

**STEPHENSON
HARWOOD**
pensions law group

CLEAR VIEWS

Quarter one 2023 update
January 2023

OVERVIEW

Priorities for trustees this quarter are to:

- consider the Pensions Regulator's (**Regulator**) draft defined benefit funding code (**Draft Code**) and, in particular, the impact this will have on their scheme's investments and level of risk they are able to take;
- ensure they are on track with their pension dashboard preparations, particularly in light of:
 - the Regulator's new enforcement and compliance policy; and
 - proposals to prohibit the assets of a pension scheme from being used to reimburse trustees in respect of any fine or penalty imposed on them for breach of their pensions dashboard obligations; and
- ensure they are undertaking sufficient due diligence before undertaking a transfer out to avoid full liability for transfers that turn out to be scams.

In addition, trustees should be aware that:

- certain European judgments relating to the calculation of PPF benefits will not be retained. This will open the door for the PPF to move away from minimum benefit limits imposed by EU law;
- a wide-ranging set of reforms of the financial services sector, referred to as the 'Edinburgh Reforms', were announced by the Chancellor of the Exchequer on 9 December 2022. A number of these impact pension schemes; and
- the Employment Appeal Tribunal dismissed age discrimination complaints save for two claimants who had brought their claims before 31 December 2020 (the date of the UK's withdrawal from the European Union). It was held that the claimants could not rely on the general principle of EU law after 31 December 2020. This decision will have a wider impact given any similar cases must have begun before 31 December 2020.

KEY DEVELOPMENTS

Development	Date of change	Links to further information
<p>Pensions Regulator published draft defined benefit funding code</p> <p>The Pension Schemes Act 2021 provided for a framework for a new defined benefit funding regime. In particular, the framework would require defined benefit schemes to have a funding and investment strategy for the purpose of ensuring benefits under</p>	<p>Expected to take effect from October 2023</p>	<p>The Draft Code can be found here.</p> <p>Further information on this topic can be found in our briefing here.</p>

<p>the scheme can be paid over the long term. As part of this, trustees will be required to produce:</p> <ul style="list-style-type: none"> • A funding and investment strategy; and • A statement of strategy. <p>Draft regulations added further detail, but the industry has been waiting for a revised code of practice from the Regulator to understand what much of this will mean in practice.</p> <p>The funding and investment strategy will need to set out how trustees will meet their long-term funding target. The Draft Code discusses the types of investments and level of risk available to trustees under this new approach, as well as setting out the maturity level of the scheme by which the long-term funding target will need to be met.</p> <p>Trustees should start considering the impact the new approach will have on the funding of their schemes and, in particular, their investment portfolio.</p>		
<p>Pensions dashboard developments</p> <p>Pensions Dashboards Regulations 2022 The Pensions Dashboards Regulations 2022 (Dashboard Regulations) came into force on 12 December 2022. These set out the dashboard obligations of trustees of in scope occupational pension schemes as well as setting out the requirements for pension dashboard services.</p> <p>Dashboard standards The Pensions Dashboards Programme has published its revised dashboard standards following its consultation. They set out the technical and operational detail that underpins the dashboards legislation.</p> <p>Compliance and enforcement policy The Regulator is consulting on its dashboards compliance and enforcement policy. The Regulator is responsible for the compliance and enforcement of in scope occupational pension schemes in respect of their duties under the Dashboard Regulations.</p> <p>Indemnification prohibition The Pensions Dashboards (Prohibition of Indemnification) Bill is expected to proceed through</p>	<p>In force now.</p> <p>The standards will come into force following ministerial approval.</p> <p>This consultation runs until 24 February 2023. The Regulator aims to publish the final policy in Spring 2023.</p> <p>TBC</p>	<p>Further information on all of these topics can be found in our December snapshot here.</p> <p>The revised standards can be found here.</p> <p>The consultation can be found here.</p>

<p>Parliament unopposed. This will prohibit the assets of a pension scheme from being used to reimburse the trustees in respect of any fine or penalty imposed on them for breach of their pension dashboard obligations.</p>		
<p>Pensions Ombudsman case – trustees need to ensure sufficient due diligence before transferring out</p> <p>In the case of Mrs G, a transfer out was made from the Teachers' Pension (TP) to a scheme (LQPS) which turned out to be invested in high risk, unregulated assets unsuited to pension fund investment. TP did not carry out sufficient due diligence before undertaking the transfer and its argument was that it wanted to ensure it met the statutory transfer out deadline.</p> <p>When Mrs G requested Friends Life transfer her pension with them to LQPS, they raised concerns over the transfer and that transfer did not proceed.</p> <p>Mrs G complained that TP should also have raised concerns over LQPS before the transfer. The Pensions Ombudsman found that the TP had failed to carry out sufficient due diligence prior to the transfers. TP prioritised processing the transfer quickly. The Pensions Ombudsman found TP had sufficient time to carry out the due diligence and therefore TP's failures amounted to serious maladministration.</p> <p>TP was ordered to reinstate Mrs G's accrued benefits in TP, adjusting for any revaluation, and pay £1,000 to reflect the 'serious distress and inconvenience' she had suffered.</p> <p>This case serves as a reminder to trustees to ensure that appropriate due diligence is carried out in the context of transfers. The requirements are even more stringent now with the advent of red and amber flags, which trustees should ensure they are actively considering in response to any statutory transfer request received.</p>	<p>N/A</p>	<p>Further information can be found in our January snapshot here.</p>
<p>Pensions-related aspects of the Edinburgh Reforms</p> <p>A wide-ranging set of reforms of the financial services sector, referred to as the 'Edinburgh Reforms', were announced by the Chancellor of the Exchequer on 9 December 2022. Some of the main proposals affecting pension schemes cover:</p>		<p>Further information can be found in our January snapshot here.</p>

<ul style="list-style-type: none"> • A new value for money framework for defined contribution schemes (DC); • The removal of certain performance fees from charges cap that apply in default funds in DC schemes used for auto enrolment; and • Proposed reform of the VAT treatment of fund management services. 		
<p>Secretary of State v Beattie and others – Age discrimination time limit for post-Brexit cases</p> <p>In this case, certain members claimed that having their pension capped as a result of the Pension Protection Fund compensation cap legislation amounted to age discrimination.</p> <p>Certain members made their discrimination claim on 1 November 2019 and the remaining claims were lodged on 9 August 2021.</p> <p>The Employment Appeal Tribunal found that the cap was inconsistent with EU law but that due to the European Union (Withdrawal) Act 2018 following Brexit, only those members who had brought their claim before 31 December 2020 could continue with it.</p> <p>As a result, this decision will have a wider impact given any similar cases must have begun before 31 December 2020.</p>	N/A	Further information can be found in our December snapshot here .



The Stephenson Harwood pensions law group has been promoted to tier 1 and tier 2 by the Legal 500 for pensions disputes and pensions advisory work. Please see the Legal 500 website [here](#) for more information.

Contacts



PHILIP GOODCHILD
PARTNER, Pensions

T: +44 20 7809 2166
E: Philip.Goodchild@shlegal.com



STEPHEN RICHARDS
PARTNER, Pensions

T: +44 20 7809 2350
E: Stephen.Richards@shlegal.com



JULIA WARD
SENIOR KNOWLEDGE LAWYER,
Pensions

T: +44 20 7809 2028
E: julia.ward@shlegal.com

This note does not constitute legal advice. Information contained in this document should not be applied to any particular set of facts without seeking legal advice. Please contact your usual Stephenson Harwood pensions law group member for more information.