Extension of the ban on member-borne commission

Alert | 11 September 2017

Introduction

Following the publication of the Government's response to consultation earlier this year, regulations to implement the second phase of the member-borne commission ban will come into force with effect from 1 October 2017.

Key points

- Since 6 April 2016, service providers have been prevented from levying a charge on members to recover the cost of any commission payments to advisers, for certain advice or services, in respect of any new commission arrangements, or variations or renewals of existing commission arrangements, on or after that date.
- With effect from 1 October 2017, the ban will be extended to prohibit commission payments in respect of arrangements entered into before 6 April 2016.
- Service providers will have until 1 April 2018 to make any changes or modifications to their systems and processes in order to comply with the prohibition.

Commission arrangements

In occupational pension schemes, commission typically relates to advice or services that have been agreed between a service provider and an adviser. The service provider remunerates the adviser and recovers this cost through member-borne charges. Commission may take the form of an up-front payment known as "initial commission" or an ongoing payment, commonly referred to as "trail commission".

The ban

Application

Subject to certain exceptions, the ban applies to occupational pension schemes that provide money purchase benefits and are used for automatic enrolment (even if only in respect of a single jobholder) ("Specified Schemes"). So, for example, an open DC scheme or an open DB scheme with DC AVCs will be a Specified Scheme if that scheme is being used to satisfy an employer's auto-enrolment obligations.

All members, whether active or deferred, who are, or were, employed by an employer for whom the scheme is being used as a qualifying scheme (currently, on or after 6 April 2016, but this restriction will be removed with effect from 1 October 2017) are protected by the ban.

First phase

Since 6 April 2016, service providers (persons who provide an administration service directly to a scheme's trustees or managers) have been prevented from levying a charge on members to recover the cost of any commission payments to advisers, for certain advice or services, in respect of any new commission arrangements, or variations or renewals of existing commission arrangements, on or after that date.

Second phase

With effect from 1 October 2017, the ban on member-borne commission will be extended to contracts which were entered into before 6 April 2016 (and which were not varied or renewed after that date).

The prohibition does not apply to commission payments under such arrangements which are made before 1 October 2017.

It will still be possible for members to choose to pay for certain advice / services, subject to certain conditions. For example, any such agreement must be set out in writing, including the cost of the advice or service and the duration over which the payment will be taken.

Action

Service providers

Service providers are responsible for preventing new commission arrangements, removing existing ones, and for notifying trustees whether or not they are compliant.

Once the extended prohibition applies (in practice, from 1 April 2018), service providers will have one month (until 1 May 2018) to confirm their compliance to the scheme trustees. Trustees must also be notified if the service provider ceases to comply.

With effect from 1 October 2017, if any contractual terms conflict with the ban, they will be overridden.

Trustees

As a service provider will not necessarily know whether the scheme they are administering is being used as a qualifying scheme for automatic enrolment, the trustees are required to provide them with this information within three months beginning with the later of:

- the date on which the scheme is used as a qualifying scheme
- the date on which the service provider is appointed.

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