

The Pensions Brief

At a glance...

Issues affecting all schemes

▲ PENSION SCAMS

Revised code of good practice

▲ CROSS-BORDER SCHEMES

Updated Pensions Regulator guidance

CLIMATE CHANGE

Pensions Regulator strategy statement

DOCUMENTATION ERRORS

High Court decision correcting an error in scheme rules

TRANSFER REQUESTS

Pensions Ombudsman decision on adequate due diligence levels

Issues affecting DB schemes

▲ ASSET INFORMATION

Consultation on changes to scheme return data

▲ INDEXATION MEASURES

Judicial review of the government's decision to align RPI with CPIH

Issues affecting DC schemes

CHAIR'S GOVERNANCE STATEMENTS

Government review of the statement requirements

AUTOMATIC ENROLMENT

Updated Pensions Regulator Covid-19 guidance

▲ Action required

▲ Follow development and keep under review



Issues affecting all schemes

Pension scams – revised code

The Pension Scams Industry Group has published [version 2.2](#) of its code of good practice on combating pension scams. The revised version, which is effective from 1 April, includes a summary of changes since version 2.1 which was published in June 2019. The changes include:

- A new example letter warning a member who is thinking of transferring their defined benefits to a DC arrangement of the risks of doing so.
- A recommendation for schemes to consider using the telephone to better engage with members during the due diligence process.
- A requirement for all transfers of concern to be reported to the relevant agencies rather than just transfers which are refused.
- Inclusion of additional questions in the “Questions To Ask Members” section of the resources pack.
- Updated case studies, including new case studies on transfers to international self-invested personal pension schemes.

In addition, the Pensions Regulator has published a [webinar](#) on how trustees and administrators can help protect scheme members from scams.

Action

Schemes should ensure that they refer to the revised code when processing transfer requests.

Cross-border schemes – Brexit

The Pensions Regulator has updated its [guidance](#) for UK cross-border schemes and UK employers that are contributing to schemes established outside the UK following Brexit. The updated guidance clarifies that, post-Brexit, UK employers cannot continue to use a scheme established outside the UK as an automatic enrolment scheme (i.e. a scheme which the employer can use to meet its automatic enrolment duties in respect of eligible jobholders who are not members of a qualifying scheme on their automatic enrolment date). However, UK employers may be able to continue using a scheme established outside the UK as a qualifying scheme (i.e. a scheme which the employer can use to meet its automatic enrolment duties in respect of eligible jobholders who are members of the scheme on their automatic enrolment date).

Action

Employers who contribute to a cross-border scheme should review the guidance and ensure that they are still meeting their automatic enrolment duties.



Climate change – Pensions Regulator strategy

The Pensions Regulator has published a [document](#) setting out its strategic response to climate change and how it thinks it can help trustees meet the challenges from climate change. The strategy notes that larger schemes will become subject to new climate risk-related governance and reporting obligations later this year, but also states that the Regulator expects all trustees to comply with the existing requirements to publish their statement of investment principles and their implementation statement. Where schemes do not comply, and it is appropriate to do so, the Regulator will take enforcement action.

The Regulator plans to support trustees in a range of ways including by:

- Publishing guidance on the new climate risk-related governance and reporting obligations.
- Sharing best practice annual climate risk reports.
- Including climate change and stewardship modules in its new consolidated code of practice.
- Updating the climate change content in the Trustee Toolkit.

Action

No action required.

Errors in scheme rules – correction

The High Court has decided that scheme rules could be rectified (i.e. corrected) to reinstate words that had been omitted from the pension increase rule. The omission of the words had the effect of hardcoding the Retail Prices Index (RPI) as the scheme’s indexation measure. The judge noted that he had been provided with a substantial body of evidence and witness statements demonstrating that neither the trustee nor the sponsoring employer had had the intention of removing the omitted words and that this was “the clearest possible case for rectification of a pension deed based on an omission that was not noted by any of the persons involved”.

The judge also considered representations made by two members during the course of a member consultation exercise that was conducted about the proposal to apply for rectification. The two members said that they would have made different retirement decisions had they known that their pension would not definitely receive RPI-based increases. Among other things, the judge noted that the representative beneficiary had made the decision not to oppose the claim for rectification. The judge also concluded that there was no or inadequate evidence to support a claim that the trustee and the sponsoring employer were estopped (i.e. prevented) from asking for the rules to be corrected.

Iggesund Paperboard (Workington) Ltd and another v Messenger [2021] EWHC 627 (Ch)

Action

No action required.

Transfer requests – due diligence

The Pensions Ombudsman has dismissed a complaint about the level of due diligence carried out by a personal pension scheme provider in connection with a transfer to a suspected scam vehicle. In August 2014, following an unsolicited approach by an unregulated firm, the member requested a transfer to a single member occupational pension scheme. The administrator of the receiving scheme submitted the completed transfer request documentation and enclosed a range of supporting information, including a letter from the member confirming that he was aware of pensions liberation issues and had carefully considered his decision to request a transfer.

On 12 August 2014, the provider sent the member a letter setting out various concerns regarding the investment advice received by the member, the terms of the receiving scheme, and the way in which it was proposed that the member's funds would be invested by the receiving scheme. The letter also referred the member to the Pensions Regulator's Scorpion leaflet that had been included in the transfer pack sent to him. The member returned a completed comprehensive discharge form and declaration which, among other things, confirmed that he had read the 12 August 2014

letter. The provider processed the transfer and the receiving scheme invested the bulk of the transfer monies in commercial property in Cape Verde. The member subsequently became aware that the Cape Verde investment may have been a scam. He complained that the provider had carried out insufficient due diligence and had failed to warn him about the potential risks of the transfer.

The Ombudsman decided that the provider had provided the member with sufficient information through the warnings in its 12 August 2014 letter and the Regulator's Scorpion leaflet for him to have known about the possibility of pensions liberation and its consequences. The member's losses arose from the Cape Verde investment. The provider had pointed out the risks associated with overseas investments, but it was not its responsibility to advise or otherwise comment on the suitability of the investment.

Mr R (PO-28256)

Action

No action required.



Issues affecting DB schemes

Scheme assets – provision of information in scheme return

The Pensions Regulator and the Pension Protection Fund (PPF) are consulting on proposed changes to the asset class information to be provided by DB schemes in the annual scheme return. The changes are designed to improve the measurement of investment risk. The Regulator and the PPF are proposing to adopt a tiered approach, whereby the asset information required will depend on scheme size as follows:

- Schemes with PPF liabilities of less than £20 million (Tier 1) will see only minor changes.
- Schemes with PPF liabilities of £20 million – £1.5 billion (Tier 2) will be asked to provide more detailed information.
- Schemes with PPF liabilities of £1.5 billion or more (Tier 3) will be asked to provide the same information as Tier 2 schemes plus additional information on portfolio sensitivity and risk-factor stresses.

Schemes will be able to voluntarily provide more information if they wish. The consultation closes on 10 June.

Action

Trustees should keep the progress of the consultation under review.

Alignment of RPI with CPIH – judicial review

The trustees of the BT Pension Scheme, the Ford Pension Schemes and the Marks and Spencer Pension Scheme have announced that they have applied for judicial review of the government's decision to align the Retail Prices Index (RPI) with the Consumer Prices Index including Housing (CPIH) from 2030. The schemes believe that the government has not considered the far-reaching implications of its decision.

If the application for judicial review is successful, the government will be required to revisit its decision.

Action

Trustees and employers should monitor the progress of the application for judicial review.



Issues affecting DC schemes

Chair's statements – government review

The government has published a five year post-implementation review of the statutory requirement for DC schemes to produce an annual chair's governance statement. The review's main conclusions are that:

- The current format of the chair's statement does not work as a document intended for multiple audiences i.e. for the trustees to demonstrate good scheme governance whilst also providing information to members. The government and the Pensions Regulator should therefore consider the audience and role of the statement.
- Once the intended audience of the chair's statement has been clarified, the information to be contained in the statement should be revisited. In particular, consideration should be given to whether there is a need to divide the required content into different documents e.g. one to provide information to members and one to record the scheme's regulatory activity.
- Whilst not within the scope of the review, consideration should be given to whether the statutory requirement for the Regulator to issue mandatory fines in relation to the chair's statement should be amended to allow the Regulator to use discretion.

Action

No action required.

Automatic enrolment – Covid-19

The Pensions Regulator has updated its Covid-19 guidance on automatic enrolment and DC pension contributions to reflect the changes to the Coronavirus Job Retention Scheme and wider government support announced in March.

Action

Employers with furloughed staff may find the updated guidance helpful.

Mayer Brown news

Upcoming events

All events will take place as online webinars. For more information or to book a place, please contact [Katherine Carter](#).

- **Trustee Foundation Course**
15 September 2021
- **Trustee Building Blocks Classes**
16 June 2021 – Trustee discretions and decision-making
8 December 2021 – DC governance

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 Videos and Podcasts

Watch or subscribe to Mayer Brown's YouTube channel here:

[Subscribe via YouTube](#)

Listen to or subscribe to Mayer Brown UK Pensions Law iTunes channel here:

[Subscribe via iTunes](#)

Please note – subscribing above will only work on a device with iTunes installed. Alternatively if you don't have iTunes you can access the audio via the links below:

- [Google](#)
- [Yahoo](#)

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

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](https://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

This Mayer Brown 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.

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.

© 2021 Mayer Brown. All rights reserved.

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

Americas | Asia | Europe | Middle East

[mayerbrown.com](https://www.mayerbrown.com)