

THE PENSIONS BRIEF

At a glance...

Issues affecting all schemes

PENSIONS OMBUDSMAN ▲

Updated signposting wording to reflect the transfer of TPAS' dispute resolution function to the Ombudsman

INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT ▲

CMA provisional decision in its investigation into the investment consultancy and fiduciary management markets

LIFE ASSURANCE ARRANGEMENTS AND QROPSs ▲

Proposed changes to the tax treatment of employer contributions to life assurance arrangements and QROPSs

VALIDITY OF TRUSTEE EXERCISE OF AMENDMENT POWER

Court of Appeal decision on the validity of a trustee amendment introducing a discretionary pension increase power

OVERSEAS TRANSFERS

Tribunal decision on trustee reliance on HMRC's QROPS list

Issues affecting DB schemes

EMIR PENSION SCHEME CLEARING EXEMPTION

FCA announcement about expiry of the current exemption for pension schemes from the clearing obligation under EMIR

Issues affecting DC schemes

MASTER TRUST AUTHORISATION AND SUPERVISION FRAMEWORK ▲

Pensions Regulator code of practice laid before Parliament for approval and Regulator consultation on a draft enforcement policy

▲ Action required

▲ Follow development and keep under review

Issues affecting all schemes

Pensions Ombudsman – updated “signposting” wording

The Pensions Ombudsman has circulated generic “signposting” wording for schemes to use to inform members of their right to refer complaints about the administration of the scheme to the Ombudsman. The wording has been circulated in light of, and to reflect, the transfer of the Pensions Advisory Service’s dispute resolution function to the Ombudsman.

Action

Trustees should ensure that any future communications to members which are required to include Ombudsman signposting language use the updated wording.

Investment consultancy and fiduciary management – provisional CMA decision

The Competition and Markets Authority (“**CMA**”) has published the [provisional decision report](#) in its investigation into the investment consultancy and fiduciary management markets. The CMA has identified competition problems in both markets, but considers that these problems exist to a greater degree in the fiduciary management market. Its recommendations include requiring trustees to run a competitive tender process when appointing a fiduciary manager for the first time.

The CMA’s provisional decision is open for comment until 24 August 2018, and the CMA must publish its final report by 13 March 2019. For more information, please see our [legal update](#).

Action

Trustees, especially those who have appointed or are considering appointing a fiduciary manager, should keep the process of the CMA’s investigation under review.



Life assurance arrangements and QROPS – employer premiums/contributions

HMRC has published [draft legislation](#) changing the tax treatment of premiums paid by employers to life assurance arrangements and employer contributions to qualifying recognised overseas pension schemes (QROPSs) so that premiums/contributions will be tax-exempt if the beneficiary is an individual or a registered charity. The draft legislation would take effect from 6 April 2019. HMRC has also published an accompanying [policy paper](#).

Action

Employers who offer a life assurance arrangement and/or pay contributions to QROPSs should keep the progress of the draft legislation under review.

Validity of trustee exercise of amendment power

The Court of Appeal has [upheld](#) BA's appeal against the High Court's decision that the trustee of the Airways Pension Scheme had validly exercised the Scheme's amendment power to introduce a trustee power to pay discretionary pension increases. The Court held that, although introduction of the discretionary increase power was within the scope of the Scheme's amendment power, it amounted to an exercise of the amendment power for an improper purpose as, under the Scheme's trust deed and rules, the trustee's role was to "manage and administer the scheme; not to design it".

British Airways plc v Airways Pension Scheme Trustee Limited [2018] EWCA Civ 1533

Action

No action required.

Overseas transfers – reliance on HMRC QROPS list

The First-tier Tribunal has [held](#) that the fact that an overseas pension scheme was on HMRC's list of qualifying recognised overseas pension schemes (QROPSs) did not mean that the scheme was in fact a QROPS. As the scheme had failed to meet the conditions to be a QROPS, four transfers to the scheme were therefore unauthorised payments.

Gordon and others v HMRC [2018] UKFTT 307 (TC)

Action

No action required.

Issues affecting DB schemes

EMIR – pension scheme clearing exemption

The FCA has announced that it will not require trustees and their counterparties to start putting processes in place to clear derivatives which they are currently exempt from clearing under the European Market Infrastructure Regulation (EMIR) between 17 August 2018 (the date on which the current exemption expires) and the coming into force of a new exemption under the EMIR Refit Regulation.

Action

No action required.



Issues affecting DC schemes

Master trusts – authorisation and supervision framework

The Pensions Regulator has published the finalised code of practice for master trusts which has been laid before Parliament for approval, as well as a response to its consultation on the draft code of practice.

The Regulator has also published a consultation on a draft supervision and enforcement policy for authorised master trusts. The policy sets out how the Regulator:

- will supervise master trusts as well as more intensively scrutinise higher risk master trusts; and
- may use its powers to enforce against master trusts if problems arise or legislation is breached, and ultimately withdraw authorisation if a master trust no longer meets the authorisation criteria or other obligations.

The consultation closes on 23 August 2018.

Action

Trustees of schemes which will become subject to the master trust authorisation and supervision framework should ensure that they are making arrangements to submit an authorisation application, and should keep the progress of the Regulator's consultation on the draft supervision and enforcement policy under review.

Mayer Brown events and publications

Announcements

[Ian Wright](#) has been elected to the Pensions Management Institute's Advisory Council. The Council advises the PMI's Board on the strategic direction of the PMI, and provides technical input and expertise on industry issues.

Upcoming events

If you are interested in attending any of our events, please contact Katherine Carter (kcarter@mayerbrown.com) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

Trustee Foundation Course

11 September 2018 **FULLY BOOKED**

11 December 2018

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.

Trustee Building Blocks Classes

13 November 2018 – internal controls and risk management

Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management. They are designed to be taken by trustees who have already taken our Foundation Course.

Annual Pensions Conference

7 November 2018

Our Annual Pensions Conference will address some of the ways in which pension scheme stakeholders can collaborate to achieve good outcomes.

The View from Mayer Brown – UK Pensions Law Podcasts

Every month [Richard Goldstein](#), a partner in our Pensions Group, places a spotlight on key developments that could affect your scheme in a podcast. Just 10-15 minutes long and available on iTunes, the podcasts provide a quick and easy way to stay on top of current issues in pensions law.

Listen to or subscribe to The View from Mayer Brown UK Pensions Law Podcasts via iTunes here:



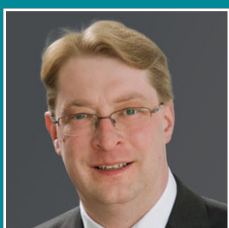
Please note – subscribing above will only work on a device with iTunes installed. Alternatively, if you don't have iTunes, you can access the podcasts via our [website](#).

Mayer Brown media comment

- [Stuart Pickford](#) was quoted in CityAm, Law360, Professional Pensions, Pensions Age and Pensions & Investments articles on the Court of Appeal decision in the *BA v Airways Pension Scheme Trustee* case

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

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Dates to note over the next 12 months



Key:

- Important dates to note
- For information

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