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### PASA publishes guidance for DC schemes on administration governance

The Pensions Administration Standards Association ("**PASA**") has published its DC Administration Governance Guidance for administrators, employers and trustees. This guidance outlines what the good administration of defined contribution pension schemes should look like in five core areas - data, decumulation, controls and processes, management information and transitions - and has been welcomed by the Pensions Regulator (the "**Regulator**").

Baker McKenzie is happy to have provided technical input to assist the PASA DC Governance Working Group in the creation of the guidance.

The PASA press release can be found [here](#) and the guidance can be found [here](#).

### Pensions Regulator publishes draft Master Trust Supervision and Enforcement Policy

The Regulator has published a draft policy on its approach to regulating master trust pension schemes. A master trust is an occupational pension scheme providing money purchase benefits to two or more employers where not all of the employers are connected with each other. A consultation on this draft policy ran from 26 July 2018 to 23 August 2018 and the Regulator will consider the responses and make appropriate changes before publishing the final policy.

The Regulator intends to take a proactive, risk-based approach to the supervision of master trusts, with a programme of routine supervision for all master trusts and additional supervision of individual trusts as required, based on the level of risk identified. The policy also sets out the Regulator's expectations that those running master trusts will operate their trusts with efficient processes and effective governance, and will be open and honest in their communications with the Regulator.

The draft policy can be found [here](#).

### Work and Pensions Committee costs and transparency inquiry launched

The House of Commons Work and Pensions Committee (the "**Committee**") is seeking views on

whether the pensions industry provides sufficient transparency around charges to individual consumers of workplace pension schemes, investment strategy and performance.

The inquiry considers developments in the pensions industry (particularly the recent rise in enrolment in workplace pension schemes, use of pension freedoms and increase in transfers out of defined benefit pension schemes) and asks if enough is being done to address consumer engagement and understanding of the investments that consumers are making and the associated costs. The Committee is seeking comments from all interested parties.

The inquiry closes on 3 September 2018 and can be found [here](#).

## Pensions Ombudsman annual report notes increase in amounts awarded for distress and inconvenience

The Pensions Ombudsman (the "**Ombudsman**") has published its Annual Report and Accounts for 2017/18.

The Annual Report shows that the average time to complete new investigations last year was five months, with 70% of all investigations concluded without the Ombudsman's intervention.

The Annual Report also flags the new upper limit for non-exceptional awards for distress and inconvenience. Following the *Baugniet* and *Smith* appeals (where the Court made awards for distress and inconvenience significantly higher than typical awards made by the Ombudsman), the Ombudsman confirms it is changing its policy and increasing the upper limit for non-exceptional awards to £2,000. Typical awards for distress and inconvenience will, therefore, be in the region of £500-£2,000, although the Ombudsman has also said that awards above £2,000 may still be made in "exceptional" circumstances.

The full report can be found [here](#).

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## Pensions Dispute News

### Judgment released on "frozen" scheme with final salary link

In our [June Update](#), we reported on the case of *G45 v. G45 Trustees Ltd*, in which the High Court ruled that members who retained a right for their past service benefits to be linked to their future final salary when final salary benefits ceased to accrue were not active members in pensionable service, and that the scheme was "frozen" for the purposes of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (the "**Employer Debt Regulations**").

The transcript of the judgment has now been made available which sets out the judge's reasoning for this decision in more detail. The judge preferred the employer's interpretation of the Employer Debt Regulations that a continuing final salary link after scheme closure does not mean that the relevant members are continuing in "pensionable service". Rather, the extra pension that member may receive if his/her salary is increased is part of his/her rights earned by pre-closure date accrual, such that post-closure service does not **qualify** the member for further pension rights, it merely **quantifies** the rights the member already has.

There are a couple of additional points to note from the judgment:

- **Revaluation:** The judge directly addressed the concept of a deferred revaluation "underpin" for employed deferred members with a final salary link after closure. It was submitted that it was unreasonable for the relevant members to get the "better" of statutory revaluation and the effect of the final salary link. In response to this, the judge acknowledged, and appeared to accept, that employed deferred members were entitled to statutory revaluation as well as the final salary link (i.e., the member receives the "better" of the two amounts). He noted that the two protections were separate from one another, as revaluation is provided on a statutory basis and

the final salary link is effectively required by case law, and concluded "[t]hat does mean the member gets the better of the two, but there is nothing here which indicates that the legislation should be given a different meaning".

- **Courage restrictions:** The judge seemed to accept the difficulties with the decision in *Re. Courage Group's Pension Schemes [1987]* (in which the High Court found that a restriction in the scheme's power of amendment meant that a final salary link had to be maintained while a member remained in employment), but noted that any change in position would now need to occur at Court of Appeal level. The judge noted that the effect of a *Courage* restriction is "common ground" nowadays "at any rate up to the High Court level".

## Pensions Ombudsman offers guidance on giving reasons for exercise of discretion

In the complaint of *Dr G (PO-18953)*, the Ombudsman upheld a complaint against a scheme administrator's use of a discretion not to award the partner of a deceased scheme member any benefits on the member's death.

The Ombudsman accepted that the scheme administrator had taken into account all the relevant factors in making its decision, but concluded that it had not documented reasons for reaching its conclusion, suggesting there was no supportable reason for the decision. The Ombudsman therefore directed the scheme administrator to reconsider whether the complainant should be entitled to death benefits.

Although the decision relates to scheme administrators, there is no reason to believe that a different approach would have been adopted in the case of a trustee. This determination may, therefore, alter how trustees should address and record decisions, at least in the eyes of the Ombudsman. Guidance from the Ombudsman's decision suggests the reasons given (and documented) need not be lengthy but should sufficiently convey to the reader:

- an understanding of the factors which have been given some weight;
- why some factors have been discounted; and
- whether there are grounds to challenge the decision.

Further consideration will need to be given to this issue. Although the Ombudsman has previously indicated that trustees should give reasons for, for example, rejecting an application for ill-health early retirement, the Ombudsman's approach in this case nevertheless reflects something of a departure from accepted practice. The Ombudsman's concern in this case was maladministration and it remains to be seen whether a court (whose concern would be the law and the trustees' fiduciary responsibilities) would take the same view of trustees' responsibilities and processes.

The full decision can be found [here](#).

## Contact us

If you wish to discuss any of these issues further, please contact your usual Baker McKenzie lawyer.

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