

The Pensions Brief

At a glance...

Issues affecting all schemes

▲ SINGLE FINANCIAL GUIDANCE BODY

Regulations naming the body

▲ INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT

Government response to the CMA report on its investigation into the investment consultancy and fiduciary management markets

SPONSORING EMPLOYER

DIRECTORS' DUTIES

High Court decision on the duties owed by sponsoring employer directors who are also pension scheme trustees

DISABILITY DISCRIMINATION

Pensions Ombudsman determination on a claim for disability discrimination by association

Issues affecting DB schemes

▲ DB FUNDING

Pensions Regulator 2019 DB funding statement

RETROSPECTIVE AMENDMENTS

Advocate General opinion on the retrospective levelling-down of benefits to equalise normal retirement ages

Issues affecting DC schemes

COLLECTIVE DC SCHEMES

Government response to its consultation on CDC schemes

▲ Action required

▲ Follow development and keep under review



Issues affecting all schemes

Single financial guidance body – naming

Regulations will come into force on 6 April 2019 that name the single financial guidance body (SFGB) “the Money and Pensions Service”. They also replace references to the Pensions Advisory Service (TPAS), Pension Wise and the Money Advice Service in legislation, including occupational pensions disclosure legislation, with references to the Money and Pensions Service. For more information, please see our [legal update](#).

Action

Once the SFGB confirms that it has adopted the Money and Pensions Service brand, schemes should update their member communications to replace references to TPAS and Pension Wise with references to the Money and Pensions Service.

Investment consultancy and fiduciary management – government response to CMA report

The government has published a [response](#) to the Competition and Markets Authority’s (CMA) final report in its investigation into the investment consultancy and fiduciary management markets. The response sets out the responses of the government and the Pensions Regulator to the recommendations addressed to them in the CMA’s report. They accept all of the CMA’s remedies and, among other things:

- The government will consult on regulations putting those of the remedies that apply to trustees into the main body of pensions law. Subject to the outcome of that consultation and Parliamentary time, the regulations will be brought into force to replace the CMA order in 2020.
- The Regulator will consult this summer on guidance to support trustees in complying with the new governance requirements to be imposed by the CMA order.

For more information on the CMA’s remedies order, please see the [February 2019 issue](#) of The Pensions Brief.

Action

Trustees should keep the progress of implementation of the CMA’s remedies under review.

Sponsoring employer directors – duties owed when also pension scheme trustees

The High Court has held that directors of the sponsoring employer of an executive pension scheme did not, as trustees of the scheme, owe any fiduciary duties to the employer. The trustees were entitled to take account of the employer's interests, but only where those interests did not conflict with the trustees' primary duty to the scheme's beneficiaries. The Court also held that the directors were not in breach of duty to the employer by adopting a conservative scheme investment and funding strategy. While adoption of such a strategy was to the advantage of scheme members, this did not necessarily mean that it was to the disadvantage to the employer or that it was contrary to the interests of the employer and/or improper.

KeyMed (Medical & Industrial Equipment) Limited v Hillman and another [2019] EWHC 485 (Ch)

Action

No action required.

Disability discrimination – discrimination by association

The Deputy Pensions Ombudsman has decided that an employer's refusal to award a member full ill-health early retirement benefits did not amount to indirect disability discrimination. The member had argued that he was entitled to the benefits as he was being forced to cease employment to care for his disabled son. UK law does not currently recognise that discrimination by association applies to a claim for reasonable adjustments on the grounds of disability. There was therefore no legal obligation on the employer to make reasonable adjustments to accommodate the member's caring responsibilities.

Mr H (PO-20991)

Action

No action required.

Issues affecting DB schemes

DB funding – Pensions Regulator annual statement

The Pensions Regulator has published its 2019 [DB funding statement](#). The statement is targeted at schemes undergoing a valuation with an effective date between 22 September 2018 and 21 September 2019, and schemes undergoing significant changes that require a review of their funding and risk strategies. The statement sets out the Regulator’s views on various funding issues and the Regulator’s expectations of trustees and employers. For more information, please see our [legal update](#).

Action

Trustees and employers of DB schemes undergoing a valuation with an effective date between 22 September 2018 and 21 September 2019 and schemes otherwise reviewing their funding and risk strategies should review the statement and factor it into their funding discussions. Trustees and employers of other DB schemes may also find the statement useful.

Retrospective levelling-down of benefits – Advocate General opinion

The Advocate General of the Court of Justice of the EU (CJEU) has [concluded](#) that the prohibition under EU law on the retrospective levelling-down of benefits applies even when, as a matter of domestic law, a scheme’s rules permit retrospective levelling-down. In this case, the scheme had levelled down benefits for the period between the date of a written announcement of intended changes to equalise the scheme’s normal retirement age and the date when the rules were actually amended.

No date for the CJEU’s judgment has been set. However, the CJEU rarely departs from the Advocate General’s opinion.

Safeway Limited v Newton and another [2019] EUECJ C-171/18_O

Action

No action required.

Issues affecting DC schemes

Collective DC schemes – consultation response

The government has responded to its consultation on establishing a legislative and regulatory framework for collective DC (CDC) schemes. The response confirms that the government will introduce legislation to provide a framework for single and associated employer CDC schemes. Under the new framework, CDC schemes will be occupational pension schemes which must be registered with HMRC and authorised by the Pensions Regulator. Benefits under CDC schemes will be classified as money purchase. Once the framework for this model of CDC scheme has been established, the government will work with interested parties to develop a framework for other CDC models such as master trusts, decumulation-only vehicles and other commercial models.

Action

No action required.

Mayer Brown news

Award shortlistings

Mayer Brown has been shortlisted for:

- **"Pension Lawyers of the Year"** at the UK Pensions Awards 2019; and
- **"European Pensions Law Firm of the Year"** at the European Pensions Awards 2019

Upcoming events

All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**
21 May 2019
17 September 2019
10 December 2019
- **Trustee Building Blocks Classes**
18 June 2019 – DC governance
12 November 2019 – DB funding and investment
- **Annual Pensions Conference**
2 October 2019

Employer Perspectives – news and views on employment and pensions issues

Visit the blog at employerperspectives.com and [subscribe to blog updates via email](#).

The View from Mayer Brown: UK Pensions Law Podcasts

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

- [Stephen Walsh](#) will be speaking at the 17th Conference on Bulk Annuities which is being held in London on 9-10 April 2019.

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

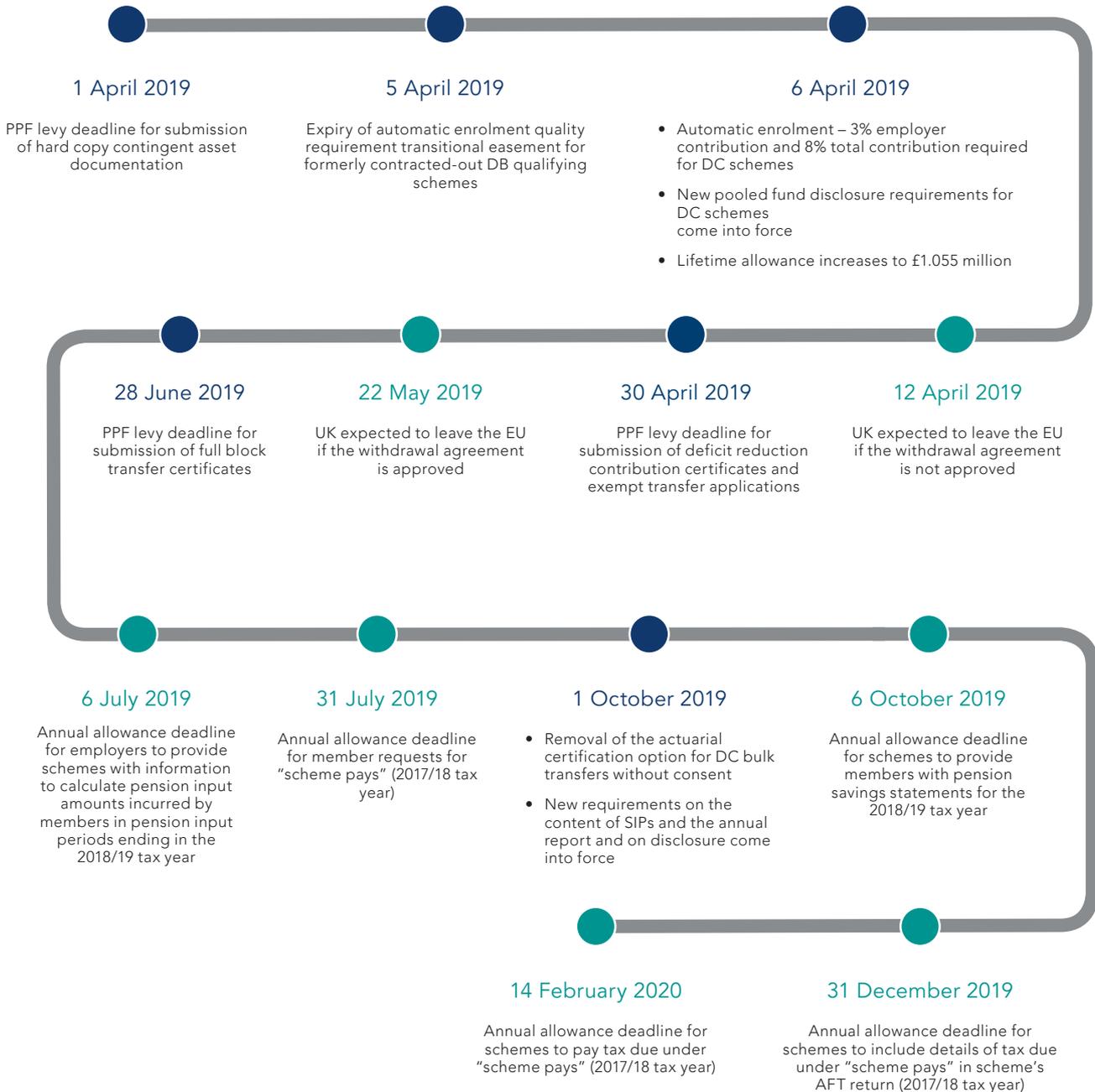
Co-Head of Pensions, London
E: iwright@mayerbrown.com
T: +44 20 3130 3417



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

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the “Mayer Brown Practices”) and non-legal service providers, which provide consultancy services (the “Mayer Brown Consultancies”). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. “Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2019 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.