

# The Pensions Brief

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### Issues affecting all schemes

#### ▲ COVID-19: PENSIONS REGULATOR

Guidance for employers on calculating pension contributions under a salary sacrifice arrangement for furloughed employees

Guidance for trustees on communicating with members during the pandemic

Update on administrative and governance reporting duties and its more flexible approach to enforcement activity

Guidance for employers on automatic enrolment and DC pension contributions

### Issues affecting DB schemes

#### ▲ RETAIL PRICES INDEX CASE

The High Court confirms the Pensions Ombudsman decision that the rules required Retail Prices Index increases was correct

#### ▲ RETAIL PRICES INDEX REFORM

Consultation deadline extended to 21 August 2020

#### ▲ ANNUAL FUNDING STATEMENT

The Pensions Regulator reflects on both COVID-19 and the long term direction in its annual funding statement

#### ▲ GMP EQUALISATION

The extent to which past transfers out need to be revisited will be heard in the second hearing of this case

▲ Action required

▲ Follow development and keep under review



## Issues affecting all schemes

The Pensions Regulator has issued further COVID-19 guidance. This is summarised below.

### COVID-19: tPR issues salary sacrifice guidance for large employers

tPR has published new guidance on calculating pension contributions under a salary sacrifice arrangement for furloughed employees. It has also updated its **guidance** for trustees on DC scheme management and investment.

The new guidance sets out examples of the interaction between salary sacrifice and grants from the government's Coronavirus Job Retention Scheme (CJRS). It also contains practical points for employees and trustees to ensure the administration of salary sacrifice arrangements is done correctly.

The guidance confirms that any grant payable to an employer under the CJRS does not change an employer's usual pension contribution obligations or processes. As the operation of a salary sacrifice arrangement is a contractual one, separate from any obligations under the scheme's governing documents and the auto-enrolment requirements, the first step is for an employer to consider their contractual obligations.

The guidance confirms that COVID-19 counts as a life event which means changes can be made to salary sacrifice arrangements subject to amending existing contracts of employment. The guidance also addresses the factors employers will need to consider if an employer wants to reduce their contribution to the auto-enrolment statutory minimum, including where this may involve an amendment to the scheme's governing documents.

Where an employer self-certifies because its scheme meets the alternative auto-enrolment statutory minimum contribution requirements, the guidance states that employers may be able to change their scheme rules to match the auto-enrolment statutory minimum employer contributions based on qualifying earnings. It notes that employers can choose to end the current certification period early under the certification rules. However, as this is likely to lead to a reduction in the employer contribution then the same list of factors as arise when considering a reduction of employer contributions to the auto-enrolment statutory minimum should be considered.

**Action:**

Consider guidance.



## COVID-19: tPR [guidance on communicating to members during COVID-19](#)

This guidance includes:

- Trustees should keep members informed about changes, delays or a disruption to member services.
- Communicating with members when they request a transfer or to access benefits. This includes giving warnings about the risks and implications of their chosen decision, for DC benefits.
- For DB to DC transfers:
  - » a request to issue a specific template letter where members request a transfer value quote.
  - » a statement that trustees should actively monitor the number of requests for CETV quotes received, which advisers are supporting the members' request and a request to contact the FCA if there are unusual or concerning patterns.
- A reminder that where a DB transfer value is more than £30,000 and members want to transfer benefits to a DC scheme, they are required by law to take advice from an authorised financial adviser.
- A request to warn members about the implications of stopping pension contributions or opting out.
- A reminder of the role that trustees can play in helping to prevent scams.
- A request that trustees who are communicating with members (for example when sending benefit statements) should highlight:
  - » what current market volatility might mean to members retiring over different future time periods.
  - » the need to think carefully and consider getting investment advice before switching funds in the current market (to avoid crystallising losses).
  - » the danger of scam activity in the current climate.
  - » free impartial guidance is available from the Pensions Advisory Service.

**Action:**

Consider guidance.

### COVID-19: tPR issues [guidance for employers on automatic enrolment and DC pension contributions](#)

**Automatic enrolment duties.** The guidance says:

- automatic enrolment and re-enrolment duties continue to apply as normal. This is the case whether staff are still working or are being furloughed as part of the Coronavirus Job Retention Scheme (CJRS);
- new employers should continue to assess staff and put them into a pension if they are eligible. Employers can use a process which postpones their duty to assess staff (and therefore make pension contributions) for up to three months;
- some smaller employers are approaching or carrying out their first re-enrolment of staff. tPR will continue to write to them with information and support on how to carry out re-enrolment. tPR says that employers who may be struggling to complete re-enrolment duties can choose a later date up to three months after their third anniversary to assess staff;
- tPR will take a proportionate and risk-based approach towards enforcement against those who fail to meet their duties.

**Maintaining pension contributions.** The guidance says:

- the obligation for employers and staff to make contributions is set out in a pension scheme's rules or other governing documentation;
- unless a member of staff asks to opt out of their workplace pension or reduces their contributions, employers and staff must continue to make the contributions required under the scheme at the correct time;
- any staff contributions deducted from their wages must be paid to the scheme and not used for any other purposes.

If an employer is struggling to make pension contributions, the guidance says:

- the CJRS would include the employer's statutory minimum automatic enrolment contribution. If an employer claims for a grant (to cover the lower of 80% of furloughed worker's salary/wage or £2,500 per month), it will also be able to claim the employer pension contribution on those wages up to the level of the statutory minimum employer pension contribution.
- contact your provider to explore whether there is flexibility to change the due date for payment of employer contributions to a future date or, whether the employer may be able to pay contributions over a longer period. The employer could also consider using the government support packages, which are there to help with cash-flow.

**Coronavirus Job Retention Scheme.** The guidance includes:

- information on how payroll and pension contributions should be operated where an employer claims under CJRS; and
- reducing employer contributions to the statutory minimum, including consultation requirements. tPR says it will grant an easement to these requirements if an employer fails to consult for the full 60 days subject to certain conditions – the main one is that the employer is only proposing to reduce contributions for furloughed staff to align with the government's CJRS.

**Action:**

Consider guidance.

### COVID-19: tPR's update on reporting duties and enforcement activity

tPR has confirmed that it will adopt a more flexible approach to what it expects to be reported on in a number of areas and when enforcement action would be appropriate due to the COVID-19 situation. These administrative and governance easements will remain in place until 30 June 2020.

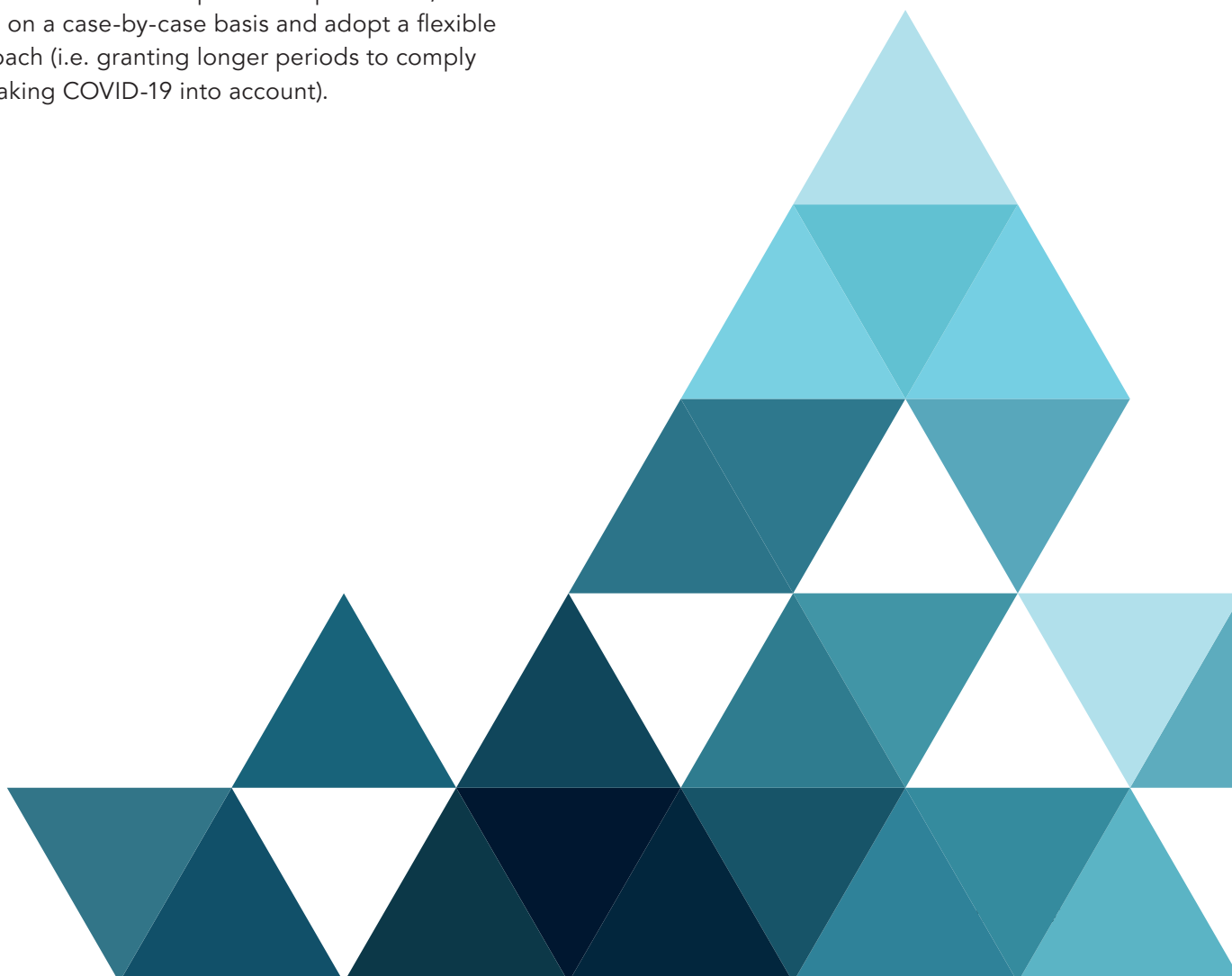
**Reporting:** there is no need to report a breach if it will be rectified within a short timeframe (i.e. not more than 3 months) and it does not have a negative impact on savers. However, schemes should keep a record of any decisions made and actions taken.

**Enforcement:** in respect of breaches of administrative and compliance requirements, it will do so on a case-by-case basis and adopt a flexible approach (i.e. granting longer periods to comply and taking COVID-19 into account).

Areas where tPR has no discretion in relation to enforcement (e.g. chair's statement) or non-compliance is deemed indicative of more serious issues (e.g. late accounts and notifiable events) are excluded from this new approach. Annual benefit statements and investment governance are some of the areas included in this new approach.

**Action:**

Consider guidance.



## Issues affecting DB schemes

### High Court: Pensions Ombudsman decision that rules required RPI increases was correct

The High Court has decided that the Pensions Ombudsman was correct that a scheme's rules required increases in line with the Retail Prices Index (RPI) rather than the Consumer Prices Index (CPI).

The rules required increases in line with the Retail Prices Index (limb 1) as specified in a revaluation order made under the Pension Schemes Act 1993 (limb 2). At the time that the rule was drafted the revaluation order specified RPI, but from 2010 onward the order specified CPI. From then onwards the two limbs were inconsistent.

The Pensions Ombudsman had upheld a member's complaint that increases should be based on RPI, not CPI. The reference to RPI should be given its ordinary and natural meaning.

The High Court confirmed the Ombudsman's views. The Court was required to decide which of two inconsistent provisions in the scheme rules should prevail. The natural and ordinary reading of the rule gave primacy to the limb that provided for increases to be in line with the RPI.

*Carr v Thales Pension Trustees Ltd [2020] EWHC 949 (Ch) (22 April 2020).*

#### Action:

For noting. The case shows that it is the wording of an individual scheme's rules that determines whether increases will be in line with RPI or CPI.

### Lloyds bank case: revisiting past transfers out

A second hearing in the Lloyds Bank guaranteed minimum pension (GMP) equalisation case is taking place in May 2020 in which the parties are seeking guidance about the extent of the trustee's obligation to revisit past transfers out of the schemes.

This follows the decision of the High Court in October 2018 (*Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc [2018] EWHC 2839 (Ch)*) which held that benefits built up in the schemes between 17 May 1990 and 6 April 1997 have to be equalised to take account of the unequal effects of GMPs.

If trustees are required to equalise past transfers out there could well be administrative and tax implications for trustees of all formerly contracted-out DB schemes.

#### Action:

For noting.

## RPI reform consultation deadline for responses extended

Due to the COVID-19 pandemic the UK Statistics Authority (UKSA) and HM Treasury have announced an extension to the time period for responding to the consultation of the reform of the Retail Prices Index (RPI) and its alignment with a variant of the Consumer Prices Index which includes owner-occupier's housing costs (CPIH). The consultation was due to close on 22 April 2020. It will now close on 21 August 2020.

The joint consultation between the UKSA and the government on proposed changes to RPI and the precise timing of those changes between 2025 and 2030 was previously postponed until the budget on 11 March 2020. The precise timing of the change is important to the wide range of users of RPI including employers and pension schemes.

It remains to be seen whether, despite the government's wariness of removing RPI, the alignment of RPI with CPIH is the first step on the road to the formal replacement of RPI. This will also be of interest to schemes and employers with rules that only permit a change to be made following the replacement of RPI.

**Action:**

For noting.

## tPR's Annual Funding Statement

tPR has reflected on both COVID-19 and the long-term direction in this year's Annual Funding Statement. Although it applies specifically to DB schemes with a valuation between 22 September 2019 and 21 September 2020, it also shows tPR's wider thinking for other DB schemes. Please see our [client alert](#) for further information about the statement.

**Action:**

For noting.



## Mayer Brown news

### Upcoming events

- **Trustee Foundation Course**  
15 September 2020  
8 December 2020
- **Trustee Building Blocks Classes**  
16 June 2020 – trustee discretions and decision-making  
17 November 2020 – DB funding and investment

Due to the COVID-19 restrictions, our events will be hosted via telephone/video conference until further notice. We will provide further details nearer the time of each event.

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## Dates to note over the next 12 months



**Key:**



Important dates to note



For information

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