

**STEPHENSON
HARWOOD**
pensions law group

CLEAR VIEWS

Quarter three 2021 Trustee update

OVERVIEW

We take a high-level look at some of the most recent developments in pensions law. Further information on all of these topics can be found in our additional materials, referenced in the table below, and at www.pensionshub.com.

KEY DEVELOPMENTS

Topic	Summary	Links
The PPF's guidance on the Corporate Insolvency and Governance Act 2020 (CIGA)	The guidance provides assistance to those who may become involved in a moratorium or a restructuring plan, where the CIGA requires engagement with the Pensions Regulator and the IPPF.	For more information please see our recent snapshot here .
Judicial review of RPI changes sought	<p>Trustees of some of the UK's largest defined benefit pension schemes to include BT, Ford and M&S are challenging the Government's decision to align RPI with CPIH. There is concern that this will impact the value of RPI-linked assets that funds hold without compensation being made to those affected.</p> <p>Until a decision is available, schemes should continue to prepare for the upcoming changes to RPI to take effect from 2030.</p>	<p>For more information please see our recent snapshot here.</p> <p>A statement from BT's website can be found here.</p>

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<p>EAT age discrimination claim dismissed (London Fire Commissioner v Sargeant)</p>	<p>The Employment Appeal Tribunal dismissed an appeal made by various Fire and Rescue Authorities who argued that they should be able to rely on a defence to discrimination claims where the discriminatory pension scheme rules were contained in regulations.</p> <p>This decision reconfirms the importance of the Equality Act 2010 and is a reminder that simply following the rules of a pension scheme is not a defence to a discrimination claim.</p>	<p>For more information please see our recent snapshot here.</p>
<p>Time limits prevent Ombudsman addressing member's complaints</p>	<p>On the basis that Mr N's indexation and AVC complaint fell outside of the three-year time limit and for negligence the six year time limit, the Ombudsman concluded his claims were statute barred and was unable to provide a remedy.</p>	<p>For more information please see our recent snapshot here.</p>
<p>Pensions Regulator consultation on criminal sanctions policy and single code of practice now closed</p>	<p>The Pensions Regulator recently issued a consultation in relation to its policy for imposing criminal sanctions under the new Pension Schemes Act 2021 and its new draft single code of conduct which updates and consolidates 10 of the 15 existing codes of practice into one document.</p> <p>The consultations are now closed and we await publication of the outcome.</p>	<p>For more information on the Pension Schemes Bill and the proposed new powers of the Pensions Regulator, please see our briefing on the topic here.</p> <p>Please also see our recent snapshot here.</p>

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<p>Absence of HMRC guarantee that a receiving scheme is a QROPS is not a relevant factor to refuse a transfer.</p>	<p>The Pensions Ombudsman partially upheld Mr Y's complaint about a scheme's refusal to make a transfer to a qualifying recognised overseas pension Scheme (QROPS).The trustees based their refusal, which amounted to maladministration, on the fact that HMRC would not guarantee that the QROPS was on its list.</p> <p>This is a reminder that, in relation to statutory transfer requests, there needs to be a good reason to refuse.</p>	<p>For more information please see our recent snapshot here.</p>
<p>Britvic Court of Appeal ruling</p>	<p>In the case of <i>Britvic Plc v Britvic Pensions Ltd and another</i>, the Court of Appeal has overturned the High Court's decision and ruled that the words " any other rate" did not mean "any higher rate" and that the wording was to be interpreted literally and Britvic could change the scheme's inflation index measure.</p> <p>This Court of Appeal's decision was not surprising. The case, once again, however demonstrates the "rules lottery" in terms of considering any change to the indexation measure.</p>	<p>The Court of Appeal's decision can be found here.</p>
<p>Climate change governance and reporting and monetary penalties for breach</p>	<p>From 1 October 2021 trustees of certain schemes (large schemes, master trusts and collective money purchase schemes) will be subject new reporting requirements to improve the quality of governance on climate-related risks and opportunities.</p> <p>The new reporting requirements under the Climate Change Governance and Reporting Regulations are accompanied by guidance from the DWP which sets out how and when trustees must implement climate change governance measures. Trustees must also publish a report containing relevant disclosures on a publicly available website, accessible free of charge.</p> <p>TPR has also launched its consultation on its draft guidance and enforcement policy. The guidance indicates the factors TPR is likely to take into account when assessing whether trustees have met the requirements. The enforcement policy sets out TPR's new enforcement regime and a minimum penalty of £2,500 for non-compliance.</p>	<p>DWP's statutory guidance can be found here.</p> <p>TPR's draft guidance can be found here.</p>

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<p>New requirement to refer member to guidance before accessing flexible benefits</p>	<p>The DWP has published a consultation paper, <i>Stronger Nudge to Pensions Guidance</i>, along with draft regulations. These regulations will require trustees to ensure that members who seek to access, or transfer for the purpose of accessing, their pensions savings have received, or opted out of receiving the Pension Wise guidance, and that a guidance appointment has been booked on their behalf.</p> <p>Responses must be received by 3 September 2021. The draft Regulations are expected to come into force on 6 April 2022.</p>	<p>The DWP's consultation paper can be found here.</p>
<p>PPF compensation cap is age discriminatory</p>	<p>In the case of <i>Hughes v PPF</i>, the Court of Appeal upheld the High Court's decision that the statutory cap on compensation payable by the PPF to members who have not achieved normal pension age at the date of their employer's insolvency amounted to unlawful age discrimination by treating them less favourably than those who had waited until their retirement date and were not subject to the cap.</p> <p>However, the court found in favour of the PPF's approach to adjusting compensation following the ECJ's ruling in <i>Hampshire v Board of the Pension Protection Fund</i>.</p> <p>More information on the implementation of the judgment will be provided by the PPF as soon as it is able. In the meantime, it intends to continue to pay members their current level of benefits.</p>	<p>The Court of Appeal's decision can be found here.</p>
<p>PASA's GMP conversion guidance</p>	<p>The Pensions Administration Standards Association (PASA) has published guidance on how formerly contracted-out pension schemes can implement guaranteed minimum pension (GMP) conversion.</p> <p>The guidance provides examples of the application of GMP conversion to equalise GMPs and how this is being used in practice. It explains the issues faced using this method and how these have been addressed.</p> <p>The guidance makes it clear that although the approaches are not endorsed by the working group, they demonstrate industry thinking.</p>	<p>PASA's guidance can be found here.</p>

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