

## Bulletin for Pensions Managers

In this issue:

1. Pensions news
4. Pensions litigation
5. Mayer Brown events
6. Dates to note over the next 12 months

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### Pensions news

#### BRIDGING PENSIONS AND CHANGES TO STATE PENSION AGE: NEW REGULATIONS

New [regulations](#), which come into force on 1 October 2013, give trustees a power to amend their scheme by resolution to alter the age at which bridging pensions stop and/or the reduction made to a member's pension when their bridging pension stops. The power is very flexible, but is subject to various restrictions. See our [client alert](#) for more information.

The Finance Act 2013 allows bridging pensions to be paid to the later of age 65 and the member's state pension age without incurring a tax charge.

#### Action

Schemes should consider whether or not to amend their bridging pension rules.

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#### FINANCE ACT 2013: TAX CHANGES

The [Act](#) has now received Royal Assent. Its pensions-related content includes the following:

- The terms of the employee's income tax exemption on employer pension contributions are restricted from 6 April 2013 so that it only applies where contributions are made to the employee's own pension arrangements rather than to arrangements for the benefit of an employee's family member.

#### Action

Check whether employer pension contributions made in respect of any employees will now fall outside the income tax exemption.

- The capped drawdown limit is increased to 120% of an equivalent annuity with effect from 26 March 2013.

#### Action

Ensure that the new drawdown limit is applied.

- The lifetime allowance is reduced to £1.25m and the annual allowance (AA) is reduced to £40,000 from 6 April 2014.

#### Action

Note that the reduced AA affects pension input periods beginning on or after **7 April 2013**.

#### Action

Consider reviewing schemes for particular features which could cause members to breach the reduced AA.

#### Action

Where arrangements have been made, contractually or by rule amendment, to cap accrual to prevent the AA being exceeded, review the terms of those arrangements. Consider whether such arrangements should be extended to other members and what communications should be made about them.

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#### LIFETIME AND ANNUAL ALLOWANCES: NEW REPORTING REQUIREMENTS

[Regulations](#) came into force on 12 August 2013 which impose a requirement on scheme administrators to report, among other things, the following to HMRC:

- members who have claimed fixed protection 2014; and
- members to whom the scheme has provided a pension savings statement (for annual allowance calculation purposes) in the previous tax year.

#### Action

Ensure that the relevant information is included in the scheme's ent Report.

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## LIFETIME ALLOWANCE: FIXED PROTECTION 2014

The Finance Act 2013 provides for a fixed protection regime to apply to the 2014 reduction in the lifetime allowance (LTA). The regime will allow members with pension savings valued at over £1.25 million to retain the higher LTA of £1.5 million from 6 April 2014. Broadly, fixed protection will be lost if the member makes further pension savings after 6 April 2014.

Regulations came into force on 12 August 2013 which set out the procedure for obtaining fixed protection 2014. Individuals must submit a form (online or in hard copy – accompanying notes are also available) to HMRC. Forms must be received by HMRC by 5 April 2014.

HMRC has updated its guidance on the lifetime allowance to reflect the fact that individuals can now apply.

### Action

Trustees and employers may wish to ensure that members are aware of their option to apply for fixed protection 2014 and have the right information to make an informed decision, but will need to be careful not to be too helpful and thereby run the risk of potential liability where a member decides they made the “wrong” decision.

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## MARRIAGE (SAME SEX COUPLES) ACT 2013: PENSIONS CONTENT

The Act has now received Royal Assent and the first same sex marriages are expected to take place in 2014. Under the Act, same sex spouses will be entitled to the same pension benefits as must be provided under the Equality Act 2010 for civil partners, but the DWP is required to review the position in relation to pension benefits for same sex spouses and civil partners and to publish a report on the outcome of the review by 1 July 2014.

The DWP has estimated that the cost for contracted-in private sector schemes of equalising benefits for same sex spouses and civil partners would be £18m.

### Action

Schemes will need to consider what benefits they intend to provide to same sex spouses and whether they wish to make any changes to the benefits provided to civil partners.

### Action

Schemes may need to be amended to reflect the benefits to be provided to same sex spouses.

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## DC GOVERNANCE: NEW CODE OF PRACTICE

The Pensions Regulator has published the final version of its new code of practice on the governance and administration of workplace DC pension schemes.

The Code is divided into five core areas of scheme governance and sets out, for each of these areas, the features of a “quality” DC scheme, trustees’ legal duties, and practical guidance to help trustees discharge their duties.

The Code does not say anything particularly new about DC governance, but rather brings together in one place the elements of other codes of practice which are relevant to DC schemes.

The Code will come into force this autumn.

### Action

Employers, trustees and administrators of DC schemes should review the new Code to identify any areas of scheme governance and administration which may need improvement.

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## PENSION CHARGES CODE OF CONDUCT: WEB-TOOL LAUNCHED

An online pension charges calculator web-tool has been launched to help employers select cost-efficient DC schemes for automatic enrolment. The web-tool’s launch means that all provisions of the joint industry code of conduct on pension charges should be followed by anyone providing advice and support to employers on DC workplace pension schemes. The Code requires advisers and providers to give examples of the effect of charges on employee pension pots either directly or through the use of the web-tool.

### Action

No action required, but employers who are selecting new pension arrangements should ensure that they receive the Summary of Charges required by the Code.

## QUALITY STANDARDS IN DC SCHEMES: CALL FOR EVIDENCE

The DWP has published a [call for evidence](#) on quality standards in DC schemes which sets out five key areas relating to DC schemes, explains why the DWP considered those areas to be important, and asks for evidence about current practice in those areas.

### Action

No action required.

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## REVISED DISCLOSURE OF INFORMATION REGULATIONS

The DWP has [confirmed](#) that, subject to some minor amendments, it will proceed with its proposed revised disclosure of information regulations, which are designed to consolidate, simplify, update and where possible harmonise pension disclosure requirements. However, the regulations will now come into force on 6 April 2014 rather than 1 October 2013 as originally proposed. The revised regulations will be laid before Parliament after the summer recess.

### Action

No action currently required, but once the regulations are published, schemes should consider what changes they need to make to their disclosure procedures.

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## INFORMATION COMMISSIONER: CODE OF PRACTICE ON SUBJECT ACCESS REQUESTS

The Information Commissioner has published a [code of practice](#) on dealing with subject access requests. The Code explains the rights that individuals have to access their personal data, and what data controllers must do to comply with their duties with regard to subject access requests.

### Action

No action required, but schemes which receive a subject access request should review the Code before responding.

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## FCA: CONSULTATION ON CHANGES TO LISTING RULES

The FCA is [consulting](#) on the removal of requirements relating to the reporting of directors' remuneration

(including pension benefits) which are duplicated by the new reporting requirements for quoted companies being introduced from 30 September 2013 by recent regulations (see our [May/June Bulletin](#)). The changes to the Listing Rules will come into force for financial years ending on or after 1 January 2014.

### Action

No action required.

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## PPF: 2013/14 LEVY INVOICING INFORMATION

The PPF has updated its [invoicing pages](#) with the following information on the invoicing of the 2013/14 levy:

- an updated guide that explains how the levy invoice is calculated;
- sample invoices; and
- updated FAQs.

The PPF has now started issuing invoices for the 2013/14 levy.

### Action

No action required.

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## PPF: NEW INSOLVENCY RISK RATING PROVIDER

The PPF has [announced](#) that, with effect from the 2015/16 levy year, employer insolvency risk ratings will be provided by Experian rather than Dun & Bradstreet.

### Action

No action required.

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## HMRC: PENSIONS NEWSLETTER 58

HMRC has published [issue 58](#) of its Pensions Newsletter. The issue includes:

- an update on fixed protection 2014 and individual protection;
- a summary of the pensions-related provisions of the Finance Act 2013; and
- an update on QROPS for scheme administrators.

### Action

No action required.

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## ABOLITION OF NEST CONSTRAINTS

The DWP has [confirmed](#) that the contributions cap and bulk transfer restrictions applicable to NEST will be abolished from April 2017, and that the individual transfer restrictions will be abolished when the automatic transfer system for small DC pots is launched.

### Action

No action required, but the eventual abolition of the constraints may make NEST a more attractive automatic enrolment vehicle.

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## AUTOMATIC ENROLMENT: FIRST COMPLIANCE NOTICE ISSUED

The Pensions Regulator has issued its first automatic enrolment compliance notice to an unnamed employer as well as issuing a further 38 warning notices. A compliance notice sets out specific remedial action that the recipient is required to take in order to comply with its automatic enrolment obligations.

### Action

No action required.

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## Pensions litigation

### THE NORTEL AND LEHMAN COMPANIES

The Supreme Court has [held](#) that liabilities arising under a financial support direction (FSD) issued after the insolvency of the recipient company rank alongside the debts that the company owes to its unsecured creditors and behind the debts it owes to its secured creditors. The decision overturns the Court of Appeal's ruling that the liabilities ranked as an expense of the administration or liquidation and therefore ahead of the company's unsecured debts and ahead of some secured debts. The Supreme Court's decision means that liabilities arising under an FSD issued after the insolvency of the recipient company will now have the same priority as section 75 debts.

### Action

No action required.

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## PPG HOLDINGS

The Court of Justice of the European Union (ECJ) has [held](#) that an employer that has established a pension scheme and has paid for management and investment management services relating to that scheme can deduct the VAT charged on those services if there is a direct and immediate link between the services and the employer's economic activities as a whole.

It is not clear whether this means that UK employers will be able to deduct VAT paid on investment management services that they have paid for relating to their occupational pension schemes and if so, what conditions will need to be met in order for a direct and immediate link to be shown (the ECJ held that it was for the national court to decide whether there was such a link). HMRC is expected to issue a policy statement in light of the ECJ's decision, but it is not known when this statement will be published.

For more information, please see our [client alert](#).

### Action

UK employers may wish to make a protective VAT claim covering the last four years.

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## PELL FRISCHMANN CONSULTANTS V PRABHU

The High Court has [held](#) that an employer could launch High Court proceedings to determine a member's disputed pension rights prior to the end of the scheme's IDRPs and thereby effectively pre-empt the member's complaint to the Pensions Ombudsman.

The Court held that even though the employer acknowledged that it had issued proceedings so that the dispute would be heard in a jurisdiction where they could seek to recover costs from the member and where witnesses could be cross-examined on their evidence, this did not amount to an abuse of process or breach of the overriding objective of the Civil Procedure Rules.

### Action

No action required.

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## PROCTER & GAMBLE V SVENSKA CELLULOSA

The appeal against the High Court decision in this case, which dealt with the transfer of occupational pension rights on a business sale, has now been settled and the appeal dismissed without a hearing.

### Action

No action required.

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## PENSIONS LIBERATION: TEST CASE

A test case has been launched in the High Court which seeks to establish the legal status of pension schemes which are used for pensions liberation purposes. The hearing has been adjourned until this autumn.

### Action

No action required.

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## Mayer Brown events

If you, any of your colleagues or any of the trustees of your scheme(s) are interested in attending any of our events, please contact Katherine Dixon ([kdixon@mayerbrown.com](mailto:kdixon@mayerbrown.com)) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**

Our Foundation Course aims to take trustees through the pensions landscape and the key legal principles relating to DB funding and investment matters, as well as some of the specific issues relating to DC schemes, in a practical and interactive way.

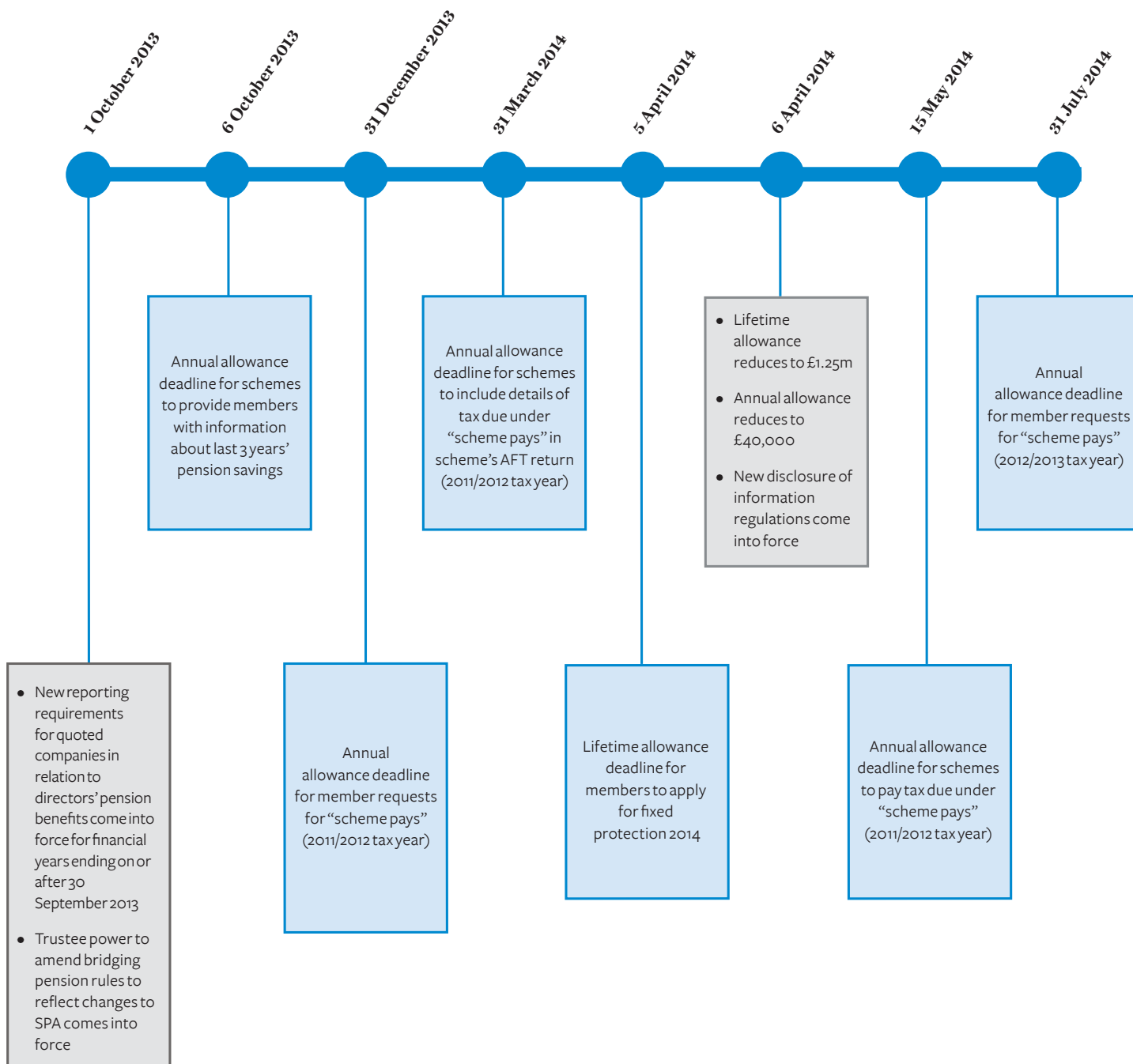
10 December 2013

- **Trustee Building Blocks Classes**

Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management. Each class considers a specific issue which trustees are likely to face in their role.

19 November 2013 – DC pension schemes

## Dates to note over the next 12 months



Key:  Important dates to note  For information

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This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

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