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CLEAR VIEWS

Quarterly Update

November 2024

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Rachel Reeves has indicated that in her Mansion House speech on 14 November she will share her initial findings on the Pensions Review along with potentially far-reaching changes to be made to pensions.

OVERVIEW

Priorities for trustees over the winter are:

- For upcoming actuarial valuations with an effective date on or after 22 September 2024, to put in place a "funding and investment strategy" and thereafter submit a statement of strategy to The Pensions Regulator (**TPR**) as soon as reasonably practicable. Note that TPR will not expect submissions until the new digital platform is operational in spring 2025.

- To ensure they are aware of when they should submit their scheme's first own risk assessment. In most cases, a scheme's deadline for a first own risk assessment will be the last day of the first scheme year which begins after 28 March 2024.

In addition, trustees should be aware that:

- Significant pension changes are proposed in the Autumn Budget, in particular the impact of the government's decision to bring pension benefits that pass on death into scope of inheritance tax from 6 April 2027.

- Regulations to address the technical changes required as a result of the abolition of the lifetime allowance were laid on 7 October 2024 and 9 October 2024. The regulations will have effect from 18 November 2024.

- The Pensions Ombudsman is rolling out its expedited decision-making, so pension complaints that do not require significant correspondence with members will be handled by a caseworker who issue an initial decision. Such a complaint will only be referred to the Ombudsman if a party disagrees with the caseworker's decision.

- The Pensions Ombudsman has published a useful determination (CAS-79505-D9P2) on incorrect benefit quotations being provided and the circumstances where a member could not rely on such incorrect benefit quotations.

KEY DEVELOPMENTS

The Autumn Budget 2024: what does it mean for pensions?

Pensions brought within the scope of inheritance tax

In a major overhaul to the taxation of pensions on death, from 6 April 2027 almost all pension benefits that pass on death will be included in the deceased's estate for inheritance tax (**IHT**) purposes.

The value of pension death benefits will be taken into account when calculating the overall value of a person's estate (meaning his property, money and possessions) and any IHT due. If the total value of the estate exceeds the nil-rate band which is currently £325,000 (and any other allowances or exemptions available) the excess will be subject to IHT at a rate of 40%.

This change will apply equally to DB and DC schemes, as well as to non-UK schemes, with limited exemptions only for dependant's scheme pensions and charity lump sum death benefits.

The imposition of IHT will apply alongside the current taxing regime for pension death benefits. This means that on death at or after age 75, and on the proportion of death benefits over the "lump sum death benefit allowance" on death before 75, there will also be a charge to income tax. This could give rise to an effective tax rate on pension death benefits of 67%, unless this proposal is changed after consultation.

Changes to the overseas transfer charge

With effect from 30 October 2024, there will no longer be an exclusion from the 25% Overseas Transfer Charge where the QROPS is established in the EEA or Gibraltar and the transferring member remains in the UK.

We understand that this change is not intended to impact the transfer of pension benefits out of the UK where the pension scheme member is also leaving the UK, but the policy paper on this point is not totally clear so it will be important to review the draft legislation carefully.

State pension and minimum wage changes

Pensioners will continue to benefit from the triple lock, under which the State Pension is increased in line with the higher of wages, inflation or 2.5%. This will result in an increase in the State Pension of 4.1% in 2025/26.

From 6 April 2025, the national living wage will increase to £12.21 an hour, and the minimum wage for eligible workers aged 18-20 will increase to £10 an hour. These changes will bring more workers, and therefore employers, within the scope of the automatic enrolment requirements.

TPR's press release that Trustees should use TPR's new DB Funding Code from Monday 23 September 2024

Trustees of defined benefit (**DB**) pension schemes with actuarial valuation dates effective from 22 September 2024 should now refer to TPR's new DB funding code. This code, which was laid in Parliament on 29 July 2024 and is expected to come into force in late November, outlines TPR's guidance and expectations for compliance with funding and investment strategy (**FIS**) requirements.

The code provides clear expectations and includes guidance for trustees navigating their first Fast Track or Bespoke valuation.

Trustees and scheme managers are required to submit their statement of strategy to TPR as soon as reasonably practicable after preparing their FIS. However, TPR will not expect submissions until a new digital platform is operational in spring 2025.

TPR has published illustrative templates and a list of required data for the statement of strategy, along with a summary of key themes and changes from its consultation feedback. There will be a nine-week gap between the start of the Funding and Investment Strategy Regulations and the new DB funding code's enforcement, during which affected schemes should use the new code as a base.

TPR's General Code - Timing for the first own risk assessment

The Pensions Act 2004 requires the Trustees of occupational pension schemes (subject to certain prescribed exemptions including public service pension schemes and authorised Master Trust schemes which are subject to different requirements) to establish and operate an effective system of governance (**ESOG**) which is proportionate to the size, nature, scale and complexity of the scheme's activities.

The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (**Regulations**) came into force on 13 January 2019 and required the Pensions Regulator's General Code of Practice (in force from 28 March 2024) (**General Code**) to include details of how trustees should discharge the requirement to establish and operate an ESOG, including (amongst other details) the carrying out of an own-risk assessment (**ORA**) of their ESOG (for schemes with 100 members or more) at least every 3 years; and the timing of schemes' first ORA. The ORA is an assessment of how well the ESOG is working and how potential risks are managed and the General Code sets out details of what the ORA needs to address.

The Regulations provide that schemes' first ORA must be prepared (emphasis added):

(i) *within 12 months beginning with the last day of the first scheme year that begins after the Regulator has issued a code of practice; or*

(ii) *if later:*

aa. within 15 months beginning with the date on which the trustees or managers of the occupational pension scheme are next required to obtain an actuarial valuation in *accordance with section 224(actuarial valuations and reports) of the Pensions Act 2004; or*

bb. by the date on which the trustees or managers of the occupational pension scheme are next required to prepare an annual statement in accordance with regulation 23 (annual statement regarding governance) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

The General Code (at paragraph 4) refers to the timing for the first ORA by cross-referring to the Regulations (i.e. the above wording):

"*The governing body should prepare and document its first ORA before the end of the period described in Regulation 3(8)(i) of The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018.*"

While the timing of limb (i) above was considered to be clear, some commentators considered there to be some uncertainty in relation to the word "next" as highlighted above. This was because it was viewed as not clear whether "next" meant following the Regulations coming into force (i.e. from 13 January 2019), or the General Code coming into force (i.e. from 28 March 2024).

The Regulator's Policy Delivery team have provided their opinion (which is not legal advice) that the better view is that "next" should be read by reference to the effective date of the Regulations not the General Code. We agree that this is the better view from a legal perspective.

Consequently, there are very few, if any, scenarios where limb (ii) above will apply given that over 5 years have passed since the Regulations came into effect, and actuarial valuations are required triennially in respect of occupational defined benefit schemes, and several annual statements will have been prepared since 13 January 2019 in respect of occupational money purchase schemes.

In most cases, schemes should refer to limb (i) and therefore the deadline for first ORAs will be the last day of the first scheme year which begins after 28 March 2024.

HMRC confirms amending legislation following abolition of lifetime allowance

HMRC published its Pension schemes newsletter 163 on 24 October 2024. The newsletter notes that further regulations to address the technical changes required as a result of the abolition of the LTA were laid on 7 October 2024 and 9 October 2024. The regulations will have effect from 18 November 2024. The regulations make a number of technical changes, notably:

Lump sums and death benefits

- Clarification that where more than one lump sum death benefit is issued in respect of an individual, they are treated as occurring at the same time.
- Clarification of the amount of Lump Sum Death Benefit Allowance (**LSDBA**) which is used on the payment of a lump sum death benefit.
- An amendment to the 'lifetime allowance previously used amount' where an individual has reached the age of 75 prior to 6 April 2024 and has not become entitled to a lump sum after reaching that age.

- The introduction of a requirement for scheme administrators to report funds crystallised prior to 6 April 2024 and those crystallised after, to ensure the correct deduction from the LSDBA.

Protections

- Clarification of the applicable Lump Sum Allowance (**LSA**) and LSDBA where an individual is relying on primary protection and has pension rights over £1,500,000;

- Clarification that an individual who has previously been entitled to a serious ill-health lump sum and is relying on enhanced protection, cannot subsequently receive a pension commencement lump sum; and

- An amendment in respect of fixed protection and individual protection in relation to the relevant amount of LSA and LSDBA.

International

- The introduction of the concept of 'adjusted lifetime allowance previously used amount', which deducts any amount attributable to the occurrence of a benefit crystallisation event (BCE) 1 prior to 6 April 2024, from the available overseas transfer allowance; and

- The introduction of a requirement for a scheme manager to notify HMRC of the available overseas transfer allowance when reporting a change of circumstance or making an onward transfer.

Pensions Ombudsman blog on introducing expedited determinations

The Pensions Ombudsman's office published a blog on 25 September 2024 sharing its updates and progress of its Operating Model Review.

The Operating Model Review aims to speed up the resolution of complaints through quicker decision-making. The Model filters any pension complaints that do not require significant correspondences with members. Some examples include a pension provider supplying an incorrect benefit statement, but no loss was clearly caused by that error, or, where a member wants a scheme to honour a cash equivalent transfer value even though the member was responsible for not meeting statutory time limits.

An initial decision will be issued to all parties setting out the caseworker's view. Only where a party disagrees, the matter will be subsequently referred to an Ombudsman. This expedited process means that parties will be able to get a determination without going through a prolonged adjudication process.

The expedited Model was successfully piloted over the summer 2024, with very few of the caseworker's decisions being challenged for determination by either party.

In light of this, the Ombudsman announced that the office will be fully rolling out expedited decision-making. It does not intend to publish expedited determinations but is exploring how industry-wide learnings can be shared through, for example, publication of case studies.

The government publishes a 'Call for Evidence' in its first phase of the Pensions Investment Review

On 4 September 2024, the government published the 'Pensions Investment Review: Call for Evidence'. This open call for evidence will inform the first stage of the Pensions Investments Review which aims "to boost investment, increase pension pots and tackle waste in the pensions system."

The initial stages of the review will consider evidence on a range of topics to include the following:

Scale and consolidation: this will include exploring the potential benefits and risks of a more consolidated DC market; examining the roles of single employer trusts, master trusts, and Group Personal Pensions in a consolidated market; assessing barriers to consolidation, including competitive and legal factors; and evaluating the success of LGPS asset pooling in delivering improved long-term returns and investment capacity.

Costs vs Value: the review will investigate the roles of employers, advisers, trustees/IGCs, and pension providers in setting costs in the DC market; consider the impact of price competition on asset allocation; and the potential for government interventions to encourage higher investment budgets for better returns will be examined.

Investing in the UK: the review will assess the potential for increased investment in UK asset classes by a more consolidated LGPS and DC market; the factors influencing UK pension fund investment patterns will be explored; it will consider the case for additional incentives or requirements to raise portfolio allocations to UK assets, aiming to improve saver outcomes and boost UK growth; and options to support and incentivise LGPS investment in local communities will also be evaluated.

The call for evidence closed on 25 September 2024.

Pensions Dashboards

The UK Government has reaffirmed its commitment to the development of pensions dashboards, with the Pensions Dashboards Programme (**PDP**) reportedly making significant progress. In a written statement to Parliament, the Minister for Pensions, Emma Reynolds MP, underscored the Government's dedication to creating a system where individuals can access all their pension information in one secure online location. She highlighted the growing confidence of the Infrastructure and Projects Authority in PDP's ability to meet its objectives.

Reynolds also announced that the state-provided MoneyHelper pensions dashboard will be available to the public before any commercial dashboards are launched. This early release aims to ensure that a functional dashboard is accessible as soon as possible, allowing for extensive user testing and providing valuable insights into customer behaviour. This approach is intended to bolster confidence in the system's operational delivery, security, and consumer protection before commercial dashboards are introduced.

The Pensions Regulator has also published its new pensions dashboards compliance and enforcement policy.

The policy is driven by several principles. It adopts a risk-based and proportionate approach, focusing resources on the highest risks and intervening only as necessary. The primary goal is to ensure savers receive a complete and accurate picture of their pensions. Recognising the challenge of delivering pensions dashboards, the policy emphasises clear expectations, tools, and education to help schemes comply. While the approach to compliance is pragmatic, robust enforcement will be applied in cases of wilful or reckless non-compliance. The policy supports industry-led solutions and emphasises the importance of data quality and robust internal governance for compliance. It acknowledges the dependency on third parties and will use regulatory powers against them when necessary. The effectiveness of regulatory interventions will be monitored and adapted based on lessons learned.

Key risk areas include ensuring schemes connect to the Money and Pensions Service (**MaPS**) by the deadline, maintaining connection compliance, and accurately matching pensions to savers. The policy highlights the importance of good quality data and data controls. Schemes are expected to read and implement guidance from the regulatory body, the Department for Work and Pensions (DWP), and MaPS. They should have governance systems and internal controls, keep records of decisions and compliance efforts, and manage service providers effectively.

Compliance will be monitored using data from the MaPS dashboards system, breach reports, whistleblowing, and engagement with schemes. Non-compliance may lead to investigations and regulatory action, with a risk-based and proportionate approach considering the circumstances of each case. Factors influencing regulatory action include the impact on members, the nature of the breach, prompt corrective actions, compliance history, and cooperation with the regulatory body.

CDC consultation launched on 8 October 2024

Following the Chancellor's visit to Canada to observe CDC retirement schemes that pool employee contributions into larger, investor-managed funds, the UK government is expediting plans for the UK pension system by expanding access to Collective Defined Contribution (**CDC**) schemes. Introduced in the UK in 2022, CDC schemes purport to offer more reliable returns for individuals than DC schemes and more predictable costs for employers than DB schemes.

The government is consulting on proposals to extend CDC schemes to more employers with the aim of providing better value for future pensioners and with the secondary aim of unlocking investment potential. Currently, only single or connected employers can establish CDC schemes, with the first launched by the Royal Mail. The government now seeks to broaden access to unconnected multiple employer schemes, potentially making this model more accessible.

This initiative is part of a broader review of the pensions landscape and the new Pension Schemes Bill, which aims to boost pension pots through consolidation and broader investment strategies.

Mr S (CAS-79505-D9P2) - incorrect benefit quotations

The Deputy Pensions Ombudsman has partially upheld a complaint by a deferred member of a money purchase pension plan due to the provision of conflicting information about his estimated pension value (**EPV**) in annual benefit statements.

The decision is notable for holding that the member could not rely on a benefits statement incorrectly quoting a higher EPV where that error was obvious in the context of the clearly stated assumptions included in the benefit statement and the EPV quoted in previous statements received by the member.

In February 2019, the member, Mr S, received an annual benefits statement from Royal London which quoted an EPV of £62,600 at his normal retirement date of November 2029 (the **February 2019 Statement**). The February 2019 Statement noted that this figure was provided on the assumption that the investments would continue to grow each year by 1.6% above an assumed annual inflation rate of 2.5%. It also assumed that Mr S and his employer would continue to make regular contributions to the scheme until the member's chosen retirement date or his 75th birthday.

Mr S was made redundant in January 2021 and accordingly ceased making contributions to the scheme. On 26 September 2021, Royal London sent Mr S an updated annual benefits statement calculating Mr S' EPV at £65,100 (the **January 2021 Statement**). The January 2021 Statement noted that these figures assumed that 'no further contributions would be paid into the scheme.

Notably, the EPV quoted in the January 2021 Statement was larger than that contained in the February 2019 Statement, despite assuming that no further contributions would be made in respect of Mr S into the scheme.

Mr S contacted Royal London in March 2021 to confirm that the January 2021 Statement took into account the fact that no further contributions were being made into the scheme. Royal London confirmed that this was the case. However, Mr S received a retirement options letter in September 2021 with lower illustrated values than those included in the January 2021 Statement. Mr S made multiple attempts to contact Royal London about this discrepancy, who confirmed that the values included in the January 2021 Statement were incorrect.

Mr S complained on the basis that his reliance on the incorrect information had caused him to miss the opportunity to make further contributions into the scheme after he was made redundant, and benefit from a higher pension on retirement.

The Deputy Ombudsman held that it was unreasonable for Mr S to have relied on the January 2021 Statement as:

1. the values in the January 2021 Statement were not guaranteed, and so did not create an entitlement to the sums quoted;

2. on the balance of probabilities, Mr S could not have reasonably relied on the January 2021 Statement as an accurate quote of his EPV, given that the stated EPV was higher than the EPV quoted in the February 2019 Statement, despite clear wording that the January 2021 Statement assumed no further contributions would be made; and

3. the fact that Mr S did not take further follow up actions after the phone calls in March 2021 to clarify whether the January 2021 Statement was accurate suggests that pension planning was not a high priority for Mr S in March 2021. It was therefore less likely that he would have made further contributions into the scheme had he been provided with the correct information.

However, the Deputy Ombudsman held that Royal London's provision of incorrect information and failure to correct this error in a timely manner amounted to maladministration, and made an award of £500 for distress and inconvenience.

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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