Pension Provision

The next Lobler case in the making?

Building a better working world

Agenda

- Customer Redress –
  - FCA Expectations and HMRC reality
- Flexible Access –
  - Should there be a cooling-off period
- Scheme sanction charge
  - So what is “just and reasonable”?

Customer Redress

Customer Redress – the FCA expectation

- Customers to be restored to the correct position
- This should be after the deduction of tax
- Historically, the expectation was that the customer’s fund would be restored

Redress – the common tax issues

- The taxation of interest – to withhold or not
- Putting the customer back in the post-tax position – how do you know?
- Capital gains and the application of ESC D33
- Whether to give a customer a cash sum or credit their account

Customer Redress – the practical issues

The “what ifs”:

- The member has transferred the fund elsewhere
- The new provider will not accept the redress
- An annuity has been taken
- The member has died

Redress – how HMRC can treat a pension payment

- Uplifting a policy
- Relief at source for a third-party contribution
- Counting towards the annual allowance
- And if the member has enhanced protection to the lifetime allowance…….
- Where the payment is deemed to arise from the pension fund – is it an unauthorised payment?

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The precedents from life policies

- The case of Lobler v HMRC (2015) introduced the concept of a wholly uneconomic gain
- Principle established that HMRC could recalculate the gain on a part surrender where the tax charge was wholly disproportionate
- Given the potentially penal tax rates that may apply to certain methods of redress – should there be scope for HMRC to bring similar considerations to pensions?

Flexible Access

When can a 30 day cooling-off period apply?

- Purchasing a personal pension
- Car Insurance
- Travel Insurance
- When activated – contract is treated as not having been made

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When does a 30 day cooling off period NOT apply?

- When choosing how to take your benefits from a pension…

Flexible Access – a case study

- Customer requests full benefit crystallisation
- Wishes to take 25% tax-free lump sum, but
- Leave balance of funds invested for subsequent drawdown

However:

- Advisor mistakenly keys in full flexible access

Advisor Error – the changed position

In the event of an erroneous payment through advisor error, HMRC's view was originally:

- The returned payment would count as a third-party contribution
- Be subject to the annual allowance charge
- Cause loss of enhanced protection to the LTA
- Be tested against the LTA again when subsequently crystallised

- However, Pensions Newsletter 99 introduced the concept of "advisor error"

Scheme Sanction Charge – how far can a Provider go?

Scheme Sanction Charges – just and reasonable

So would the provider be viewed as being the innocent party where:

- The use of a property in a SIPP changes from commercial to residential
- A member transfers to a pension liberation scheme
- A customer who has transferred receives a Unit Pricing adjustment directly when the new provider will not accept the additional amount

The Provider conundrum

- How will HMRC view the payment
- How is it possible to demonstrate that controls were robust and effective
- Will the FCA / PRA / FOS expect the payment to be made anyway
- Can it be demonstrated that there is a reasonable expectation that a payment would be ordered by a Court
- What if the customer goes to the Press?

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