

**STEPHENSON  
HARWOOD**  
pensions law group

CLEAR VIEWS

Quarterly Update  
February 2025

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### **In this February 2025 Quarterly Update, we cover the following topics:**

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- Mr R (CAS-63400-N0T9) - administrator carried out appropriate due diligence at time of transfer
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## OVERVIEW

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### **Priorities for trustees over this quarter are:**

- Be aware that transfers requested before 30 October 2024 that previously benefitted from an exemption from the 25% Overseas Transfer Charge must be completed by 30 April 2025 for the exemption to apply to the transfer.
  - Place greater focus on Pension Dashboard compliance. The Pensions Dashboard Programme recommends that schemes align with the current version of the updated draft reporting standards whilst preparing for connection from April 2025, when schemes start connecting in line with the 'connect by' dates in its guidance.
  - Ensure their scheme's IDRPs or complaint process is robust and well-communicated and the signposting to complain to the Pensions Ombudsman is up-to-date with the latest recommendation. The Pensions Ombudsman has confirmed its formal resolution process will only be available once the complainant has fully completed the pension scheme's IDRPs.
  - Understand the Regulator's revised employer covenant guidance, which assists in funding discussions under the new DB funding code. It expects trustees to use this guidance to review and ensure their existing covenant analysis is appropriately focused and remains proportionate.
  - Look out for the government's proposed reforms for surplus release from DB pension schemes.
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## KEY DEVELOPMENTS

### **The Finance Bill 2025 - Resolutions giving temporary legal effect to measures announced in the Autumn Budget have been approved**

The Autumn Budget 2024 resolutions received the agreement of the House of Commons on 6 November 2024, giving temporary legal effect to a number of measures announced as part of the Autumn Budget 2024.

In relation to pensions, that brings into effect from 30 October 2024 the changes to the 25% Overseas Transfer Charge. The Overseas Transfer Charge exclusion applicable to transfers to Qualifying Recognised Overseas Pension Schemes (**QROPS**) established in the European Economic Area (**EEA**) or Gibraltar will no longer apply if the transferring member is a resident of a different jurisdiction to the QROPS, for example, such as remaining in the UK.

QROPS are the only non-UK pension schemes that can receive transfers from UK registered pension schemes without incurring an unauthorised payments tax charge. The removal of the exclusion applies to transfers made on or after 30 October 2024. Transfers requested before this date must be completed by 30 April 2025 for the exclusion to apply.

Members and trustees of UK schemes and QROPS should understand the implications of these changes, particularly if a transfer is made to a QROPS that no longer meets the exemption that applied to a number of transfers before 30 October 2024.

### **Mr R (CAS-63400-N0T9) - administrator carried out appropriate due diligence at time of transfer**

Mr R complained that Veterans UK failed to conduct adequate checks or enquiries before transferring his pension to the Shearwater Pension Plan, managed by Marlborough Pension Trustees Limited. The Pensions Ombudsman did not uphold Mr R's complaint, and no further action was required by Veterans UK.

Marlborough Trustees provided the necessary documentation, including the receiving scheme's Qualifying Recognised Overseas Pension Scheme number and proof of Mr R's identity and address. The transfer was completed on 21 February 2011.

In February 2013, The Pensions Regulator launched an awareness campaign against pension liberation schemes, which was not in place at the time of Mr R's transfer. Veterans UK followed the necessary procedures at the time, ensuring the receiving scheme was registered with HMRC and obtaining the required declarations from Mr R.

Mr R's representatives argued that he was misled by an unregulated company and was not aware of the overseas nature of the Plan.

The Ombudsman agreed with the Adjudicator's findings that Veterans UK conducted the required due diligence expected at the time of Mr R's transfer and had no right to refuse the transfer request.

### **The Pensions Ombudsman (TPO) issues directions for repayment in pension liberation case**

An extensive investigation by the Pensions Dishonesty Unit (**PDU**) into three occupational pension schemes, a pension administration company, and the appointed trustees has led to

directions for the trustees, including two trustees personally, to repay over £5 million into the schemes.

The Deputy Pensions Ombudsman found that scheme funds were invested in breach of trustee investment duties, furthering a pension liberation arrangement, and by trustees with conflicting interests. Two trustees were found to have acted dishonestly, attracting personal liability. The Pension administration company was found liable as a dishonest assistant in one breach of trust.

Complaints were raised with TPO due to concerns about investment performance, inability to take benefits, or to transfer funds. The PDU investigated these complaints. There are 117 members affected by the trustees' actions.

The Deputy Pensions Ombudsman directed over £5.2 million to be repaid by the trustees into the schemes, and additional payments of £6,000 each to two Applicants and £4,000 each to three Applicants for exceptional distress and inconvenience.

TPO is part of the Pensions Scams Action Group, a multi-agency taskforce tackling pension fraud. Action Fraud reported at least £17.7 million lost to pension fraudsters in 2023.

### **Tax-free lump sums paid back into pension schemes**

On 5 December 2024, HM Revenue and Customs (**HMRC**) released Pension Schemes Newsletter 165. This newsletter addresses several procedural points regarding the payment of lump sums, particularly those accessed in anticipation of the Autumn 2024 Budget, and clarifies the tax treatment of pension payments to trustees in bankruptcy.

Previously, in a Managing Pension Schemes Service newsletter from September 2023, HMRC indicated that once benefits are paid to a trustee in bankruptcy, the member might be subject to the money purchase annual allowance on further contributions. However, HMRC has now corrected its stance, stating that while it had earlier mentioned that normal income tax rules apply to payments to a trustee in bankruptcy, this was incorrect. Such payments are taxable only at the basic rate, even if the member is a higher rate taxpayer. These payments to the trustees in bankruptcy are considered as paid to the member but are not regarded as part of the member's income. Instead, they should be treated as income received by the trustee in bankruptcy.

Additionally, due to speculation about potential changes in the Autumn 2024 Budget, HMRC has clarified that for members who have taken payments of pension commencement lump sums or uncrystallised funds pension lump sums, the member's lump sum allowance will not be restored. Since the "cooling off" rules do not apply (as the withdrawals are not new products), HMRC states that the payment of a tax-free lump sum cannot be undone. The lump sum must be tested against the member's lump sum allowance at the time of payment.

The newsletter also provides information on certain procedural issues concerning the abolition of the lifetime allowance.

### **DB scheme funding - Regulator publishes revised employer covenant guidance**

On 4 December 2024, the Pensions Regulator released updated guidance for trustees of defined benefit (DB) pension schemes, aligning with the new DB funding code that came into effect on 12 November 2024. This guidance is the final component of the new DB scheme funding code.

The updated guidance aims to assist trustees in funding discussions under the new DB funding code. It provides detailed insights into the key elements of the employer covenant, including how to identify and assess each employer's legal obligations to the scheme and the nature and extent of those obligations. It also addresses the level of reliance trustees can place on an employer's ongoing support and how to evaluate the risk of that support deteriorating.

Additionally, the guidance introduces new aspects of the DB scheme funding code, such as the "reliability period" and "covenant longevity," and explains how trustees should incorporate the covenant into the scheme recovery plan. This includes monitoring the employer covenant and establishing a framework for taking proportionate action at the appropriate time.

The Regulator expects trustees to use this guidance to review and ensure their existing covenant analysis is appropriately focused and remains proportionate, especially if the scheme has undergone significant changes in its funding position in recent years.

### **FCA fines and bans pension transfer specialist**

The Financial Conduct Authority (**FCA**) has issued a final notice to Philip Pryke concerning his misconduct in pension transfer activities. On 28 November 2024, the FCA detailed Pryke's advice and oversight failings related to defined benefit (DB) pension transfers during his tenure from 2 April 2015 to 25 June 2019 at C&I, a financial advice firm. Pryke, who held multiple roles including pension transfer specialist and compliance oversight, advised 986 customers to transfer out of their DB pension schemes despite FCA guidance suggesting such transfers are generally unsuitable. This advice generated over £8 million in fees for the firm, which were contingent on customers deciding to transfer.

The FCA described his actions as reckless and lacking integrity. He failed to adequately assess customers' objectives and risk attitudes, and his compliance monitoring and reporting systems were insufficient. These failings led to personal recommendations that breached regulatory standards, causing significant financial losses or risks for many customers. Pryke prioritised the firm's profitability, funding his luxurious lifestyle at the expense of customer welfare.

As of 20 September 2023, the Financial Services Compensation Scheme (FSCS) had received 1,300 complaints from C&I customers regarding DB transfer advice, upholding 766 and paying out over £42 million in compensation, which would have been £67 million without the compensation limit. For his misconduct, the FCA fined Pryke £1,377,968, including a financial penalty of £293,600 and disgorgement of £1,084,368, and banned him from any regulated activity.

### **Pensions Ombudsman operating model review – new ways forward?**

The Pensions Ombudsman has published an operating model review in the form of a blog, which sets out the direction of travel for an organisation which is increasingly under pressure due to significant increases in member complaints. In the blog the Ombudsman notes the following key points:

- It is confirmed that the Ombudsman's formal resolution process will only be available once the complainant has fully completed the pension scheme's own internal dispute resolution procedure (IDRP). Pension scheme IDRPs should be checked to ensure that they signpost members to the Ombudsman at the correct point in time.



- An expedited decision-making process is now being used rather than the previous fast-track process, where cases have a clear outcome. A detailed determination will not be produced for these types of cases but the Ombudsman will produce a periodic summary of the decisions.
- The Ombudsman is also now using a "lead case" approach. This is where the Ombudsman identifies an industry-wide issue, or a scheme-specific issue affecting multiple members and selects a lead case in order to get through the wider set of cases more efficiently. This is being done in two ways:
  - The first is by taking on a single case while the others remain in the scheme's own IDRPs. The Ombudsman's determination then informs the trustee's own IDRPs.
  - The second applies when the cases have already completed a scheme's IDRPs and the facts of a number of cases are very similar. The Ombudsman notes that in some circumstances his findings and directions in the lead case can be applied equally to all the linked cases.

The Ombudsman acknowledges that it will not be possible to use the lead case approach in all circumstances – for example, where the Ombudsman has to look at the specific defences that each member might have in a scheme-wide overpayments matter.

The Ombudsman notes that for trustees of schemes these changes will mean that they'll need to ensure:

- The IDRPs or complaint process is robust and well-communicated
- Signposting to TPO is clear and up-to-date
- If their scheme has an issue affecting multiple members, they should let the Ombudsman know at an early stage, and the Ombudsman will explore with the trustees whether a lead case approach is appropriate.

### **Pensions Dashboards Programme announces update to draft reporting standards**

On 8 January 2024 the Pensions Dashboard Programme (PDP) announced that it has published updated draft reporting standards as part of its preparations for the pension industry's connection to the dashboards ecosystem, which will start later this year. This latest draft has been developed following consultation with regulators and a review process with PDP volunteer participants connecting directly to the ecosystem.

#### *What are the reporting standards?*

The reporting standards set out mandatory requirements on pension schemes for generating and recording operational information and reporting it to the Money and Pensions Service (MaPS). This supports oversight and management of the dashboards ecosystem and regulators' functions in respect of compliance monitoring and enforcement. The standards apply legally to the trustees or scheme managers of occupational pension schemes and the managers of stakeholder and personal pension schemes that are required to connect to the dashboards ecosystem. It is therefore important for schemes to understand the standards, even if implementation is delegated to a third party.

Broadly, these reporting standards cover requirements in relation to generating and keeping records and (later) reporting data to MaPS about:

- coverage – legislation requires all relevant member records to be connected to the dashboard, although it is anticipated that at least some schemes will not immediately meet this requirement following their 'connect by' date;
- service availability – legislation states that schemes are expected to remain connected at all times and the code of connection requires 99.5% service availability per calendar month, and
- view responses – dashboard users must be able to view their information in relation to the scheme almost instantly, with the code of connection requiring 99.9% of view responses to be sent within 10 seconds of receipt of the view request (measured over a 24-hour period).

#### *What has changed?*

One of the key changes to the reporting standards is a new 2-phase approach. From April 2025, when schemes start connecting in line with the 'connect by' dates in guidance, the standards require only the generation and keeping of records which can be made available to MaPS or regulators upon request, not the routine reporting of this data to MaPS. An additional duty to routinely send that data to MaPS will apply at a later date (to be confirmed, but not expected to be before October 2025).

Another change relates to a previous operational monitoring requirement whereby the scheme would have been required to confirm its availability on the dashboard to PDP every 60 seconds. PDP accepts that this would have been onerous and added unnecessary burden to system processing. Instead, schemes will (in the second phase, once routine reporting begins) report retrospective unavailability on a daily basis.

Schemes can refer to the PDP changelog for details of all the updates made: <https://www.pensionsdashboardsprogramme.org.uk/standards/reporting-standards#changelog>

#### *Next steps*

Formal approval of the reporting standards from the Secretary of State for Work and Pensions and publication of the final standards is expected later in Q1 2025. In the meantime, the PDP doesn't anticipate any further significant changes and recommends that schemes align with the current version whilst preparing for connection.

### **Proposed reforms to defined benefit scheme surplus release**

The Chancellor has announced that she intends to reform the regime for surplus release from DB schemes on an ongoing basis. Currently, schemes may only release surplus on an ongoing basis if they passed a s251 resolution before 6 April 2016 and many scheme rules expressly prohibit surplus extraction. Any extracted surplus is currently subject to a tax charge of 25%.

It is not yet clear whether the scope of these reforms will be limited to changes the statutory procedural framework governing surplus release, or if the government will also consider introducing statutory overrides to permit surplus release where it is prohibited under the rules of a scheme, and if the government is considering any reforms to the taxation of released

surplus. The government has indicated that it will set out the details of its proposed reforms in its response to the Options for Defined Benefits consultation, due this Spring.

**Pension scheme invests in bitcoin**

A UK pension scheme has invested 3% of its assets in Bitcoin. Investment in crypto-currency represents a change in approach compared to the way pension scheme trustees have invested in the past. The percentage of assets allocated to Bitcoin was relatively small, but the move is a novel one for UK defined benefit pension schemes.



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



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