THE PENSIONS COMPASS

DECEMBER 2022

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INTRODUCTION

Season's Greetings to all our readers.

And a big welcome to the Pension Team's latest recruit, Associate James Newcome, click ***here*** for James' details.

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Baffled by pension terminology? Try our Pensions Glossary, visit *https://wedlakebell.com/pensions-glossary*

Clive Weber, Editor
On behalf of the Wedlake Bell Pensions & Employee Benefits Team.

PART 1 – PENSIONS DASHBOARDS – SOUND LEGAL STRUCTURE?

Pensions dashboards have been a key area of interest in the UK for some years now. Our previous ***update***, referred to amongst other things, some of the main issues and concerns around pensions dashboards including the ambitious timescales for compliance and the exposure of trustee boards to the Pensions Regulator's (**TPR**) ability to issue fines and penalties for breaching the requirements.

Key point *– Dashboard compliance may seem daunting to schemes but, with advice including legal advice as appropriate, will be achievable.*

Background

The Pensions Schemes Act 2021 lays the foundation for pensions dashboards services, with an indicative version of draft regulations published in January 2022. These regulations were followed recently by an updated set which are due to come into force on 12 December 2022 (the ***Regulations***). The Regulations have been amended to take account of the DWP's responses to its consultations on both sets of regulations.

By way of reminder, pensions dashboards are an online platform providing pension scheme members with the ability to see their pensions across all of their schemes, including their state pension. Pensions dashboards are designed to make it easier for members to receive information on their pension savings and in turn increase member engagement by providing a service that is easy to use and readily accessible.

The Money and Pensions Service (**MaPS**) has established the Pensions Dashboards Programme (**PDP**). The PDP's vision is to *"enable individuals to access their pensions information online, securely and all in one place, thereby supporting better planning for retirement and growing financial wellbeing"*.

Application of the Regulations

The Regulations apply to trustees of *"relevant occupational pension schemes"*, which are any schemes with 100 or more active or deferred members. This includes DB and DC schemes.

Smaller schemes with less than 100 members are not yet subject to the new regime. However, there will be the option for these schemes to opt in voluntarily on application to MaPS and the DWP expects these schemes to have completed the onboarding process from 2026.

Preparing for launch

The Regulations provide the legal basis for relevant schemes to prepare their own dashboard system. Trustees will need to reach out to software providers and website designers which will connect to the dashboard ecosystem. Scheme administrators will be at the forefront of offering these services to trustee boards, so it will be important to communicate with them early to move things forward.

Provision of information requirements

The dashboard system will need to receive both "*find*" requests (a request to receive personal information on relevant members, search and match members to their pensions) and "*view*" requests (a request to provide members with information about their pension).

Broadly speaking, the Regulations refer to the information the dashboard system will need to display, which includes:

- **Administrative data**: information about the member's pension scheme, including scheme name, nature of benefit and membership category.
- **Signpost data**: information about a website address so members can access information on member-borne costs and charges, the statement of investment principles and implementation statement.
- **Value data**: information about accrued and projected pension values.
- **Contextual information**: this includes items such as the illustration date and whether a value is expressed as regular income, lump sum or pot values.

The dashboard system will also need to display details of the member's employment and on their pension provider.

Timescales for compliance

Our previous Pensions Compass ***update*** in March 2022 set out the proposed phased staging dates for pension schemes according to size to connect to the dashboard ecosystem. The Regulations set out specific timescales for providing view data.

There have been significant concerns raised in the pensions industry around the timescales schemes have to comply with the requirements. Originally, pension providers were to be given at least three months' notice to prepare for the introduction of pensions dashboards, known as the *"Dashboards Available Point"* (**DAP**). The DWP has now extended this to at least six months' notice before dashboards go live, in recognition of feedback from the industry. The Government has stated *"by making this change to at*

least six months' notice, the regulations provide greater certainty for the pensions industry to make final preparations for the public launch of pensions dashboard services".

There is no date that has yet been set for the DAP, although this is expected to be around mid-late 2024.

Key changes to the Regulations

After a period of further consultation and feedback, the following changes have been made and are reflected in the Regulations:

- The DWP has decided to push back the connection deadline for master trusts with 20,000 or more relevant members. Originally this was to be three months from 1 April 2023, but is now five months from 1 April 2023 (31 August 2023). DC schemes used for automatic enrolment with 10,000 or more relevant members also have a longer deadline, having changed from 31 July 2023 to 30 September 2023.
- The Regulations have been amended so that entire schemes already in a PPF assessment period before their staging deadline will be exempt from the requirement to connect to pensions dashboards. However, schemes that enter PPF assessment after they have connected to pensions dashboards will be required to maintain connection.
- Schemes that are winding-up will still be required to connect to the pensions dashboard by their applicable staging deadline.
- The DWP has delayed the staging date for public service schemes from 30 April 2024 to 30 September 2024. This is in response to concerns raised around implementing pensions dashboards alongside the McCloud remedy (the removal of age discriminatory practices across public sector pension schemes).
- It will be possible for a scheme to defer its staging deadline for up to 12 months, in limited circumstances. These may include circumstances where a scheme is changing administrator.

Further details of all staging dates are provided on TPR's website. TPR will also be contacting all schemes at least 12 months before their staging deadline to provide details of their applicable deadline.

TPR's Consultation on its proposed compliance and enforcement policy for pensions dashboards opened on 24 November 2022 and closes on 24 February 2023.

Compliance and enforcement

Despite concerns raised about certain aspects of the compliance provisions around fines and the overall scope of TPR's enforcement powers, the DWP has stated that these provisions are appropriate and proportionate to the wider dashboards project. Accordingly, the DWP does not intend to make changes to the fines and penalties set out in the January 2022 regulations, so they remain in the current Draft Regulations.

Pensions Dashboards Programme (PDP)

PDP's October 2022 Update explains progress on its testing and refining programme and on its proposed standards on which it consulted earlier this year. In November 2022 PDP issued proposed revised standards. Once the Dashboards Regulations have come into force (expected 12 December 2022) approval will be sought from the secretary of state for the PDP standards to become mandatory standards under the Regulations.

Next steps

Much of the legal groundwork for pensions dashboards has now been provided. Whilst the legal basis of pensions dashboards has advanced in the last few months, the practical realities of ensuring schemes are 'dashboard ready' ahead of their staging dates remain uncertain. There is clearly much to do ahead of these deadlines and TPR has produced a useful ***checklist*** so that trustees and managers can make a start. The scale of the project may appear daunting, but it is possible to tackle the requirements with the guidance available and a thorough project plan, with legal advice where necessary.

Wedlake Bell can offer scheme specific training on the new dashboard duties for trustees who need assistance in this area.

James Newcome, Associate and Justin McGilloway, Partner – Wedlake Bell Pensions & Employee Benefits Team

PART 2 – DERIVATIVES – THE STAR ON TOP OF THE CHRISTMAS TREE OR JUST A STOCKING FILLER?

Key Points

- In line with the Investment Regulations, Derivatives can be used only as a risk management tool or for efficient portfolio management.
- Trustees should always have their scheme's statement of investment principles in mind when making investment strategy decisions.
- Trustees should consult with their advisers over the levels of derivative investments and whether any de-risking is required.

What are Derivatives?

Derivatives are essentially forward looking contracts in which the seller agrees to sell an asset on a future date at a price which is fixed at the time the contract is entered into (the "strike price"). Derivatives derive their value from an underlying asset which is determined at a future date. Commonly this asset is a currency, stock or bond but can also be in relation to interest rates or commodities.

For example, someone who agrees a strike price today to buy shares in a company which will be sold in two weeks' time believes that in two weeks' time they will have a valuable benefit if the shares go up in price. The contract therefore has inherent value based on how the underlying asset is performing and can be bought and sold before the contract ends.

Why do Pension Schemes invest in derivatives?

Defined benefit ("**DB**") pension schemes are always looking for investment opportunities in order to improve their funding position in relation to their liabilities, usually in pursuit of the ultimate goal of a scheme buy-out with an insurer or self-sufficiency.

Derivatives are one such investment that DB pension schemes use to get a return on their investments. They can be used for efficient portfolio management or as a hedge in relation to the investment portfolio as a whole. They can be effective risk management tools.

What does the law say?

It is, of course, ultimately the members who must be at the forefront of trustees' minds when choosing to invest in derivatives albeit the impact on DB employers of trustees' investment strategy must also be considered. Trustees are under an obligation to act in

the best interests of the scheme beneficiaries, which typically means their best financial interests. The Pensions Regulator ("**TPR**") provides the following list of considerations which trustees must consider when adopting their investment strategy:

- *any limitations on investments contained in the trust deed and rules, and other legal requirements;*
- *your fiduciary duty to choose investments that are in the best financial interests of the scheme members – for example, you must not let your ethical or political convictions get in the way of achieving the best returns for the scheme;*
- *the suitability of different asset classes to meet the needs of the scheme and future liabilities;*
- *the risks involved in different types of investment and the possible returns that may be achieved; and*
- *appropriate diversification of the scheme's investments – in other words not 'putting all your eggs in one basket'.*

It is accepted that pension schemes may invest in derivatives, but it is clear from TPR guidance that they should not be the sole investment vehicle and appropriate risk management structures or hedges should be in place. It is also worth reiterating that trustees should seek expert advice from professional advisers when setting their investment strategy. Trustees are ultimately responsible for the operation of the scheme, and therefore need to ensure they understand the investments they are making and any risk involved.

The UK implementation of the European Market Infrastructure Regulation ("**UK EMIR**") sets the legal requirements for 'over the counter' ("**OTC**") derivative investments and regulates the OTC derivatives markets. An OTC derivative is simply a derivative contract direct between two parties rather than taking place on a supervised exchange. Pension Schemes entering into OTC derivatives over a certain investment threshold are required to provide 'margin' (collateral). If a Pension Scheme's derivatives exceed the relevant threshold, those transactions will need to be cleared by a 'clearing house' ("**CCP**"). The CCP effectively acts as the supervisor would on a regulated exchange. The CCP receives the margin and then stands in the middle of the contracting parties so that should one default, the CCP steps in so the contract may continue.

The aim of the UK EMIR was to increase transparency and reduce risk in the derivative markets by increasing reporting obligations and setting up safeguards such as CCPs. This was seen as of particular importance in the wake of the 2007/2008

financial crisis. There were initial concerns that pension funds may struggle to meet the clearing margin requirements as pension schemes do not usually hold large amounts of cash. Whilst these concerns did not immediately come to light, there was a stark reminder of the potential illiquidity of pension funds earlier this year where rapidly rising margin requirements triggered a mass sale of gilts and nearly lead to a collapse in certain DB pension schemes until the Bank of England stepped in.

Have some schemes gone too far?

As set out above, trustees must have certain statutory considerations in mind when setting their investment strategy. These statutory considerations include:

- Investing scheme assets in the best interests of members and beneficiaries;
- Ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- Invest predominantly in regulated markets;
- Ensure assets are sufficiently diverse to manage risk;

and most notably in relation to derivatives, regulation 4(8) of the Investment Regulations states (paraphrasing):

- Trustees may invest in derivatives but only to **contribute to a reduction in risks** OR to facilitate efficient portfolio management.

  Also, such investments must *"avoid excessive risk exposure to a single counterparty and to other derivative operations."*

Use of derivatives has become more and more common in pension scheme investment portfolios over the past 15 years, with an estimated two thirds of pension schemes invested in some form of derivative. Derivatives are now seemingly being used to the extent that may go beyond mere risk management or promoting efficient portfolio management. For a while, this seemed a 'no-brainer' approach for pension schemes with derivatives giving excellent returns and financial advisors saw them as a safe bet. The terms of derivative contracts may not have been as closely considered as they should have been e.g. whether in volatile markets the scheme would be able to meet large and sudden margin calls.

This has exposed pension schemes to much higher levels of risk than originally envisaged and as mentioned above was highlighted in an almost catastrophic way earlier this year when interest rate rises resulted in large increases in margin requirements for derivative investments, nearly causing a collapse in certain UK DB pension schemes.

Conclusion

Whilst derivative investment by DB pension schemes has become commonplace over the past 15 years, trustees should consider their exposure to the high risks they bring and whether their investment strategy reflects the required principles and statutory considerations.

Trustees should consult with their financial advisers and ask whether any de-risking of their portfolio is appropriate in light of recent events. In particular, trustees should discuss regulation 4(8) with their advisors and confirm their investments in derivatives are being used appropriately as risk management tools as required by the Investment Regulations.

Paul Ashcroft, Associate and Schuyler Hillbery, Trainee
Wedlake Bell Pensions & Employee Benefits Team

PART 3 – DEFINED CONTRIBUTION SCHEMES – CAN SCHEME TRUSTEES PRUDENTLY INVEST PART OF THEIR DEFAULT FUNDS IN ILLIQUID INVESTMENTS

Key Points

- DC Scheme trustees will have to report on their illiquid investments (and other investment holdings) in their Statement of Investment Principles/Annual Chair Statement.
- An exemption from the fee cap on default funds may be available to DC schemes for certain performance-based fees.
- DC Trustees should always prioritise members' interests when deciding how to invest.

Introduction

On 6 October 2022, the Department for Work and Pensions ("**DWP**") launched a consultation on draft Regulations which would require trustees of defined contribution ("**DC**") schemes to disclose and explain their investment approach to illiquid investments in their default fund within their Statements of Investment Principles and also provide a yearly breakdown of their investment asset classes in the annual Chair Statement. The draft Regulations also amend the relevant existing Regulations so that certain performance-based fees charged by investment managers are out of scope of the charge cap that applies to default funds.

What is an illiquid investment?

Under the draft regulations, an illiquid asset is defined as an asset *"which cannot easily or quickly be sold or exchanged for cash"*. The definition is extended to include any assets held in a collective investment scheme.

In its current form, this definition is quite vague and open to interpretation. This may result in inconsistent disclosures from scheme to scheme. The government is considering expanding on this definition, presumably in the form of guidance, to allow trustees properly to consider what is and what is not an illiquid investment and therefore would need to be disclosed.

Why are the regulations being introduced?

Automatic pension enrolment started in 2012. There has been a rapid increase in the assets invested by DC schemes, which look set to further double before 2030. The DWP are keen to allow schemes to invest in illiquid assets as they regard them as potentially offering better returns for pensioners and certain

investments may have wider beneficial impact for the UK economy (eg. Investment into renewable energy). Many overseas pension schemes operate in this manner. However, while opening up these avenues for investment, the DWP is keen to ensure transparency as to these investments.

The transparency is aimed to standardise the approach of default funds within the occupational pension market and also to allow members to see what investments are being made with their contributions, the outcome of these investments and the impact it may have on their potential retirements.

What will trustees have to do by way of disclosure and reporting on their default funds ?

Under the draft Regulations:

(1) Statements of Investment Principles for default funds - trustees will be required to disclose and explain their policy on illiquid investments on the first occasion on which their SIP is updated after 1/10/2023 and in any event from 1 October 2024; and

(2) Annual Chair statement – for the first scheme year ending after 1 October 2023, must specify their asset holdings within their default fund, on a percentage basis per specified asset class. Such classification will 'see through' collective money purchase schemes and need to incorporate the underlying asset. The asset classes proposed are:

- cash;
- bonds;
- listed equities (i.e shares listed on a public stock exchange);
- private equity (i.e shares not listed on a recognised public stock exchange);
- infrastructure;
- property/real estate;
- private debt/credit facilities; and
- other.

The structure of asset allocation disclosure will be a matter for trustees to decide how best to present the data to their members. A recommended approach will be included in (at present draft) statutory guidance but the approach will not be a requirement.

Some have questioned whether the Chair's statement is the appropriate place for this information and DWP are considering this further.

Exempting performance-based fees from the default fund charge cap

Simultaneously, the government has been looking at exempting certain DC scheme performance fees from the charge cap. Currently, DC scheme performance fees are subject to a regulatory charge cap of 0.75% charged to members auto-enrolled into the default fund. It is hoped that by exempting certain performance based fees from the cap, it would further encourage illiquid investment and therefore potentially allow a greater return on investment. Scheme trustees must consider whether the additional incentive for fund managers provided by additional performance fees will provide additional value to members that outweighs the expected extra performance fee costs.

The Government aims to finalise the draft regulations issued by way of consultation on October 2022 swiftly in time for them to take effect on 6 April 2023. The exemption for relevant performance-based fees would then be available from 6 April 2023.

The trustees (with support from their advisers) and the investment manager will need to agree the terms of the performance fee prior to the investment. No classes of assets are excluded from performance based fees.

It is for trustees to decide whether to include performance fee based investments in their default fund. Trustees are not bound to do so and should obtain advice both from the investment and legal perspectives.

Would such investments be consistent with trustees' legal duties? Each case will depend on the specific circumstances but, broadly speaking providing the trustees obtain and consider appropriate advice including legal advice, such investments may be in order.

Schuyler Hillbery, Trainee and Clive Weber, Consultant – Wedlake Bell Pensions & Employee Benefits Team.

PART 4 – PENSIONS READY RECKONER

Clive Weber, Consultant, Pensions & Employee Benefits Team. Please contact Clive with any queries on this Ready Reckoner.

PARLIAMENT	EFFECTIVE DATE	EFFECT
Forthcoming Bills (and Acts not yet in force)		
GMP Conversion – Conversion of GMPs Act (Royal Assent 28/4/2022)	*Not yet in force*	Will facilitate converting GMPs once relevant Regulations made. Awaiting DWP's consultation on the Regulations. Click ***here*** for article in June 2022 Pensions Compass.
Online Safety Bill	Bill in House of Commons. Will be enacted by Summer 2023?	Hopefully will assist in combating pension fraud.
Data Protection and Digital Information Bill	Bill introduced 18 July 2022, into force Spring/Summer 2023	Updating the UK's data protection laws, to reduce burden whilst ensuring standards.
Boycotts, Disinvestment and Sanctions Bill	Bill due to be published late 2022	Obliges public bodies including, it seems, the Local Government Pension Scheme to conduct procurement and *investment* activity in ways not contrary to Government policy.
Pensions Dashboards – Prohibition of Indemnification Bill	Expected to come into force in Spring/ Summer 2023	Trustees reimbursing themselves out of scheme assets for TPR fines under Dashboard Regulations to constitute criminal offence.

PARLIAMENT	EFFECTIVE DATE	EFFECT
Forthcoming Bills (and Acts not yet in force)		
Retained EU law Reform and Revocation Bill	Bill introduced on 22 September 2022. Possibly Summer 2023 or later	Replacement of EU retained law by end of 2023 or by June 2026 latest and assimilation into UK law. UK Courts regard to EU law to be lessened.
Extension of Automatic Enrolment Bill	Second reading in House of Commons expected on 25 November 2022	This Private Member's Bill extends auto-enrolment to all jobholders aged at least 18 in place of current minimum age of 22 years and removes the lower qualifying earnings threshold.
For Finance Bill 2022-2023	Draft Finance Bill clauses published 20 July 2022. Finance Bill is expected to be published in Spring 2023, Royal Assent expected July 2023	Specifies basis for making top up payments direct to low earning individuals where individuals paying pension contributions under a *net pay arrangement* (for tax year starting 6 April 2024 and onwards).
Recent Acts in Force		
Finance Act 2022	April 2022	Various measures including re: – transfer of dormant assets, see below; – scheme administrators' paying members' annual allowance charges; and – increase in NMPA from age 55 to age 57 from 6 April 2028 (click ***here*** for article in February 2022 Pensions Compass).
Dormant Assets Act	27 May 2022 and later	To reunite individuals with 'lost' financial assets including lost life insurance and retirement income policies, and where not possible, providing for social and environmental uses.

PARLIAMENT	EFFECTIVE DATE	EFFECT
Forthcoming Regulations (including those made but not yet in force)		
Pensions Dashboard Regulations 2022	Due to come into force on 12 December 2022	Click ***here*** for the article in this Pensions Compass and ***here*** for the article in March 2022 Pensions Compass. Click ***here*** for our list of key Pensions Dashboard documents. It is presently envisaged that large schemes (minimum 1000 active/deferred members) will need to connect to the Dashboard between April 2023 to September 2024, with a timetable in 2024/2025 and onwards for smaller schemes. The October 2022 Pensions Dashboards Programme Update Report describes the testing in which some organisations are participating.
DC schemes – Default funds illiquid assets: Administration, Charges and Governance Amendment Regulations	Regulations expected shortly, to come into force on 6 April 2023	Encouraging scheme trustees to invest part of auto-enrolment Default funds in illiquid assets, such as infrastructure funds. Click ***here*** for article in this Pensions Compass.
DB schemes – Funding and Investment Strategy Amendment Regulations	Timing uncertain – may be late 2023.	Proposed amendments to the Pensions Act 2004 scheme specific funding regime. The Government's Response to its Consultation on the draft regulations, and TPR's draft new Funding Code of Practice, are both awaited. Click ***here*** for the article in September 2022 Pensions Compass.
GMP Conversion Regulations	Timing uncertain, Consultation may be in Q1 2023	See above under Conversion of GMPs Act.
Notifiable Events Amendment Regulations	Timing uncertain – may be late 2023	Proposed additional Events to be notified to TPR and to scheme trustees (change in control of an employer, sale of material proportion of business or assets and/or granting of certain security rights). DWP's Consultation on these proposed controversial Regulations closed on 27 October 2021 and DWP's Response is awaited. Click ***here*** to listen to our December 2021 Podcast.

PARLIAMENT	EFFECTIVE DATE	EFFECT
Recent Regulations		
DC auto-enrolment schemes – Statements of Benefit Regulations	1 October 2022	Simplified annual benefit statements to be issued to DC scheme auto-enrolled members.
Climate Change – Governance and Reporting Amendment Regulations	1 October 2022	In scope schemes to measure their alignment with Paris Agreement climate goal *"so far as they are able to"*. Click ***here*** for the article in September 2022 Pensions Compass.
Fiduciary Managers and Investment Consultations – Amendment Regulations	1 October 2022	Alignment of pension legislation (scheme administration regulations 1996) relating to trustees' use of fiduciary managers and investment consultants with 2010 Order made by the Competition and Markets Authority.

FROM THE COURTS – RECENT DECISIONS	
TOPIC	**EFFECT**
Limitation and forfeiture *'Axminster' Pension Scheme* High Court, 17 June 2021	The same Judge as in the November 2020 Lloyds Bank GMP equalisation case confirmed that the Limitation Act does not apply to restrict claims by members for pension arrears as they are claims to recover *trust property*. However, scheme rules may limit such claims depending on their wording. Click ***here*** for our review of the Axminster case in July 2021 Pensions Compass, and see below for our case report on the CMG High Court decision on 11 August 2022.
Interpreting Revaluation provisions *De La Rue Pension Scheme* High Court, 14 January 2022	The employer's interpretation of the Scheme's revaluation rule for deferred pensions namely revaluation in line with minimum statutory requirements, was the preferred interpretation. A reminder to ensure clarity in scheme rules.

FROM THE COURTS – RECENT DECISIONS	
TOPIC	**EFFECT**
Death Benefits *Punter Southall v Benge and Barrett* High Court, 1 February 2022	The independent trustee concluded, having obtained supportive legal advice, that a luxurious lifestyle with the deceased member still meant the claimant was dependent on the deceased member for the "necessaries" of life. The High Court approved the trustee's decision. Click ***here*** for the article in March 2022 Pensions Compass.
Bankruptcy *Trustees in Bankruptcy v McNamara* High Court, 15 February 2022	The High Court decided in favour of the bankrupt scheme member, an Irish citizen made bankrupt in England. The Court decided his pension rights under an Irish pension scheme were beyond the reach of his English trustee in bankruptcy. Click ***here*** for the article in June 2022 Pensions Compass. *Wedlake Bell acted for the pension scheme trustees in this matter.* An appeal is listed in the Court of Appeal for 13 or 14 December 2022.
TPR fixed penalty notice *Ease & Co v TPR* First-Tier Tribunal, 31 January 2022	The Tribunal dismissed the company's appeal against TPR's fixed penalty notice. The company failed to prepare its scheme's annual governance statement and the company's lack of knowledge of the statutory requirement was not a reasonable excuse.
TPR escalating penalty notice *Davey West Ltd v TPR* First Tier Tribunal, 10 February 2022	TPR's Unpaid Contributions Notice lead to TPR issuing a fixed penalty notice and subsequently an escalating penalty notice, for failure to pay auto-enrolment contributions for a six month period. Click ***here*** for the article in February 2022 Pensions Compass (the review and appeal process) and ***here*** for the article in June 2022 Pensions Compass on recent cases in the First Tier Tribunal where the employer's defence of reasonable excuse also failed (*Kingswear Gallery v TPR* and *Morecombe Bay Wines v TPR*).
TPR contribution notice ("CN") Dosco Pension Scheme TPR Regulatory Report 31 March 2022	On 31 March 2022 TPR reported on the CN issued in August 2021 against the scheme's former German parent company. Besides demonstrating TPRs beyond the UK, this is the first example of a CN amount including amounts in respect of *lost investment returns* and *interest* aimed at compensating the UK pension scheme. Click ***here*** for the article in June 2022 Pensions Compass.

FROM THE COURTS – RECENT DECISIONS	
TOPIC	**EFFECT**
Whether Actuarial Valuation valid and other matters *McGaughey & Davies v Trustee of Universities Superannuation Scheme (USS)* High Court, May 2022	Application to High Court to bring proceedings against the USS for alleged breach of duties in relation to Valuation and other matters and as to the validity of proposed benefit cuts. On 24th May 2022 the High Court refused permission for the claims to be pursued.
Debts owed by member – Creditor enforcing against personal pensions (1)*Bacci v Green*, High Court 7 March 2022 (2) *Brake v Guy*, High Court 11 July 2022 (3) *Lindsay v O'Loughnane*, High Court 14 July 202	Broad overview: these three High Court cases relate to where scheme member X is legally due to pay Y – can X be forced to drawdown on his personal pension to enable X to pay Y? The Court's broad answer was, yes. It granted Y injunctions to force X to drawdown (in the Bacci case, subject to the existing pension sharing order in favour of the member's former wife). *Our specialist Insolvency Team can assist in such cases (see also above the McNamara Bankruptcy case where Wedlake Bell act for the scheme trustee).* In *Bacci v Green* the debt arose out of the member's fraud and so the Order for payment of the debt survived Mr Green's bankruptcy and remained in force. On 8 November 2022 the Court of Appeal upheld the High Court's decision.
Forfeiture of pension benefits and recovering over-payments *CMG Trustee v CGI Limited* High Court, 11 August 2022	Members had been paid extra pension benefits in the past following the scheme's sex equalisation process and other scheme amendments. On behalf of the employer it was argued that the arrears paid were too great and should in accordance with its reading of the scheme's rule be limited to amounts due no more than six years previously and even though the members concerned were unaware of their entitlement and ability to make a claim. The Court upheld the employer's view. The Trustee then wished to recover the overpayments from future pension payments due to the members concerned – the Court explained how the legislation relating to recouping overpayments out of members' future pension works. **Forfeiture and Recoupment are complex areas on which legal advice is essential.**

FROM THE COURTS – RECENT DECISIONS	
TOPIC	**EFFECT**
Tax treatment of facilitation payments *E.ON UK v HMRC* Upper Tribunal July 2022	Whether employer payments to employees re: adverse pension scheme changes are taxable. The First-Tier Tribunal ruled, yes. The Upper Tribunal ruled, no. Query, whether HMRC will appeal.
RPI/CPIH Judicial Review High Court 1 September 2022	In 2021, three pension schemes announced judicial review proceedings relating to the Government's decisions in 2019/2020 to align the basis of RPI with CPIH from 2030 and without any compensation. Click ***here*** to see our article in December 2020 Pensions Compass "RIP for RPI?". In its judgment on 1 September 2022, the High Court upheld the Government's decisions. News of any appeal is awaited.
Corrections *Viavi Solutions UK* High Court 22 September 2022	Good recent explanation of the circumstances in which the Court will order Rectification (correction) of scheme rules.
Age exception for pre – December 2006 benefits *Beattie v 20-20 Trustee Services and Federal Mogul Ltd* Employment Appeal Tribunal (EAT) 7 November 2022	In a preliminary hearing at the Employment Tribunal, the Tribunal decided the exceptions for age discrimination for pre 1 December 2006 benefits were incompatible with EU law retained by the UK since Brexit. On the DWP's appeal heard on 7 November 2022, the EAT decided that claims brought before 31 December 2020 (being the end of the further implementation period for the EU Withdrawal Act 2018) succeeded whereas for claims after this date the age exception for pre 1 December 2006 pensionable service was valid.

OTHER DEVELOPMENTS	
TOPIC	**EFFECT**
PPF	
PPF Consultation on its proposed Levy Rules for Levy Year starting 1 April 2023.	The big news is that the PPF proposes to reduce its risk based levy by about half overall. It also proposes some changes to its calculation method. The Consultation opened on 29 September 2022 and closed on 10 November 2022. The PPF Levy Rules are expected to be finalised and published in December 2022.
TPR	
TPR's Consultation on its proposed new Funding Code of Practice	TPR is waiting for Government to develop its views on amendments to the Funding and Investment Regulations (see above under Parliament, DB schemes Funding and Strategy Amending Regulations). TPR's Consultation is expected by 31 March 2023. The Amending Regulations and the new TPR's Code are not expected to come into force until Q4 2023.
TPR's draft Single Code of Practice	On 17 March 2021, TPR consulted on amalgamating its existing 15 individual Codes into a Single New Code. The Consultation closed on 26 May 2021. On 24 August 2021 TPR published its interim response. TPR has indicated the new Single Code is likely to be laid in Parliament soon and may come into effect before Summer 2023. WB comment: this is a mammoth undertaking by TPR – hopefully a useful and more navigable Single Code will result.
TPR Policies on its enforcement powers under Pension Schemes Act 2021	In May 2022 TPR issued: – a consultation on its proposed Enforcement and Prosecution Policies (Consultation closed 24 June 2022); and – finalised Policies on High Fines (up to £1 million). In October 2022 TPR finalised its Enforcement and Prosecution Policies and published its Enforcement Strategy.
TPR's views on trustees' Climate Change obligations	In December 2021 TPR finalised its Guidance on TPR's approach to trustees' compliance with the Climate Governance and Reporting Regulations which came into force on 1 October 2021. TPR has since updated its Guidance to reflect changes to the Regulations requiring schemes in scope to apply a measurement metric. See above under Parliament Recent Regulations.

OTHER DEVELOPMENTS	
TOPIC	**EFFECT**
TPR	
Conflict in Ukraine – TPR Guidance	TPR Guidance for trustees from the investment and employer covenant perspective on events in Ukraine. Click ***here*** to read our article in March 2022 Pensions Compass.
TPR blog for employers and trustees on "Refinancing risks in the current economic climate"	Click ***here*** for the article in September 2022 Pensions Compass.
TPR Consultation on Compliance and Enforcement Policy for Pensions Dashboards	On 24 November 2022 TPR issued its proposal Policy for Consultation. The Consultation closes on 24 February 2023.
TPR issues Guidance to DB schemes on liability-driven investment	On 30 November 2022 TPR set out recommended actions for DB scheme trustees in light of recent gilt market turmoil (click ***here*** for the article in this Pensions Compass).
HMRC	
Regulation of Pensions Tax Advice – HMRC's proposals	On 23 March 2021 HMRC proposed that all tax advisers should have mandatory professional indemnity insurance, and how to define "tax advice" for these purposes. The Consultation closed on 15 June 2021. Subsequently HMRC announced it would not pursue mandatory insurance. HMRC continues to consider how best to protect consumers and to regulate tax advisers including tax agents.
HMRC Newsletter on GMP Equalisation and Tax	HMRC's Newsletter of 6 April 2022 gives some guidance on the tax treatment of Transfer Top-ups. This includes where a Top-up is paid direct to a member as a lump sum. Some modest guidance on GMP conversion is also included. Click ***here*** for the article in June 2022 Pensions Compass.

OTHER DEVELOPMENTS	
TOPIC	**EFFECT**
PENSIONS DASHBOARDS	
DWP Consultation on its proposed Dashboard Regulations and further Consultation on 28 June 2022 on two specific matters	On 28 June 2022 DWP's Consultation asked for views on two specific points: (1) definition of "Dashboards Available Point" relating to when the Secretary of State can trigger the commencement of Dashboards, and (2) disclosure of information between MaPS and TPR. The Government's approach is now reflected in the finalised Dashboard Regulations which are due to come into force on 12 December 2022 (see above under Parliament and ***here*** for the article in this Pensions Compass).
Pensions Dashboard Programme (PDP)	19 July 2022 – Consultation on standards, specifications and technical requirements (closed 30 August 2022). October 2022 – PDP Progress Update including on early testing. November 2022 – PDP updated standards pending approval by the Secretary of State.
PASA	April 2022 – PASA Guidance on Pensions Values for Dashboards. August 2022 – Updated PASA Guidance on their proposed Data Matching Convention.
HOUSE OF COMMONS WORK & PENSIONS COMMITTEE (WPC)	On 24 October 2022 the WPC announced an Enquiry into pension funds with hedging portfolios. Click ***here*** for the article in this Pensions Compass on derivative investments.

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