to "safeguarded benefits" (broadly, defined benefits) under the scheme with a value in excess of £30,000.

Once the requirement is set out in these terms, it becomes possible to see that:

- where a pension sharing order is being implemented, the ex-spouse is **not** a member of the scheme against which the order has been served (at least, not in the context of the pension credit entitlement), and
- they do **not** have any subsisting rights to safeguarded benefits under that scheme in respect of the pension credit.

As such the appropriate independent advice requirement does **not** apply here.

For completeness, if the ex-spouse were to initially take an internal transfer of the pension credit (such that pension credit benefits are created for them under the scheme in question) and subsequently requests a transfer out of those pension credit benefits, then the appropriate independent advice requirement might apply.

### **Automatic Pension Savings Statements and the tapered Annual Allowance**

As we are rapidly approaching 6 October – the date by which schemes are required to automatically provide certain members with a Pension Savings statement to confirm their Pension Input Amount under the scheme for the previous tax year – another 'hardy perennial' query was recently raised with us.

This concerned members who are subject to the tapered Annual Allowance and whether the scheme must provide an automatic statement where the member has exceeded their tapered Annual Allowance (and, if so, the related question

of how the scheme establishes what the member's tapered Annual Allowance actually is)?

The short answer here is that the scheme must automatically provide a pensions savings statement where the member's Pension Input Amount under the scheme exceeds the **standard** Annual Allowance for the tax year. Any reduction in the member's personal Annual Allowance due to the taper is ignored here. (There are slightly different rules where the member is subject to the money purchase Annual Allowance.)

To explain why the test is against the standard Annual Allowance, Regulation 14A of *The Registered Pension Schemes (Provision of Information) Regulations 2006* [SI 2006/567] says that the scheme must provide an automatic statement where "the aggregate of the pension input amounts for the relevant pension input period in respect of each arrangement under the registered pension scheme relating to the member exceeds the annual allowance for that tax year".

In this text, "annual allowance" is a defined term under Regulation 2 (3) of the Regulations: "*Expressions defined, or otherwise explained, in section 280 [of the Finance Act 2004], have the same meaning in these Regulations as they have in Part 4 of the Act*".

Under Section 280 of the *Finance Act 2004*, "Annual Allowance" means the figure specified in Section 228 of the Act, which is £40,000. As such, a scheme is required to provide an automatic pension savings statement where the member's Pension Input Amount under the scheme exceeds £40,000 (the standard Annual Allowance).

## Pension sharing charges - a real world query

Whilst perhaps not one of our hardy perennials, we recently received a good 'real world' query on an issue that does crop up occasionally and it is worth repeating the actual text of the enquiry here:

"I have an unusual query regarding a Pension Sharing Order (PSO) Implementation Fee, which I hope you can help me with.

A PSO order has been going for two years, the ex-spouse has paid his share of the implementation fee and is now fed up waiting for his ex-wife (who is the member) to pay her share, the PSO states that that the costs should be split 50/50. The ex-spouse would like to know whether he can just pay her (the member's) share, in order to get this done and completed. Is this possible?"

We must say that we have some sympathy with both the ex-spouse and the scheme administrator here, both of whom are being inconvenienced by the member's failure to pay their share of the charges.

In terms of the query itself, however, the short answer is "yes".

In a little more detail, it is indeed possible for one party to pay the pension sharing charges due from the other party. Regulation 8 of *The Pensions on Divorce etc (Charging) Regulations 2000* [SI 2000/1049] says that:

## **8 Charges in respect of pension sharing activity — reimbursement as between the parties to pension sharing**

*A payment in respect of charges recoverable under regulation 3, 5 or 6 [the parts of the Regulations that detail what charges can be recovered] made by one party to pension sharing on behalf of the other party to pension sharing, shall be recoverable by the party who made the payment from that other party as a debt.*

Not only does this allow one party to pay the charges due from the other party, it provides that the party who paid the other person's charges can then pursue them for reimbursement of those charges.

### **Small Pots – big headaches!**

Another frequent source of queries are the rules around the payment of "small pots" (scheme specific commutation) under *The Registered Pension Schemes (Authorised Payments) Regulations 2009* [SI 2009/1171].

This is, perhaps, not helped by the fact that there are two different provisions that might apply where the scheme is an occupational scheme and a third set of rules for schemes that are not occupational schemes.

In the context of occupational schemes, a common issue arises where the member has benefits in more than one scheme in respect of the same employer, for example, where the employer has previously closed one scheme and established

another one and the member has benefits in both schemes.

The question here is whether you have to take account of the value of the benefits under both schemes when applying the "small pot" tests, or whether the schemes can be looked at separately.

As is often the case with pensions, the answer here is that "it depends". We mentioned that, for occupational schemes, there are two different "small pot" options which are generally referred to, unimaginatively, as the Regulation 11 and Regulation 12 options. The Regulation 11 option can apply for all occupational schemes, whilst the Regulation 12 option is only available for certain, larger, occupational schemes.

These options are covered in the PTM: see [Regulation 11](#) and [Regulation 12](#).

Under the Regulation 11 option, the requirements include that "*the commutation value of the benefits to which the member is entitled under this and any related scheme does not exceed £10,000 in total*" and "*the payment does not exceed £10,000*". [Reg 11 (1) (c) and (d), SI 2009/1171]

Under the Regulation 12 option, however, the relevant requirements are that "*the payment does not exceed £10,000*" and "*the payment extinguishes the member's entitlement to benefits under this scheme*". [Reg 12 (1) (e) and (f), SI 2009/1171]

The key point here is that, under the Regulation 11 option, you have to take account of the value of the member's benefits under any related scheme, whilst under the Regulation 12 option you only need to consider the benefits under the actual scheme in question.

For this query, then, our enquirer would need to establish whether the case can fall within the Regulation 12 option (i.e. does it meet all of the criteria necessary for this route to be used). If so, then the existence of benefits in the other scheme is not an issue. If the Regulation 12 route cannot be used, then our enquirer would need to establish whether the case meets the Regulation 11 criteria instead. This would, of course, require them to take into account the value of any benefits under any related scheme.

The term "related scheme" is defined in Regulation 2 (4) of the Regulations as follows:

*For the purpose of these Regulations,*

*(a) a pension scheme is related to another pension scheme if each of them is-*

*(i) a registered pension scheme that is an occupational pension scheme or a public service pension scheme, and*

*(ii) a pension scheme relating to the same employment;*

(There is actually another test for eligibility for a small lump sum which concerns whether the member is a controlling director or connected to such a person, but that was not an issue in this particular case.)

### **Did you find this Aries Insight useful?**

If so, please share it with your colleagues and let them know that more information is available from the [Aries Pensions System](#).

If you have any suggestions for topics that you would like to see covered in a future Aries Insight, then please [let us know](#).

Aries Insight produces these 'Insights' for Aries Members to highlight key legislative changes and other topics of interest. ***As they are only short articles, they cannot always cover every aspect of the topic being discussed and must not be considered as legal or financial advice.***

All Aries Insights are intended to reflect the position as at the date the Insight was issued. Please consider the possibility that the relevant legislation may have changed since an Insight was issued.

### **Aries Insight - September 2021**

