

UK PENSIONS UPDATE

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Welcome to the July edition of our UK Pensions Update. This month has been characterised by a swathe of guidance and consultations; is it us or is there a feeling of desk clearing in the air ahead of the summer holidays? Whatever the reason, the majority of these developments are to be welcomed, addressing issues critical to the good governance of schemes. Affecting both DB and DC schemes, we have the new consultation on the future of trusteeship and governance. On the DC front, there has been updated guidance from the Pensions Regulator (the "Regulator") on the new investment disclosure requirements; on the DB side, there is new guidance from PASA on transfers, as well as a "Call to Action" from the industry working group on GMP equalisation. Now, where on earth is the inflatable alligator?.....

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Pensions Regulator consults on the future of trusteeship and governance

The Regulator has published an **industry consultation** with proposals to improve standards of governance in occupational pension schemes.

In the consultation, the Regulator sets out its vision for the future where all savers are in pension schemes that have excellent standards of governance and deliver good value. It also comments that, over time, it considers that there will be fewer, but better governed schemes in the market.

The consultation focuses on poor governance standards in smaller DC schemes, leading to a disparity in saver outcomes. The particular areas of focus for the Regulator are improving trustees knowledge and understanding and board diversity, and the consolidation of DC schemes. The consultation also asks for feedback on whether all pension schemes should be required to have a professional trustee.

Following our successful panel event on the topic of 21st Century Trusteeship earlier this year, we surveyed a sample of trustees on their recent experiences and views in this area. This [infographic](#) reveals some of our key findings.

GMP Equalisation Working Group publishes "Call to Action"

As mentioned in [last month's Update](#), the cross-industry GMP Equalisation Working Group was launched in January to assist the pensions industry, following the High Court's decision in relation to GMP equalisation (please see our [October](#) and [December](#) 2018 Updates for more details on the *Lloyds* judgment). The Working Group has now published its "Call to Action" on this topic, which can be viewed by clicking [here](#).

The Call to Action document is aimed primarily at trustees and their advisers, and covers the three main areas where the Working Group considers there are strong reasons for trustees to act immediately: (i) understanding and progressing GMP reconciliation and rectification; (ii) reviewing the quality of the data needed for GMP equalisation; and (iii) managing "impacted transactions" (i.e. those transactions that need to be completed now but may have to be revisited in the future, such as trivial commutation payments). The Call to Action document also notes that the Working Group will publish "good practice" approaches to deal with common issues in relation to the following areas later this year: Data, Impacted Transactions, Methodologies, Tax, Reconciliation and Rectification projects.

We have recently published a one-page summary of current [GMP equalisation](#) issues, which contains a particular focus on GMP conversion, given the possibility of this becoming one of the principal solutions used in the industry to address the legal obligations with respect to GMPs. Our summary gives background on the steps that trustees and employers should consider carrying out now in this area, pending final resolution of other outstanding legal issues.

New online tool launched to help employers with their automatic re-enrolment duties

The Regulator has published details of a new online [tool](#) which is designed to help employers with their re-enrolment duties.

Employers are required to automatically re-enrol all eligible jobholders every three years after their initial staging date (for example, if their eligible jobholders had opted out when originally enrolled). The tool helps employers identify what, if any, legal duties they will have to re-enrol eligible jobholders, taking into account details of the employer's particular workforce.

The new tool will be particularly relevant for smaller employers and newer employers who are dealing with re-enrolment for the first time. Most larger employers who had staging dates before 2016 will already have gone through the process of re-enrolment.

Statement in Parliament responds to 2014 Review of Survivor Benefits

The Government has issued a [Statement](#) in Parliament responding to the 2014 review of survivor benefits. It confirms that the Government does not intend to make any retrospective changes to legislation in order to equalise survivor benefits apart from the changes brought about by the Supreme Court decision in *Walker v Innospec*.

We expect most schemes will, where relevant, already have put in place amendments to ensure that their scheme is legally compliant following the *Walker v Innospec* decision. However, if any schemes do have rules which still provide for a pension in excess of GMP payable to a surviving civil partner or same sex spouse to be calculated by reference to service only from 5 December 2005, trustees should now take steps (in conjunction with the employer where necessary) to remove such a restriction.

The position in relation to contacted-out rights may require consideration in due course.

Pensions Regulator updates DC Investment Guidance and announces longer term project to consolidate Codes of Practice

As we have reported previously, various changes are being made to legislation from 1 October (with further changes coming into force in 1 October 2020) which will increase trustees' duties in

relation to what information they need to disclose about their scheme investments as part of their SIP and how it should be disclosed. The Regulator has now updated its **DC Guide to Investment Governance** to take these changes into account. This includes new guidance on what is meant by the terms "financially material considerations" and "stewardship", as well as practical suggestions on how trustees should approach the preparation of an implementation statement - one of the new requirements which are being introduced for DC schemes.

Trustees of DC schemes (including hybrid schemes with DC benefits) should take the new Guidance into account as part of their preparations for the forthcoming changes to the SIP requirements. The Regulator has not updated its DB guidance, although it should be noted that some (but not all) of the legal changes which are being made will also be relevant to DB schemes.

Separately, the Regulator has **announced** that it will be reviewing all of its current Codes of Practice and will eventually combine these into a single, shorter Code. The main impetus for this project stems from the UK's implementation of the IORP II Directive. This was brought into effect in January 2019, with the introduction of a new statutory requirement for occupational pension schemes to establish an effective system of governance (building on the previous requirement for trustees to have in place adequate internal controls), with the detail of what this principle means in practice to be covered as part of this new project. The Regulator has said that it expects that well-run schemes will already be meeting many of the new requirements and so, in practice, any revisions to the content of the Codes as part of this new project may not lead to schemes needing to make many substantive changes to their governance arrangements.

"From a practical perspective, if the review leads to a clearer and more streamlined body of regulatory expectations, that will be welcomed by trustees and the wider industry alike. As ever, the devil will be in the detail."
- Chantal Thompson, Partner in our London Pensions team



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Regulator issues joint statement on climate change

The Regulator, the Prudential Regulation Authority, the Financial Conduct Authority and the Financial Reporting Council have together issued a **joint statement in relation to climate change issues**. Within this, the relevant authorities urge companies to consider the likely consequences of climate change on their business decisions. From a pensions perspective, the Regulator not only warns trustees about the impact of climate change as a risk to long-term sustainability vis-a-vis the implementation of investment strategies, but also notes that many schemes are relying on employers whose financial positions and prospects for growth are dependent on current and future policies to address climate change.

PASA announces new DB transfer guidance

PASA has launched its new "**Guide to Good Practice**" in the area of DB scheme transfers, with the aim of creating "*faster, better communicated, more efficient and more cost effective approaches that scheme administrators and the industry as a whole, can execute*". The Guidance contains various suggested timelines for transfers, as well as template checklists and member communications. **Whilst the new Guidance is not legally binding, it is anticipated that it will be considered as good industry practice in the future, particularly by the Pensions Ombudsman in the context of transfer complaints. Against that background, we recommend that trustees liaise with their advisers and administrators without delay with a view to considering the adoption of the processes and templates set out in the Guidance.** A further "Part 2" of the guidance will be issued towards the end of 2019, covering "non-standard" or more complex transfer cases.

In particular, trustees should be aware of an important feature of the Guidance, which is the new "Transfer Template", to which both the Regulator and the FCA have inputted. This is a template document which contains all required scheme and member information in respect of a DB transfer, and is designed to be used by both advisers and administrators with the aim of reducing follow-up data requests from advisers and improving the quality of advice given to members.

Supreme Court refuses permission for the Government to appeal in firefighters' and judges' case

Many readers will have been following the litigation between members of the judges' and

firefighters' pension scheme and the Government with interest, not least because of the size of the potential liabilities involved and consequential strain on the public purse. The refusal by the Supreme Court to hear the Government's appeal means that the Government has now exhausted all avenues for appeal. A future employment tribunal hearing will determine the remedies, but recent Government estimates have put the cost of addressing the Court of Appeal's ruling in the region of £4 billion. The size of the price tag is partly due to the fact that the Government has confirmed that it will address inequality in all public sector schemes, not just the judges' and firefighters' schemes.

For background, in January 2019, the Court of Appeal ruled that transitional provisions in the judges' and firefighters' schemes under which, broadly, older members were permitted to stay in their original defined benefits scheme for longer before having to move to a career average scheme, were discriminatory on the grounds of age, race and equal pay. For further detail of the Court of Appeal decision, please see our [January Update](#).

BT denied right to appeal by Supreme Court

As reported in our [December 2018 Update](#), the Court of Appeal dismissed an appeal by BT against the High Court ruling that RPI had not become inappropriate for the purpose of calculating pension increases. The Supreme Court has denied BT the right to appeal.

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