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What's Happening in Pensions

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- **Switching from RPI to CPI:** The Supreme Court has upheld the earlier decisions in *Barnardo's v Buckinghamshire and others*, with the result that the Barnardo's pension scheme cannot, under its rules, switch from RPI to CPI for calculating pension increases.

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- **Budget:** The Budget included no major pension announcements but there are a few points of interest.

- **Civil partnerships:** The Prime Minister has announced that civil partnerships will be made available to opposite sex couples as well as same sex couples.

- **Inflation:** The price inflation figures for the year to September 2018 have been published. The CPI increase figure for the year to September 2018 is 2.4% (RPI: 3.3%).

- **Collective DC schemes:** The government has published a consultation on allowing collective defined contribution occupational pension schemes to operate without being subject to the legal requirements applicable to non-money purchase pension schemes.

- **IORP II:** Amending regulations will broaden existing internal controls requirements to require occupational pension schemes to "establish and operate an effective system of governance including internal controls".

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- **PPF compensation:** The PPF has issued a brief update on the immediate steps it is taking with regard to paying at least 50% compensation in light of the European Court judgment in *Hampshire v Board of the Pension Protection Fund*.

- **Pensions Ombudsman – non-financial injustice:** The Pensions Ombudsman has published revised guidance about redress for non-financial injustice caused by maladministration (also known as awards for distress and inconvenience).

- **Pensions Ombudsman and TPAS:** The Pensions Ombudsman has published a notice concerning the signposting of complainants to the Pensions Ombudsman rather than to The Pensions Advisory Service, following the recent transfer of responsibility for assisting individuals informally with their grievances. He has also published template language for trustees to use.

- **Master trusts:** Regulations have been laid, setting out more detail on what counts as a master trust and various matters in relation to authorisation. The Pensions Regulator's code of practice has come into effect.

- **TPR and FCA statement:** The FCA and Pensions Regulator have published a joint strategy for regulating the pensions and retirement income sector.

- **Inheritance tax:** The Court of Appeal has ruled in favour of HMRC in an inheritance tax case concerning the transfer of the value of an individual buyout policy to a personal pension.

GMP equalisation

The High Court has handed down its **judgment** in the *Lloyds Banking Group* GMP equalisation case. Mr Justice Morgan ruled that the trustees of the Lloyds Banking Group schemes are under a legal obligation to address GMP-related inequalities in benefits for men and women for service between 17 May 1990 and 5 April 1997. He also ruled on the ability of trustees to use various different equalisation methods and on other questions, such as paying arrears. See our briefing note **GMP equalisation: court ruling**.

Pension protection levy 2019/20

The PPF **has published** its consultation on the 2019/20 pension protection levy determination and accompanying appendices and guidance. This being the middle year of a triennium, there are few significant changes other than the already known requirement for Type A and B contingent assets to be in the new PPF standard form in order for the scheme to qualify for a 2019/20 levy reduction.

- **The levy**: The levy calculation factors are unchanged from last year. The overall levy estimate has been reduced from £550 million to £500 million, due to the expectation of improved insolvency scores.

- **Contingent assets**: As previously announced, Type A (parent or group company guarantees) or Type B (security over cash, UK real estate or securities) contingent assets that include a fixed cap need to be in the PPF's new standard form if they are to be recognised for a 2019/20 levy reduction.

  The PPF says that the starting point is for schemes to consider the contingent asset afresh, "so that trustees along with their advisers can satisfy themselves that the Contingent Asset affords them and the Board with the same protection". The deadlines for certification for the 2019/20 levy year are at the end of March 2019 but the process of replacing existing fixed amount cap guarantees could in some cases prove to be contentious and time-consuming (perhaps unexpectedly so). See our alert "**Does your PPF guarantee include a fixed sum liability cap? If so, the clock is ticking**" for more information.

The PPF is considering whether schemes refreshing existing Type C contingent assets (letters of credit and bank guarantees) will have to use the new standard form.

- **Deficit reduction contributions**: The PPF notes that a significant number of schemes do not seem to be applying to obtain credit for deficit reduction contributions (DRCs) paid since the effective date of their last valuation.

- **Commercial consolidators**: There will be special levy calculation rules for commercial consolidator ("CC") DB schemes, such as the Pension SuperFund and Clara. Whilst we do not yet have specific legislation for such schemes (a government consultation is expected soon), they may be able to start operating under the current DB regime so the PPF needs to be ready for them. Its rules will develop in the light of any new regime that is introduced.

  The proposed rules for CCs are based on the existing special rules for schemes without a substantial sponsor but with adjustments "to ensure the levy charged to consolidators is in line with commercial pricing and to ensure there is no cross subsidy from existing levy payers". These adjustments include the need for annual valuations and an end-of-year levy reconciliation process. Failure to include a funding level winding-up trigger will mean a significant levy increase. "Buffer funds" (ie, contingent funds held outside the scheme) would be treated in a similar way to Type B contingent assets or asset-backed contribution (ABC) arrangements.

- **Schemes without a substantial sponsor (and CCs)**: The levy rules for schemes without a substantial sponsor (SWOSSs), for example following a regulated apportionment arrangement, are to be strengthened to take account of liabilities increasing during the levy year. There will also be an "iterative" approach to calculating the levy for SWOSSs, to take account of the fact that SWOSS scheme assets are less valuable than is currently taken into account, because payment of the PPF levy will reduce them. These changes will also apply to CCs.

Part-time workers

The European Court has given its **decision** in *O'Brien v Ministry of Justice*. It declared that Mr O'Brien, a former part-time judge, is entitled to a pension in respect of all of his service, including the period before the EU requirement to protect part-timers applied, but that his former colleagues who retired before then have no such claim.

Mr O'Brien claimed that the EU part-time work directive entitles him to a pro-rated pension for all of his service. The directive required the government to introduce legislation protecting part-timers by 7 April 2000; UK law implemented the requirements of the directive from 1 July 2000, without any effect in relation to benefits accrued before then. (Prior to that, part-timers had to establish unlawful indirect sex discrimination.) Mr O'Brien's part-time service was from 1978 to 2005.

The Supreme Court referred the following question to the European Court:

> “Does [EU Part-time Work directive 97/81] require that periods of service prior to the deadline for transposing the Directive should be taken into account when calculating the amount of the retirement pension of a part-time worker, if they would be taken into account when calculating the pension of a comparable full-time worker?”

The European Court decided that the directive must be interpreted as meaning that periods of service prior to the deadline for transposing the directive must be taken into account for the purpose of calculating the pension entitlement. This was on the basis that "a new legal rule applies from the entry into force of the act introducing it, and that, while it does not apply to legal situations that arose and became definitive prior to that entry into force, it does apply immediately to the future effects of a situation which arose under the old law, and to new legal situations".

The judgment adds:

- "Consequently, in a situation such as that in the main proceedings, in which the accrual of pension entitlement extends over periods both prior to and after the deadline for transposition of Directive 97/81, it should be considered that the calculation of those rights is governed by the provisions of that directive, including with regard to the periods of service prior to its entry into force.

- Such a situation is, in that regard, to be distinguished from the situation ... of the colleagues of [Mr O'Brien] who retired before expiry of the period for transposition of Directive 97/81."

The judgment does not say what the analysis would be for a part-time judge who left service before the directive's transposition deadline but retired after it (or who has yet to retire).

This was a claim against the Ministry of Justice, a state employer. Directives apply directly to state institutions and similar bodies but not normally to entities such as private sector employers and pension scheme trustees. EU member state governments are required to introduce domestic legislation reflecting the terms of directives, which then applies to private sector entities. The government might now consider that it is obliged to amend the UK law on part-time workers' pension rights in order to be compliant with the directive. Brexit will, of course, be a factor in that decision. In the meantime, private sector employers and trustees are likely to continue, where necessary, to rely on the 1 July 2000 limitation in the domestic legislation.

There may also be implications as regards age discrimination claims for periods of service before 1 December 2006, when the UK implemented age discrimination legislation required under a different EU directive.

Switching from RPI to CPI

The Supreme Court **has upheld** the decisions of the High Court and Court of Appeal in *Barnardo's v Buckinghamshire and others*, with the result that, due to the drafting of its rules, the Barnardo's scheme cannot switch from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) for calculating pension increases.

The Barnardo's scheme rules include pension indexation and revaluation rules that apply increases based on increases in the Retail Prices Index. That is defined as follows:

> "... the General Index of Retail Prices published by the Department of Employment or any replacement adopted by the Trustees without prejudicing Approval. Where the amount is to be increased "in line with the Retail Prices Index" over a period, the increase as a percentage of the original amount will be equal to the percentage increase between the figures in the Retail Prices Index published immediately prior to the dates when the period began and ended, with an appropriate restatement of the later figure if the Retail Prices Index has been replaced or re-based during the period."

The courts had to decide whether "replacement" means replacement by the relevant authority or replacement by the trustees.

The Supreme Court, agreeing with the decisions of both lower courts, ruled that there is no "replacement" of RPI within the meaning of the Barnardo's scheme rules for so long as RPI remains an officially published index. It does, of course, remain an officially published index, so the Barnardo's scheme cannot, under its rules, currently switch from RPI to CPI (or to any other index).

If the Supreme Court had decided that the trustees do have a power to switch from RPI to CPI, it would then have had to decide whether that power is subject to section 67 of the Pensions Act 1995 (which applies to powers to modify a scheme and protects subsisting rights). In other cases, where scheme rules were found to include a specific power to switch from RPI to another inflation index, the lower courts have answered that question in the negative. But since in this case the Supreme Court ruled that there was no such power, that question was not addressed.

Pensions Regulator supervision

The Pensions Regulator **has announced** that it will now be supervising selected schemes more closely.

25 of the largest DB, DC and public service schemes will have ongoing one-to-one supervision, which will involve the Regulator having regular contact with trustees and (in some cases) sponsoring employers. Schemes will be selected based on a range of criteria including size, risk and previous interactions with the Regulator. The Regulator will be building relationships with schemes whose size means they are strategically important regardless of whether they trigger the traditional risk indicators, such as a long recovery period. The supervision will cover more than just scheme funding. The 25 schemes subject to this one-to-one supervision will increase to 60 over the coming year.

A second tier of (initially) 50 DB schemes will see "higher volume supervisory approaches". The Regulator is contacting these schemes with a view to tackling particular risks identified as part of its "intelligence and horizon-scanning approach". This will focus initially on "compliance" with messages in the Regulator's 2018 annual funding statement, "specifically concerning whether schemes are being treated fairly when it comes to dividend payments to shareholders". Eventually, hundreds of schemes will be included in this second tier, addressing different risks.

This is part of the "TPR Future" project. An **update** from the Regulator includes a diagram (on pages 10/11) showing the overall supervision process.

Overall, the Regulator now expects to have some sort of supervisory interaction with 20 to 40% of occupational DB, (larger) DC and public service schemes.

Investment disclosure

Regulations and consultation response

The government has published a response to its consultation (see **WHiP Issue 71**) on trustees' investment duties and disclosure requirements. It has also laid **The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018**. These add to trustees' disclosure obligations to beneficiaries on investment matters and prescribe a new requirement for public disclosure.

The new requirements concerning the contents of statements of investment principles (SIPs), the requirement to publish SIPs online and the new requirements for annual benefit statements come into effect from 1 October 2019. The implementation statement requirement applies from 1 October 2020.

When reading the following, it may be helpful to remember that (broadly) SIPs have to be produced by all schemes (DB and DC) with 100 or more members; and that a *relevant scheme* (as defined in the 1996 Scheme Administration Regulations) is very broadly a scheme that provides money purchase benefits other than just in relation to AVCs (but with exceptions, including some schemes with 12 or fewer members). It is important to note that this will catch hybrid DB/DC schemes.

Duty to take into account financially material considerations: The requirement in the 2005 Investment Regulations for a SIP to specify "the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments", is replaced by a wider requirement for the SIP to state the trustees' policy in relation to "financially material considerations over the appropriate time horizon of the investments [for the funding of future benefits], including how those considerations are taken into account in the selection, retention and realisation of investments". This "includes (but is not limited to) environmental, social and governance considerations (including but not limited to climate change)".

The changes reflect the government's view that trustees should be taking financially material environmental, social and governance (ESG) considerations into account and that climate change is of relevance for more than just ESG reasons (for example, it may affect the sustainability or profitability of certain industries).

This also affects the required content of a *relevant scheme's* default arrangement SIP.

Members' views: A proposed change has been dropped that would have required trustees of all schemes that are obliged to produce a SIP to prepare a separate statement explaining "the extent to which the views which, in the reasonable opinion of the trustees, members of the scheme hold (including the views they hold on non-financial matters) will be taken into account in preparing or revising the [SIP]".

This was removed in light of concerns that trustees might be expected to survey members and/or act on members' views. The government confirms that trustees have primacy in investment decisions and are never obliged to take account of members' views.

A replacement regulation requires the SIP to specify the trustees' policy in relation to "the extent (if at all) to which non-financial matters are taken into account in the selection, retention and realisation of investments". The original provision referred only to social, environmental or ethical considerations but "non-financial matters" is defined as "the views of the members and beneficiaries including (but not limited to) their ethical views and their views in relation to social and environmental impact and present and future quality of life of the members and beneficiaries of the trust scheme".

This therefore amounts to a new obligation for a SIP to state the trustees' policy in relation to the extent (if at all) to which members' views are taken into account in relation to investment.

This also affects the required content of a *relevant scheme's* default arrangement SIP.

Stewardship: Trustees will have to state in their SIP (if they are required to have one) their policy on stewardship, including on voting, engagement and monitoring. (Currently, trustees are only required to report their policy (if any) in relation to the exercise of rights, including voting rights, attaching to investments.) Trustees will now have to set out their policies in relation to:

- "the exercise of the rights (including voting rights) attaching to the investments; and
- undertaking engagement activities in respect of the investments (including the methods by which, and the circumstances under which, trustees would monitor and engage with *relevant persons* about relevant matters)".

"*Relevant persons*" is defined so that the requirement would cover direct engagement as well as indirect engagement via an investment manager or other agent.

Contrary to the consultation proposals, this reporting requirement will also apply in respect of a *relevant scheme's* default arrangement SIP but only for schemes with 100 or more members.

Implementation statement: By amendments to the 2013 Disclosure Regulations, trustees of relevant schemes that are required to produce a SIP will have to include in their investment report (which is part of the annual report, available to members on request):

- a statement setting out how, and the extent to which, in the trustees' opinion, the SIP has been followed during the year; and
- details of any review of the SIP, identifying and explaining any changes made to it (or if there has been no review then saying when the last review was done).

This is referred to in the consultation response (though not the legislation) as an "implementation statement".

Public disclosure: A further change to the 2013 Disclosure Regulations is that trustees of *relevant schemes* that are required to have a SIP will be required to publish their SIP and implementation report on a publicly accessible website. The requirements here are similar to those for publishing details of costs and charges (and would apply to the same schemes). The government hopes that wide dissemination of these documents will encourage trustees to share best practice, reduce the level of “boilerplate” text included in a SIP, and encourage trustees to be more responsive to members’ concerns.

Note that "*relevant schemes*" includes hybrid DB/DC schemes (unless the only DC benefits are from AVCs) and that such schemes will therefore be required to publish their whole SIP, not just DC elements of it.

Annual benefit statements: As with the existing requirements to disclose information to members about costs and charges, trustees of *relevant schemes* will be required to inform members about the published documents mentioned above in annual benefit statements.

Guidance

The government has finalised its updated guidance "**Reporting on costs, charges and other information: guidance for trustees and managers of relevant occupational schemes**". It focuses on how to produce an illustration of the cumulative effect of DC costs and charges and reflects the coming requirements noted above.

Budget

The 29 October **Budget** included no major pension announcements but the following points are of interest. The Chancellor noted that the Budget will need to be reconsidered in the event of a no-deal Brexit.

- HMRC will be given preferential creditor status in corporate insolvencies from April 2020. This will move HMRC ahead of pension scheme trustees and other unsecured creditors in the priority order. Covenant advice to pension scheme trustees may now need to consider the effect of any significant sums owed to HMRC by a scheme sponsor or guarantor.
- The lifetime allowance for 2019/20, increased in line with the CPI annual increase (see below), will be £1,055,000.
- In the context of assisting "patient capital" investment (ie, long-term investment – which can be difficult for DC schemes):

- through the British Business Bank, the government will support pension funds to invest in growing UK businesses;

- the government will consult in 2019 on the function of the pensions charge cap to ensure that it does not unduly restrict the use of performance fees within default pension schemes, while maintaining member protections;

- the FCA will publish a discussion paper by the end of the year to explore how effectively the UK's existing fund regime enables investment in patient capital; and

- the FCA will consult by the end of the year on updating the permitted links framework to allow unit-linked pension funds to invest in an appropriate range of patient capital assets.

- The government's pensions cold-calling ban **consultation response and final regulations** have been published, with the regulations to be brought into force "as soon as possible".

- The Pension Dashboard will include state pensions. There will be a consultation on the detailed design later this year.

There had been speculation that the Chancellor would target pension tax reliefs, including the annual and/or lifetime allowance. Recently published **HMRC statistics** show sharp increases in annual and lifetime allowance tax charges, generally considered to be due to the reductions of the annual and lifetime allowances in recent years and the introduction of the annual allowance taper. The **government's response** to the House of Commons Treasury Committee's report on household finances (see **WHiP Issue 72**), published on 12 October, said: "While the government keeps all taxes under review, no consensus for either incremental or more radical reform of pensions tax relief has emerged since the consultation [on pension tax relief reform] in 2015" (see **WHiP Issues 53** and **57**).

Civil partnerships

The Prime Minister has announced that civil partnerships will be made available to opposite sex couples as well as same sex couples. This will be done "as swiftly as possible" but there will first be a consultation on technical detail, which will include the implications for pension schemes.

This follows the June 2018 Supreme Court decision that the Civil Partnership Act 2004 is incompatible with the European Convention on Human Rights in only making civil partnerships available to same sex couples.

Inflation

The **price inflation figures** for the year to September 2018 have been published. The CPI increase figure for the year to September 2018 is 2.4% (RPI: 3.3%).

The September figure is used for increases to state pensions and for revaluation and indexation under many occupational pension schemes. As noted above, the lifetime allowance is to be increased by 2.4%, to (when rounded up) £1,055,000 for 2019/20.

The (as yet unpublished) national average earnings increase figure is expected to be above 2.5%. If so, it will be the figure used to determine the April 2019 state pension annual increase under the "triple lock".

Collective DC schemes

The government **has published** its consultation on allowing collective defined contribution (CDC) occupational pension schemes to operate without being subject to the legal requirements applicable to non-money purchase pension schemes. There is no draft legislation or timetable yet.

The proposals follow an approach to the government by Royal Mail and the Communication Workers Union, who have agreed to work towards CDC pension provision.

The model of CDC scheme proposed operates as an occupational pension scheme for associated employers. Benefits are provided on a DC basis. Target defined benefits are communicated but not promised. Investments are pooled (not selected by members) and pensions are paid from the scheme rather than by annuity purchase. Adjustments are made to pensions in payment and to benefit targets, based on the funding position from time to time.

The government proposes that CDC schemes would be categorised in legislation as a type of money purchase benefit. Regulations would prescribe "detailed provisions related to valuation, adjustment of benefits, transfers, wind up, disclosure and other technical requirements". They would be written in the light of the Royal Mail proposals. Using secondary legislation allows future flexibility but other employers wishing to introduce a CDC scheme at an early stage would have to follow the Royal Mail model.

It is proposed that the Pensions Regulator would have a significant new role in authorising CDC schemes. It would authorise a scheme based on factors including its actuarial assumptions, underlying investment strategy, financial sustainability, whether the trustees are fit and proper, systems and processes, and continuity strategy. Communications about target benefits and adjustment mechanisms may also require Regulator approval and would have to be published on a publicly accessible website. Actuarial assumptions would need to be peer-reviewed by an independent actuary.

The 0.75% DC default arrangement charge cap would apply but on an aggregate basis across all of a CDC scheme's investments. Automatic minimum quality requirements and questions around transfers in and out are being considered. CDC schemes would not be eligible for the PPF.

The consultation closes on 16 January 2019.

IORP II

In an **answer** to a written Parliamentary question on implementing the EU IORP II directive (see **WHiP Issue 62**), Pensions Minister Guy Opperman said:

> *"The UK was a strong and influential voice during the negotiations that produced the EU Directive 2016/2341 known as IORP II. Stakeholder and Government representatives worked together to negotiate a final text which supports the UK's direction of travel on pensions policy. Consequently, many of the key elements of IORP II are already required within UK law and/or the Pensions Regulator's existing Codes of Practice. Therefore, DWP does not intend to undertake a formal consultation exercise. However, we have consulted informally and extensively with industry, the Pensions Regulator and other stakeholders to explore which parts of the Directive to transpose into UK law and how this is best achieved."*

Two statutory instruments followed, both taking effect from 13 January 2019 (the deadline for implementing the directive):

- **The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018**: These reflect the language of the directive and will broaden the internal controls provisions in the Pensions Act

2004 to require occupational pension schemes to "establish and operate an effective system of governance including internal controls". The system of governance must be "proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme".

The Pensions Regulator's code of practice on internal controls is required to be updated to cover a large number of new matters in relation to the required system of governance. Schemes with 100 or more members will need to check existing policies or introduce new policies in relation to various matters. Trustees of such schemes will also be required to carry out and document an "own-risk assessment" of their system of governance, with detailed prescribed content.

- **The Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2018**: These make changes to provisions regarding the authorisation of EU cross-border schemes and cross-border bulk transfers.

There are no proposed amendments to the legal requirements on disclosure of information (which is another topic addressed by the directive).

Pensions Regulator DC guidance

The Pensions Regulator has published the following new or updated guides for trustees, all to be read alongside DC Code of Practice no.13 on governance and administration of DC occupational pension schemes.

- **Guide to communicating and reporting**
- **Guide to investment governance**
- **Quick guide to the chair's statement**

PPF compensation

The PPF issued a **brief update** on the immediate steps it is taking with regard to paying at least 50% compensation in light of the European Court judgment in *Hampshire v Board of the Pension Protection Fund* (see **WHiP Issue 72**). This was followed by a **longer statement**.

The first step the PPF is taking is to write to capped members to confirm their records and obtain any further information it needs in order to calculate the increase due. It expects the number of individuals affected by the ruling to be very small.

In advance of legislation, the PPF is putting in place an interim process to uplift payments now:

- *"We will value the benefits that the eligible PPF member expected to receive from their scheme at the point of their PPF assessment date. We will value the member's PPF compensation from the same date.*
- *Where we find the PPF compensation is less than 50%, we will increase the headline level of our compensation payments until the total value is at least equal to 50% of their expected pension. Existing PPF indexation/revaluation rules will apply to this increased headline amount. We anticipate that this will be a one-off change needing no further adjustment.*
- *We are the scheme manager for FAS on behalf of DWP and administer according to their instructions. Where we find FAS assistance is less than 50 per cent we will increase standard assistance. For the time being, the process will only capture members of FAS insolvent schemes."* (Some schemes whose members

are assisted by the FAS did not have an insolvent employer because a compromise was agreed under which the employer stayed in business but benefits were scaled back. It seems that the PPF believes that the EU insolvency directive does not affect FAS assistance given to such individuals because there was no employer insolvency and so the Beaton judgment does not benefit them. The government is, however, said to be considering making similar changes for their benefit.)

Pensions Ombudsman – non-financial injustice

The Pensions Ombudsman **has published** revised **guidance** about redress for non-financial injustice caused by maladministration (also known as awards for distress and inconvenience). This introduces a structure of fixed sum awards between £500 and £2,000 for non-exceptional cases. Higher awards are still possible in exceptional cases and nil awards can still be made where the injustice is insignificant. There is a table at the end giving examples of circumstances in which each level of award might be made.

Pensions Ombudsman and TPAS

The Pensions Ombudsman **has published** a **notice** signed by the Pensions Minister and Pensions Regulator Chief Executive concerning the signposting of complainants to the Pensions Ombudsman (TPO) rather than to The Pensions Advisory Service (TPAS).

The notice says that:

- TPO now operates an Early Resolution Service (ERS) in addition to its normal Adjudication Service (which comprises informal and formal adjudication). (This replaces the individual disputes assistance formerly provided by TPAS.)
- TPO will not expect complainants wishing to use that service to first use the scheme's internal dispute resolution procedure (IDRP), or if applicable such other similar process. However, it is still a matter of choice for the parties concerned. Should a complaint not be resolved and the complainant wishes to use TPO's Adjudication Service, TPO would expect the scheme's IDRP to be completed, unless discretionary provisions in the current regulations apply, or if applicable such other similar process.
- The intention is to modify relevant legislation to reflect that:
  - signposting of complaints or disputes concerning occupational or personal pension arrangements, including any difficulty with the scheme that cannot be resolved or that might become a complaint or dispute, should be referred to TPO; and pure requests for information or guidance should be referred to TPAS/SFGB; and
  - complaints going to TPO that are intended for ERS, or looked at by ERS, will not be expected by TPO to have first been through the scheme's IDRP.

  It is expected that these legislative changes will be made at the latest by April 2020.
- The Pensions Regulator is satisfied that no purpose would be served in considering whether to apply penalties in respect of non-compliance with existing legislation where signposting has been updated to clearly reflect the current position, ie, that disputes and complaints should be referred to TPO, and general requests for information or guidance to TPAS.

The Ombudsman also has **template language** for trustees to signpost complainants to the Pensions Ombudsman.

Master Trusts

Regulations and code of practice

The Occupational Pension Schemes (Master Trusts) Regulations 2018 were issued, withdrawn and then replaced by **corrected regulations**. From 1 October 2018, master trusts can apply to the Pensions Regulator for authorisation. From 1 April 2019, a master trust will be prohibited from operating unless it has been authorised.

The regulations set out some detail on matters such as:

- the test for whether employers are "connected" for the purposes of the definition of a "master trust scheme" under the Pension Schemes Act 2017;
- the matters the Regulator will take into account in assessing whether someone (including trustees, the scheme funder and scheme strategist) is a "fit and proper person"; and
- what the Regulator needs in order to be satisfied that a master trust is "financially sustainable".

The Regulator's **Code of Practice 15**: "Authorisation and supervision of master trusts" (see **WHiP Issue 72**), which sets out more detail of what the Regulator requires, **has been brought into effect**.

Applications for authorisation

The Pensions Regulator has published documentation on its **website** in relation to applications for the authorisation of master trusts, including:

- application forms and an accompanying guide;
- guidance on the "fit and proper" person test; and
- its decision-making procedure.

Supervision and enforcement

The Pensions Regulator has finalised its **supervision and enforcement policy** for authorised master trusts. The Regulator's **consultation response** notes that the final policy refers to a "spectrum of supervisory intensity", with the intended level of supervisory intensity to be confirmed by the Regulator to each master trust individually.

TPR and FCA statement

The FCA and Pensions Regulator **have published** a **joint strategy** for regulating the pensions and retirement income sector, setting out priorities for the next five to ten years. There are two new priorities:

- In 2019, the regulators will jointly carry out a strategic review of the entire consumer pensions journey, taking an in-depth look at what tools are needed to enable people to make considered decisions about their pensions.
- The regulators will use their powers to drive value for money for members of pension schemes, including the setting and enforcement of clear standards and principles where relevant.

A **feedback statement** on the March 2018 call for input (see **WHiP Issue 70**) has also been published.

Inheritance tax

The Court of Appeal has ruled in favour of HMRC in ***HMRC v Parry***. It found that inheritance tax (IHT) was due on a "disposition" which was a "transfer of value" when Mrs Staveley, who was terminally ill, omitted to take pension benefits that were payable from a section 32 individual buyout policy and transferred its value into a personal pension policy. This avoided the policy forming part of her estate for IHT purposes, though it was found that this was not her intention when making the transfer. Under the personal pension, death benefits were payable free of IHT.

There may be implications for individuals (though not trustees) in relation to other types of pension transfer made by a member within two years of death.

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If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Susie Daykin, Daniel Gerring, David James, Dan Naylor and Paul Stannard.

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