

**STEPHENSON
HARWOOD**
pensions law group

CLEAR VIEWS

Quarterly Update
June 2024

CONTENTS

In this edition of our Quarterly Update we cover the following topics:

- Pensions dashboards
- The new statutory funding regime
- Further developments in the abolition of the Lifetime Allowance
- The Pensions Regulator's priorities for the year ahead
- The impact of the General Election
- The "triple lock plus"
- A determination of the Pensions Ombudsman relating to the recovery of overpayments

OVERVIEW

Priorities for trustees over the summer are to:

- Understand the implications of the changes made to the funding regime for DB schemes. DB pension scheme trustees are required at the time of their first actuarial valuation with an effective date on or after 22 September 2024 to put in place a "funding and investment strategy" and to comply with the new legislative regime as well as the requirements of Pensions Regulator's new Funding Code; and
- Ensure they are aware of the deadline of 31 October 2026 for schemes to be connected to the pensions dashboards ecosystem and the (optional) staged timetable for connection, and to understand what steps they and their scheme administrators will need to take prior to connection.

In addition, trustees should be aware that:

- Labour reportedly no longer intends to reintroduce the lifetime allowance if elected next month;
 - We still await, however, further amending Regulations to correct errors in the new lump sum allowances legislation and expect that we will not get these before September 2024. In the meantime, HMRC has suggested that in some situations members hold off taking or transferring certain benefits; and
 - The Pensions Ombudsman has published a very interesting determination (CAS-55100-G3W9) on the recovery of overpayments by trustees, and the circumstances in which a valid defence to recovery may be available.
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KEY DEVELOPMENTS

Pensions dashboards

The Department for Work and Pensions (**DWP**) has published further guidance on pensions dashboards, emphasising that all schemes must connect to the pensions dashboards ecosystem by 31 October 2026 at the latest. The guidance details two ways that schemes can connect to the dashboard, either through an in-house technical solution or a direct connection, or through buying services from an integrated service provider.

The guidance also sets out a best practice staged timetable for schemes based on the number of relevant members at the reference date (being the scheme year end date between 1 April 2023 and 31 March 2024). For the largest schemes, this is 30 April 2025, with the smallest schemes recommended to join by 30 September 2026. It acknowledges that, while not mandatory, meeting the dates in the staged timetable will provide the Pensions Dashboards Programme with adequate time to assist and co-ordinate activities to support the connection of schemes in advance of 31 October 2026.

The guidance emphasises that connecting to the dashboards ecosystem by these relevant dates will put schemes in a good position to achieve compliance with a practical delivery plan with suppliers, as well as giving them sufficient testing time to enhance the member experience by the legal deadline. It will also showcase good governance and robust risk management on the part of the scheme.

Statutory funding regime changes for DB schemes brought into force

Regulations have been enacted (and came into force on 6 April 2024) which make important changes to the funding regime for DB pension schemes. The regulations codify under statute the requirement for DB pension schemes to have a funding and investment strategy (an **FIS**) which targets full funding on a "low dependency basis" by a specific date (determined by reference to the legislation).

A scheme's first FIS must be produced within 15 months of the effective date of its first actuarial valuation after the new regime comes into force on 22 September 2024. Transitional regulations provide that until such time as the scheme's first FIS is in place, the current provisions on the statutory funding objective in section 222 of the Pensions Act 2004 continue to apply. The transitional provisions also provide that section 224 of the Pensions Act 2004, which relates to obtaining actuarial valuations, will continue to apply without amendment until the scheme obtains an actuarial valuation with an effective date on or after 22 September 2024.

See our comment below on the impact that the General Election will have on the Pensions Regulator's accompanying new Funding Code of Practice.

Further lifetime allowance abolition developments

We discussed in our [March snapshot](#) that the Finance Act 2024 had received Royal Assent and that the Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 had been published. These regulations were effective from 6 April 2024. That is not, however, the end of things. We await a second set of amending regulations to deal with some further technical changes that are required to ensure that the legislation works as intended. As a result, HMRC has recommended that members wait until these second set of regulations are in place before taking or transferring certain benefits.

This will particularly apply to:

- members with enhanced protection who want to transfer their pension to a new provider and carry over the benefit of their protection. Amending legislation will be needed to permit this and therefore such members may wish to delay transferring to a new provider;
- members who have certain protections which entitle them to tax free lump sums in excess of £375,000. These members may want to either limit the amount of the pension commencement lump sum (**PCLS**) they take or delay taking their PCLS so that they can receive their full entitlement;
- the payment of lump sum death benefits where payment is made from funds which crystallised before 6 April 2024. The intention is that lump sum death benefits from such funds should be tax-free because they will already have been tested against the previous lifetime allowance. However, the legislation as it is currently drafted limits the tax-free amount of the death benefit that could be paid by the amount of the available lump sum and death benefit allowance. Any amount that exceeds this would, at the moment, be subject to a member's marginal rate of income tax; and
- members who wish to take a PCLS under scheme-specific lump sum protection. The formula in the legislation applying to this currently double counts certain benefits and therefore members may wish to wait until this error has been rectified.

HMRC had initially said that the second set of amending regulations would be published on 18 April 2024 and effective from 6 April 2024. That did not happen, however, and we have not heard anything further since. The introduction of these regulations will now be delayed, probably until the autumn, due to the General Election and then summer parliamentary recess.

Labour's lifetime allowance reintroduction plans reportedly dropped

On 9 June, the Financial Times reported that the proposal to reintroduce the lifetime allowance will not be included in Labour's manifesto (due to be published on 13 June). According to the Financial Times, Labour's rationale for doing so was to avoid the uncertainty and instability that could result from reintroducing the LTA.

The Pensions Regulator's priorities for the year ahead

The Chief Executive of the Pensions Regulator (**TPR**) made a key-note speech to the industry on 22 May 2024 which outlined a regulatory roadmap for DC and DB Schemes, particularly in the wake of pensions dashboards.

Specifically on dashboards and data quality, Ms Delfas emphasized the critical importance of data quality in pension schemes for achieving compliance with regulatory expectations and delivering value for members. She highlighted that regulatory compliance is mandatory and warned of a significant shift in TPR's enforcement strategy, which will involve proactive market engagement to ensure schemes maintain high-quality data. This is particularly pertinent as savers will soon have unprecedented access to their personal data through pensions dashboards and the Value for Money framework. The speech emphasised that meeting deadlines is imperative and that TPR will actively engage with and take action against schemes that do not meet their standards.

On the landscape more generally, the speech emphasised that, given the evolution of the pension sector towards fewer, larger schemes, TPR is committed to being a supportive force for market innovation while remaining vigilant against emerging risks. The speech also outlined TPR's regulatory roadmap, which aims to ensure value for DC members, security for DB members, and high standards of trusteeship across all schemes. The roadmap includes initiatives such as increased scrutiny of small schemes, additional requirements for supervising master trusts, and new guidance for DB schemes.

Finally, and perhaps most interestingly, the speech also indicated that TPR plans to use its regulatory powers to expand its supervision of professional trustee firms, highlighting the risks involved in concentrating decision-making in the hands of a few and detaching decision-making from the membership.

What does the General Election mean for upcoming pension developments?

The announcement of the General Election will see a pause to legislation and government policies. This pause will impact a number of expected pension developments.

Some of the key areas which may see delay or change are as follows:

Lifetime allowance

In our [April snapshot](#) we discussed how a further set of amending regulations were due to correct some final issues in the legislation dealing with the abolition of the Lifetime Allowance. HMRC's guidance to members impacted by these issues was to hold off taking affected benefits until these changes had been made. These regulations have not yet been made and affected members will therefore remain in limbo for some time to come. See above for further comment.

Mansion House reforms

We have yet to see the full implementation of the Mansion House reforms. The key political parties appear to support the re-invigoration of UK capital markets, in particular through the promotion of pension scheme investment in UK productive assets, but any further development of policies and legislation in this area will now be paused. We do not know what will happen to other proposals, such as facilitating the return of surplus in defined benefit schemes.

New defined benefit funding regime

As explained above, the legislation setting out the new defined benefit funding regime has been passed with effect from 6 April 2024. However, some of the detail and specific workings of the regime (such as the test for determining when a scheme reaches "significant maturity") are to be set out in the Pension Regulator's new Funding Code.

The Funding Code was due to be issued before the new regime comes into effect on 22 September 2024. It is likely this will now be delayed due to the General Election and therefore not in force by 22 September 2024. Trustees will need to have sight of the Funding Code before completing a valuation with an effective date on and after 22 September. Helpfully, the 15 month window for completing a valuation means that the first "new regime" valuation will not have to be completed until 22 December 2025, which should still give plenty of time for the new Funding Code to be introduced.

The Conservative Party's plans for a 'triple lock plus'

If the Conservatives win the General Election, they have promised to raise the tax-free pension allowance via a 'triple lock plus'.

Currently the income tax thresholds have been frozen since 2021 until 2028 while the state pension has risen significantly because of inflation. Without change, this will result in an increase in the number of pensioners having to pay tax.

Under the Conservatives' plan, the personal allowance for pensioners will increase at least 2.5% or in line with the highest of earnings or inflation. This will result in the state pension being below the tax-free threshold.

The Conservatives estimate that triple lock plus will cost £2.4 billion a year by 2029-30 and claim it can be funded out of existing policies to reduce tax avoidance.

The Pensions Ombudsman determination – Mr E / Bic UK Pension Scheme – 19 April 2024

Background

The Pensions Ombudsman's (**TPO**) determination arose from a decision of the Court of Appeal in *BIC v Burgess* [2019], which held that a change previously made to the Bic UK Pension Scheme (the **Scheme**) Rules was invalid. As a result, pensioner members had received increases to pensions in payment in excess of their entitlement. The Trustees of the Scheme sought to recover these overpayments by way of deductions from future pension payments.

The claimant (**Mr E**) was a member of the Scheme. Mr E had received pension overpayments of £90,934 over a period of almost 25 years. Mr E challenged the Trustees' decision to recover the overpaid benefits on the basis that it was not fair given his personal and financial circumstances.

Mr E was not represented and TPO encouraged him to expand his complaint to include the equitable principles of:

- i) estoppel by representation – a defence that can apply where bringing a claim is inconsistent with a previous representation or agreement that the member has relied on;
- ii) change of position – a defence that can apply if the member has used the overpayment in such a way that the member is no longer in a position to repay the overpayment; and
- iii) laches – a defence that can apply if there is undue delay on the claimant's part and detrimental reliance by the member.

TPO denied the Trustees recovery of the overpayments made before 2013 because Mr E's annual P60s, his Retirement Statement, and monthly payslips were "unambiguous representations that he was entitled to the pension specified in his payslips and P60s".

TPO also denied recoupment of the overpayment between 2013 and 2019, because the Trustees' 2013 suspension announcement did not make it sufficiently clear that members might be accruing further overpayments during the suspension period that might become repayable.

As a result, the Trustees are entitled to recover only £6,554 of the total amount overpaid by way of deduction to Mr E's future pension payments, although they may only do this after seeking an order from a competent court (i.e. to enforce TPO's decision).

TPO also made a distress and inconvenience award of £1000 to Mr E. The TPO made this award on the basis that the overpayments were made because of the Trustees' maladministration in misinterpreting the Scheme rules as well as the excessive time it took from 2013 to determine whether the increases were validly made or not.

What to do if faced with a potential overpayment

Clear communications

This determination demonstrates the importance of clear communications with members regarding potential overpayments.

TPO stated that Mr E's payslips and P60s potentially constituted implied unambiguous representations that Mr E was entitled to the pension payments paid to him. The Trustees' 2013 suspension announcement did not make it sufficiently clear that the increases might be invalid and that any overpayments may need to be repaid.

Deal with the issue without delay

The TPO stated that even if the other defences to recovery had not applied it is likely the defence of laches would have prevented recovery of the overpayments because the Trustees had failed to act promptly after discovering the overpayment.

Consider the member's financial circumstances

Mr E used the overpayment to relocate as well as on his living expenses. Although recovery was proposed to be taken from future pension instalments (which had obviously not yet been spent), TPO decided that Mr E had made decisions based on an assumption that his pension would continue to be paid without reduction.

This determination makes it clear that a change in position defence can also apply to future pension instalments, not just to the recovery of previously paid (and spent) overpayments.



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.

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



ESTELLA BOGIRA

PARTNER, Pensions

T: +44 20 7809 2298

E: Estella.Bogira@shlegal.com



JULIA WARD

**SENIOR KNOWLEDGE LAWYER,
Pensions**

T: +44 20 7809 2028

E: Julia.Ward@shlegal.com

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