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### **In This Issue**

DB consolidation consultation published

Regulator issues guidance on DB superfunds

Pensions Dashboard: Government publishes feasibility report and consultation

New Brexit Regulations published to correct earlier error

Final PPF Levy Determination for 2019/20 published

CMA publishes final report on investment consultancy and fiduciary management services

### **Pensions Disputes News**

Court of Appeal dismisses appeal in BT RPI/CPI case

High Court issues further clarificatory judgment in the Lloyds GMP equalisation case

### **DB consolidation consultation published**

The Government has published a consultation on its proposals to create a regulatory framework for the commercial consolidation of defined benefit ("DB") schemes.

The Government is seeking views on the authorisation and regulation of "superfund" consolidation vehicles, of the type envisaged by the White Paper ("Protecting Defined Benefit Pension Schemes"), published in March 2018 and discussed further in our [March Update](#). Broadly, superfunds are DB pension schemes set up to accept bulk transfers of assets and liabilities from other DB Schemes, where member security is provided by capital injections from investors or both investors and the employer. The consultation ,which closes on 1 February, can be viewed [here](#).

The consultation is consistent with the Government's position on commercial consolidation vehicles, as expressed in the White Paper. It notes that the Government welcomes innovation in this area, but is conscious that these arrangements are likely to have a different risk profile to traditional DB pension schemes and so have their own set of challenges.

The consultation sets out the proposed broad framework for DB consolidation, including authorisation and ongoing supervision by the Pensions Regulator (the "Regulator"), the evidencing of financial sustainability, ongoing funding requirements and what trigger events and governance structures might be implemented. The paper also envisages a "gateway" requirement for potential participating schemes, which would mean that schemes that can afford to buy-out with an insurer, or may be able to do so within a certain timeframe, would not be able to consolidate using one of these vehicles.

[<<back to top](#)

## **Regulator issues guidance on DB superfunds**

Following publication of the DB consolidation consultation, the Regulator has issued three sets of guidance on DB superfunds:

- guidance for those setting up and running a superfund, including directors, senior managers and trustees;
- guidance for employers considering transferring to a DB superfund which notes that the Regulator expects employers to apply for clearance; and
- guidance for trustees considering transferring to a DB superfund, which requests notification to the Regulator with sufficient information to support the trustees' rationale for concluding that the transfer is in the best interest of scheme members.

The link to the guidance can be accessed [here](#).

*We will be discussing DB consolidation, together with other current pensions developments, at our upcoming Annual Seminar on 18 January 2019. Please contact your usual Baker McKenzie lawyer if you wish to attend.*

[<<back to top](#)

## **Pensions Dashboard: Government publishes feasibility report and consultation**

The Government has published a feasibility report and consultation papers in relation to the possibility of introducing pensions dashboards, which would allow consumers to access all their pensions information in one place.

The report assumes that the pensions industry would lead any new system, but, in the absence of a clear industry lead, the new Single Financial Guidance Body ("SFGB") would convene and oversee an industry delivery group to enable successful implementation of the required technology. Pension schemes would eventually be required by legislation to provide pensions data to members (with their consent) via pensions dashboards, but the report notes that this legislation will only be introduced when parliamentary time allows and following the creation of a "robust delivery model with the appropriate governance".

In the Autumn Budget 2018, the Government committed funding for 2019/20 to assist in fulfilling its role to introduce pensions dashboards. The report notes that there may be an opportunity to use existing industry levies to fund the dashboard service in a fair and equitable way, but the overall costs of the governance structure of the dashboard should be met by the pensions industry.

The consultation, which closes on 28 January 2019, can be viewed [here](#).

[<<back to top](#)

## **New Brexit Regulations published to correct earlier error**

The Government has re-issued the draft Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018, which were originally published in October (see our [October Update](#) for more details). The Regulations are due to come into force on "exit day" (29 March 2019), and are aimed at addressing a "no-deal" scenario where there is no transitional period, meaning that EU law has to be preserved in various areas affecting UK pensions.

As originally drafted, the Regulations would have resulted in UK pension schemes having to invest their assets predominantly in "UK regulated markets", rather than "regulated markets" (defined by reference to EU Investment Directives). The pensions industry was therefore concerned that UK schemes may have been under an obligation to disinvest from regulated markets outside the UK. This has been rectified in the revised draft of the Regulations.

[\*\*<<back to top\*\*](#)

## **Final PPF Levy Determination for 2019/20 published**

The Pension Protection Fund ("PPF") has published its final Levy Determination for 2019/20, launched following the consultation in September (see our [October Update](#)). ***The Determination confirms a PPF Levy estimate for 2019/20 of £500m. It also sets out the PPF's methodology for calculating the Levy for commercial consolidators following consultation responses and discussions with the Regulator and Department for Work and Pensions.*** The Determination can be viewed [here](#).

[\*\*<<back to top\*\*](#)

## **CMA publishes final report on investment consultancy and fiduciary management services**

The Competition and Markets Authority ("CMA") has published its final report on the supply and acquisition of investment consultancy and fiduciary management services in the UK, which can be viewed [here](#). The CMA published a provisional report in July 2018 (please see our [July Update](#) for more information), which contained proposed remedies to the issues identified (many of which have been taken forward, in some form, in the final report).

The main remedies put forward in the final report are:

- ***pension trustees who wish to delegate investment decisions for more than 20% of their scheme assets to a fiduciary manager must run a competitive tender with at least three firms.*** The CMA has concluded that a closed tender would be sufficient. In addition, trustees who have appointed a fiduciary manager without a tender must put the service out to tender within five years; and
- fiduciary management firms must provide potential clients with clear information on their fees and use a standard approach to show how they have performed for other clients.

The report also recommends that the Regulator produces new guidance to help trustees with these services.

The CMA is expected to issue draft legislation setting out its new requirements for consultation in early 2019, with implementation of the requirements expected to begin later in the year.

[\*\*<<back to top\*\*](#)

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## **Pensions Disputes News**

### **Court of Appeal dismisses appeal in BT RPI/CPI case**

The Court of Appeal has dismissed an appeal by BT against the High Court's ruling in connection with the correct application of the increase provisions in the BT Pension Scheme rules.

The High Court had previously ruled that the Retail Prices Index ("RPI") had not become "*inappropriate*" for the purposes of calculating pension increases, meaning that BT, in consultation with the Trustees, could not decide to use an alternative measure of inflation in place of RPI. The Court of Appeal agreed with this conclusion, ruling that "*whether RPI has become inappropriate is an objective state of affairs*". The judge

further noted that, if there were any dispute as to whether RPI had become inappropriate, that question would have to be determined by the court. ***Although the judgment makes some interesting observations in relation to how scheme rules should be construed, the outcome turned very much upon the specific wording of the pension increase rule in the Scheme.***

[<<back to top](#)

## High Court issues further clarificatory judgment in the *Lloyds* GMP equalisation case

On 6 December 2018, the High Court handed down a further supplementary judgment in the *Lloyds Bank* case, originally reported on in our [October Update](#), relating specifically to one of the methodologies available to equalise for the effect of Guaranteed Minimum Pensions ("GMPs").

The further hearing was heard on 3 December 2018, and the judge considered several consequential matters arising from his original judgment, including the application of "Method D2" to equalise benefits in circumstances in which use was to be made of the statutory process enabling GMPs to be converted into non-GMP benefits. The trustees of the Lloyds schemes had argued that "Method C2" had to be used to equalise benefits (i.e., the method favoured by the judge for the Lloyds schemes) before "Method D2" could be implemented (which is broadly a one-off calculation to convert GMPs into non-GMP benefits). Lloyds and the Crown, on the other hand, argued that Method D2 was "stand alone", meaning that it was not necessary first to equalise benefits in accordance with Method C2.

***The judge in the case agreed with Lloyds and the Crown, concluding that, for Method D2 to be implemented, the scheme actuary can simply determine the higher of the actuarial equivalents of the unequalised female and the unequalised male pensions, meaning that he or she is not compelled to adopt a two-stage process of equalising benefits and then determining the actuarial equivalent of the equalised pension before the conversion is implemented. The judge also concluded that it is for a pension scheme's actuary, and not the court, to determine the relevant actuarial methods (including relevant actuarial assumptions) to be used.***

[<<back to top](#)

## Contact us

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

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