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June 2024

The Pensions Brief

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Dates to note over the next 12 months

22 September 2024

Requirement to prepare a funding and investment strategy applies for valuations from this date

30 April 2025

Staged timetable for connection to the pensions dashboards ecosystem starts

31 January 2025

Deadline for schemes to send annual event report to HMRC (2023/24 tax year)

Key:

Important dates to note

For information

Issues affecting all schemes

General Election – impact on pensions

The General Election resulted in a landslide victory for the Labour Party. While no pensions-related announcements have been made since the election by the new government, its election manifesto included the following pensions-related pledges:

- Adoption of reforms to ensure that workplace pension schemes take advantage of consolidation and scale to deliver better returns for UK savers and greater productive investment in the UK economy.
- A review of the pensions landscape to consider what further steps are needed to improve pension outcomes and increase investment in UK markets.
- A requirement for UK-regulated financial institutions, including pension funds, and FTSE 100 companies to develop and implement credible transition plans that align with the 1.5°C goal of the Paris Agreement.
- A review of the surplus arrangements in the Mineworkers' Pension Scheme and transfer of the Scheme's Investment Reserve Fund back to the members.

The manifesto made no mention of Labour's previously-announced plans to reinstate the lifetime allowance and, according to press reports, these plans have been dropped.

Action

Trustees and employers should monitor the new government's implementation of its manifesto pledges.

Pensions dashboards – data accuracy

The Pensions Administration Standards Association has published guidance for trustees on the importance of data accuracy for pensions dashboards. The guidance covers:

- What accurate data is.
- What trustees should do to improve their data accuracy.
- Suggested steps that trustees should take to ensure data accuracy is maintained.

In addition, the Pensions Dashboards Programme (PDP) has published FAQs on "IT Health Checks". The PDP's standards require participants connecting to the pensions dashboards ecosystem to complete an IT Health Check by an independent provider with the relevant accreditation. The FAQs cover:

- What an IT Health Check is and who is required to conduct one.
- Choosing a test partner.
- When an IT Health Check must be completed by and what the implications are of not completing one.
- Which PDP standards contain information on the IT Health Check.

Action

No action required by trustees of schemes whose administrators are handling dashboards connection. Trustees of other schemes and administrators may find the guidance and FAQs helpful in their dashboards preparations.

Pensions Ombudsman – complaints and signposting

The Pensions Ombudsman (TPO) has published a blog post on its recent operating model review which confirms that going forwards, individuals will not be able to use TPO's Early Resolution Service until they have exhausted their scheme's internal dispute resolution procedure (IDRP).

TPO has also updated its factsheet on member signposting. The factsheet sets out suggested wording that schemes can use to signpost members to TPO including:

- Referral wording for inclusion in a final response, written acceptance or summary resolution communication under an IDRP or any other stakeholder resolution process.
- Short and long-form website wording.

Action

No action required, but trustees and administrators may wish to review the updated factsheet and consider whether their member communications need updating.

ESG – engaging with asset managers

The Society of Pension Professionals has published a practical guide for trustees on engaging with asset managers on ESG matters. The guide covers:

- An outline of the various regulatory ESG disclosure requirements.
- ESG obligations for asset managers.
- A summary of the information that trustees need from their asset managers.
- A breakdown of the role of the investment consultant in ESG matters.

Action

No action required, but trustees may find the guide helpful when considering ESG matters.

Review of penalty notices – Court guidance

The First-tier Tribunal has allowed an appeal against an escalating penalty notice issued to an employer in relation to unpaid contributions. The employer argued that it was unaware of the unpaid contributions or the associated notices until the Pensions Regulator (TPR) sent an email to his personal email address 39 days after the escalating penalty started to accrue. TPR had sent all previous correspondence to the employer's former accountant, and it had not been forwarded to the employer. The employer remedied the unpaid contributions as soon as it became aware of the issue. TPR reviewed the notices, but upheld them.

The Tribunal held that:

- When reviewing the notices, TPR had simply confirmed the factual situation in existence at the time it issued the notices and treated the recipient's representations as being of no significance. However, the issue when reviewing a notice was not whether TPR was entitled to issue it at the time it did so, but whether, at the time of the review, having considered the representations of the recipient, it should confirm, vary, revoke or substitute the notice.
- A proper consideration of the circumstances of the breach, including the employer's lack of intent, TPR's failure to use available means of communication and the absence of harm to employees meant that the impact of the escalating penalty was wholly disproportionate and oppressive. The fact that the penalty was of the same magnitude as the employer's annual employer contributions also indicated disproportionality.

The Tribunal confirmed the fixed penalty notice issued prior to the escalating penalty notice, but concluded that the escalating penalty was not fair, proportionate or reasonable and therefore revoked it.

Action

No action required.

Issues affecting DB schemes

TUPE transfers – early retirement rights

TPO has decided that a member whose employment was transferred to a new employer under the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE), and who became a deferred member as a result, was not entitled to an unreduced early retirement pension. The scheme rules required the member to have left employment at the request of the employer in order to receive an unreduced early retirement pension. TPO decided that leaving employment because of the operation of law under TUPE did not constitute leaving employment at the request of his employer. The nature of a request indicates that the employee can choose whether to comply with the request. Where a TUPE transfer is concerned, the member cannot refuse to transfer and remain in employment with his existing employer.

Action

No action required.

Issues affecting DC schemes

Chair's statement – penalties

The First-tier Tribunal has decided that although legislation imposes a mandatory penalty for failure to prepare a chair's annual governance statement, TPR is not precluded from taking exceptional circumstances into account which would excuse the failure.

The sole trustee of a DC scheme received a £500 penalty for failing to prepare a chair's statement and appealed. TPR argued that the relevant legislation precluded it from exercising any discretion over whether to issue a penalty, no matter how compelling the circumstances. Instead, any such circumstances could be considered if the recipient requested a review of the penalty.

The Tribunal disagreed with TPR's view. It decided that the mere use of mandatory language did not prevent TPR from considering a compelling explanation offered for the breach. Parliament's intention was that a penalty should ordinarily follow a breach but, by necessary implication, TPR would be precluded from penalising trustees where wholly exceptional circumstances fully explained and excused their non-compliance and imposition of a penalty would be manifestly unjust.

However, the Tribunal also held that, in this particular case, the trustee had not provided a truly exceptional explanation for its failure to prepare a chair's statement.

Action

No action required.

Master trust transfers – updated guidance

The Pensions Administration Standards Association has updated its guidance on transfers to and from DC master trusts. The guidance focusses on the two most common scenarios of transfers between master trusts and transfers from a single employer scheme to a master trust. Topics covered include planning, communication, data and asset transition and industry developments.

Action

No action required, but trustees and administrators of schemes that are considering a transfer to a master trust may find the guidance helpful.

Mayer Brown news

Upcoming events

For more information or to book a place, please contact Katherine Carter.

- **Trustee Foundation Course**
  11 September 2024
  11 December 2024
- **Trustee Building Blocks Classes**
  13 November 2024 – DB funding
- **Quarterly webinars**
  24 September 2024 – topic TBC
  27 November 2024 – topic TBC

Pro bono and CSR

- Jay Doraisamy, Edward Jewitt, Beverly Cox and Liam Kellett are among 74 Mayer Brown lawyers named on the inaugural Pro Bono Recognition List for England and Wales. The list, which was established by the Attorney General's Pro Bono Committee, recognises barristers and solicitors who have given 25+ hours of pro bono legal assistance in the previous calendar year.

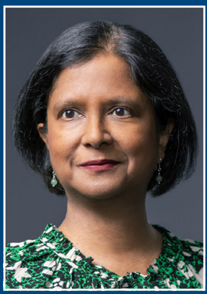
Mayer Brown Insights

- Changes to the UK GDPR Shelved (For Now) | Insights | Mayer Brown

All our Insights are available here.

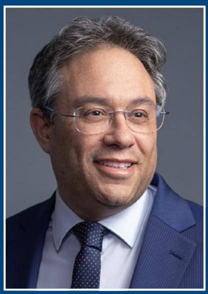
Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



Jay Doraisamy

Co-Head of Pensions, London
E: jdoraisamy@mayerbrown.com
T: +44 20 3130 3031



Andrew Block

Co-Head of Pensions, London
E: ablock@mayerbrown.com
T: +44 20 3130 3366

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