

THE PENSIONS BRIEF

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Issues affecting DB schemes

- ▲ **2019/20 PPF LEVY**
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- CHANGING INDEXATION MEASURES**
Court of Appeal decision on interpretation of a power to change indexation measures.
- ▲ Action required
- ▲ Follow development and keep under review

Issues affecting all schemes

Investment consultancy and fiduciary management – CMA final decision

The Competition and Markets Authority (CMA) has published the [final decision report](#) in its market investigation into the investment consultancy and fiduciary management services provided to institutional investors, in particular pension scheme trustees. The CMA has identified competition problems in both the investment consultancy and fiduciary management markets from which substantial customer detriment may result. Its remedies include a requirement for trustees to:

- run a competitive tender process in some circumstances when appointing a fiduciary manager; and
- set strategic objectives for their investment consultant.

For more information, please see our [legal update](#).

Action

Trustees should keep the progress of implementation of the CMA's remedies under review so that they can comply with the new requirements when they come into force.

Brexit – impact on pensions legislation

Revised [regulations](#) have been laid before Parliament for approval that make changes to pensions legislation to reflect Brexit. The previous version of the regulations (see the October 2018 [Pensions Brief](#)) contained a drafting error which would have meant that, post-Brexit, the assets of a trust-based scheme must consist predominantly of investments admitted to trading on UK regulated markets. The revised regulations correct this error so that, post-Brexit, assets must consist predominantly of investments admitted to trading on UK or EU regulated markets. Once approved by Parliament, the regulations will come into force on the date of Brexit.

Action

Once the regulations have been approved by Parliament, trustees should ask their investment consultant whether changes to the scheme's investment portfolio will be required.

Automatic enrolment – earnings figures

The government has [announced](#) that the automatic enrolment earnings figures for the 2019/20 tax year will be set as follows:

- earnings trigger: £10,000
- qualifying earnings band: £6,136 – £50,000 (corresponding with the lower and upper earnings limits for National Insurance contributions)

Action

Employers should ensure that their automatic enrolment processes are updated to reflect the new earnings figures when these come into force.



Pensions dashboards – government proposals

The government is consulting on its recommendations for how the pensions industry can develop pensions dashboards. Among other things, the consultation proposes that pension schemes will be required by legislation to provide members' data (with their consent) to the pension finder service. The government expects the industry to start providing data on a voluntary basis from 2019, with compulsory onboarding occurring over the next three to four years. The consultation closes on 28 January 2019.

Action

Trustees should keep the progress of the government's proposals under review.

Pensions Ombudsman – early dispute resolution and jurisdiction

The government is consulting on measures to, among other things:

- give the Pensions Ombudsman a new early dispute resolution function; and
- expand the range of circumstances in which employers can make a complaint or refer a dispute to the Ombudsman.

The consultation closes on 18 January 2019.

Action

No action required.

Age discrimination – benefit changes

The Court of Appeal has held that transitional provisions in the regimes establishing the new judicial and firefighters' pension schemes constituted unlawful age discrimination. Under the transitional provisions, serving judges/firefighters were compulsorily transferred to the new schemes which offered less favourable benefits. Some older judges/firefighters were entitled to remain in the old schemes until either retirement or the end of a tapered period, depending on their age.

The Court held that the government had failed to establish a legitimate aim in implementing the transitional provisions. The Court also held that arguments that the transitional provisions gave rise to a claim for equal pay (on the basis that they disproportionately affect women) and amounted to indirect race discrimination were made out.

Action

Employers and trustees wishing to make benefit changes should consider whether those changes have a potentially discriminatory effect on members and, if so, whether the changes are objectively justified as a proportionate means of achieving a legitimate aim.



Issues affecting DB schemes

PPF levy – finalised rules for 2019/20

The Pension Protection Fund (PPF) has published the finalised rules, guidance and other documentation for the 2019/20 levy. Among other things, these confirm that where a scheme has had to re-execute a Type A or Type B contingent asset using the PPF’s new standard forms because the existing contingent asset contains a fixed cap, the re-executed contingent asset will need to be submitted to the PPF with the same documentation and confirmations as for a “new” contingent asset. However, the PPF will accept “refreshed” versions of existing legal opinions and of some guarantor strength reports/financial reviews.

The deadline for provision of most information and documentation in connection with the 2019/20 PPF levy, including certification of contingent assets and asset-backed contribution arrangements, is 31 March 2019.

Action

Trustees and employers with existing Type A and Type B contingent assets should confirm whether they are subject to the re-execution requirement.

Action

Trustees and employers should ensure that any information and documentation required by 31 March 2019 is submitted by that date.

GMP equalisation – further Court guidance

In a follow-up judgment in the *Lloyds* case, the High Court has clarified that Method D2 (i.e. statutory GMP conversion) can be used to equalise and convert GMPs without a need for the benefits to be first equalised using another method such as Method C2.

Action

Trustees and employers should take the Court’s decision into account when deciding what GMP equalisation process to adopt.

DB superfunds – authorisation and supervision

The government is consulting on a proposed legal and regulatory framework for the authorisation and supervision of DB consolidation vehicles or “superfunds”. The Pensions Regulator would be responsible for the authorisation and supervision of superfunds. The consultation closes on 1 February 2019.

The Regulator has also published guidance for trustees and employers who are considering transferring their scheme to a DB superfund.

Action

No action required.

Power to change indexation measures

The Court of Appeal has rejected an appeal against the High Court’s decision that RPI has not become inappropriate for the purposes of a scheme’s pension increase rule. The Court held that whether RPI has become inappropriate is an objective state of affairs that is fact-sensitive and a matter of evaluative judgment and, if there is any dispute, has to be determined by the Court. The High Court judge was entitled to come to the decision that he did on the evidence, and he had not erred in his approach or in principle in reaching that decision.

Action

No action required.



Mayer Brown news

Award shortlisting

Mayer Brown has been shortlisted for “**Pensions Law Firm of the Year**” at the Pensions Age Awards 2019.

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

26 February 2019

14 May 2019

17 September 2019

10 December 2019

Trustee Building Blocks Classes

18 June 2019

12 November 2019

Annual Pensions Conference

2 October 2019

The View from Mayer Brown: UK Pensions Law Podcasts

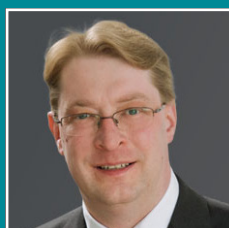
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Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



Ian Wright

Co-Head of Pensions, London

E: iwright@mayerbrown.com

T: +44 20 3130 3417



Jay Doraisamy

Co-Head of Pensions, London

E: jdoraisamy@mayerbrown.com

T: +44 20 3130 3031

Dates to note over the next 12 months



Key:

- Important dates to note
- For information

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