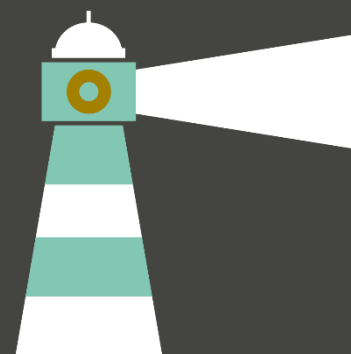


What's Happening in Pensions

Issue 125 – October 2026



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High Court rectifies unintended Courage restriction to scheme amendment power: The High Court removed unintended Courage-type fetters on a scheme's power of amendment in a case which serves as a useful reminder of the key legal principles governing the rectification of pension scheme deeds.

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PENSIONS RADAR: You may also be interested in the latest edition of [Pensions Radar](#), our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our [Sustainable finance and Investment Hub](#) includes a section on [ESG and sustainable finance issues for pension schemes and their sponsors](#).

Small pots consultation

Following the timetable set out in the [updated Pension Schemes Act 2026 roadmap](#), on 15 September 2026 the Department of Work and Pensions launched a [consultation](#) on its proposed solution for consolidating small defined contribution (DC) charge-capped default funds created since automatic enrolment was introduced on 1 October 2012. The proposed "Multiple Default Consolidator" solution provides a mechanism through which eligible small pots, initially those valued at £1,000 or less and inactive for at least 12 months, would be automatically transferred into a limited number of consolidator schemes. The consultation addresses:

- which schemes and pots fall within scope, including whether to exclude pots with guarantees, protected pension ages or Sharia-compliant funds;
- what information members must receive, including their right to opt out or choose a different consolidator;
- the authorisation regime for trust-based schemes to act as consolidators, overseen by the Pensions Regulator (TPR), with the Financial Conduct Authority (FCA) setting equivalent rules for contract-based schemes;
- the infrastructure needed to match pots to members and allocate them to consolidators;
- the supervisory and enforcement framework, including TPR's and the FCA's power to withdraw consolidator status; and
- new employer duties to share relevant employee data with schemes.

The Government expects to implement the Multiple Default Consolidator solution from 2030, starting between April and June. Our briefing [Small-pot, Big-questions: 10 key-answers on the pensions consolidation regime](#) contains more detail on the consultation which closes on 17 November 2026. A further consultation, planned for late 2027/early 2028, will consider the detailed requirements for ceding schemes, the supervisory approach for those schemes, finalised data standards, and outstanding elements of the broader framework.

Comment

The proliferation of small, dormant pots is an expensive and growing problem. There are currently around 13 million small pots, mostly held in master trusts, expected to rise to 20 million by 2030. The Government estimates that these pots are currently worth over £4 billion, and it costs around £240 million to administer them each year.

Significant further work will be needed to deliver the Government's proposals by 2030. With the volume of other changes facing the pensions industry between now and then, it remains to be seen whether delivery of this ambitious project within that timescale is achievable.

GMP conversion consultation

Following on from HMRC's consultation this summer on amendments designed to ensure that deferred members do not face unexpected annual allowance tax charges as part of Guaranteed Minimum Pension (GMP) conversion exercise (see [WHIP 123](#)), the DWP is now also [consulting](#) on amendments intended to make GMP conversion easier to implement, particularly for schemes undertaking individual rather than bulk conversions.

The [Pension Schemes \(Conversion of Guaranteed Minimum Pensions\) Act 2022](#) received Royal Assent on 28 April 2022 and amended the GMP conversion provisions of the Pension Schemes Act 1993 to allow the Government to pass future regulations to provide more flexibility in relation to the amount of the survivor pension that has to be provided post-conversion and who must consent to a conversion exercise. Nearly four and a half years later, we now have the consultation on those [draft regulations](#).

The draft regulations:

- clarify that survivors must receive half of the pension accrued by the member during the relevant period, not just half of the GMP;

- propose that the persons who must consent to GMP are the scheme's statutory employers at the time the conversion takes place. This will exclude employers who no longer have a connection with the scheme. As with existing scheme funding legislation, multi-employer schemes will be able nominate one employer to act on their behalf for the purposes of the consent requirements; and
- introduces a new, more streamlined process which schemes can use to certify GMP conversions when they are carried out on an individual basis at member retirement. The process is intended to reduce the need for schemes to repeatedly re-engage an actuary to certify individual GMP conversion calculations. Instead, it is proposed that where it results in financial savings to the scheme, the actuary could certify that pre and post-conversion benefits calculated using their actuarial model will be actuarially equivalent provided the model is used within 12 months of the certificate and in accordance with the set parameters.

The regulations will only apply to GMP conversions undertaken after the regulations come into effect and do not affect the validity of GMP conversions undertaken before the regulations come into force. Schemes in the process of consulting with members about a GMP conversion exercise when the regulations come into force will continue to be subject to the previous legislation for those members.

The DWP is also [consulting](#) on keeping the fixed rate of GMP revaluation at 3.25% p.a. for those leaving pensionable service between 6 April 2027 and 5 April 2032.

Both consultations close on 29 October 2026.

Comment

Ever since the High Court confirmed in the 2018 *Lloyds Banking Group* case that the legislative process for converting GMPs first introduced on 6 April 2009 was an acceptable method to equalise GMPs, the pensions industry has been calling for various clarifications to the GMP conversion provisions in the Pension Schemes Act 1993. Whilst some questions on the process were answered by the [statutory guidance](#) published in April 2019, it is perhaps slightly surprising that it has taken eight years since the *Lloyds* judgment for these queries to be addressed.

The draft regulations, along with the other changes aimed at addressing the loss of the deferred member carve-out on conversion covered in [WHIP 123](#), will be of assistance to schemes that currently convert individual member GMPs at retirement, as well as any schemes who have yet to complete the process of GMP equalisation.

HMRC publishes further technical note on Inheritance Tax changes to pensions

HMRC has published a [second technical note](#) on the forthcoming changes to the Inheritance Tax (IHT) regime which will bring most unused pension funds and death benefits within the scope of IHT for deaths occurring on or after 6 April 2027. This follows on from HMRC's [first technical note](#) published on 11 May 2026 covered in [WHIP 122](#). The second note again makes the point that the notes are not draft guidance and confirms that final guidance is not expected to be published until spring 2027, with draft guidance expected to be shared with industry stakeholders in winter 2026/7. A third technical note is expected in autumn 2026 which will cover international issues, the interaction of IHT with income tax, further guidance on intestacy and clarification of matters relating to charities and trusts.

Further ancillary legislation is also expected before 6 April 2027 to ensure that the new information requirements apply to sub-scheme administrators and that estates which include notional pension property can qualify as excepted estates. The note flags changes made to the final information sharing regulations, covered in [WHIP 124](#), noting in particular that trustees will only have to inform personal representatives (PRs) about any excluded benefits and provide details of these where an IHT account is required.

There are five stages at which trustees and PRs will need to share information, although not all of these stages will necessarily occur and some stages may occur concurrently. These are:

- **notification of death and basic information** — basic information should be requested by the PR and includes the value of the notional pension property. The scheme has to provide this information within 28 days and HMRC's note sets out the information required;

- **further information** — requested by the PR when they are required to file an IHT account and includes the share of the notional pension property attributable to each beneficiary. There is no statutory deadline by which this request must be made but the information must be provided by the later of 28 days beginning with the day on which the request is received, or 14 days beginning with the day on which all beneficiaries have been decided;
- **withholding notice** — information for the PR and beneficiaries if the PR instructs the trustees to withhold up to 50% of the notional pension property. Trustees must decide whether a withholding notice is valid and, if they consider it is not, notify the PR within 14 days of receiving it, explaining why they consider the notice to be invalid. HMRC's note includes a draft template withholding notice at Annex B;
- **payment notice** — information for the PR and beneficiaries if either instructs the trustee to pay some or all of the IHT attributable to the notional pension property. For a payment notice to be valid, it must contain the information prescribed by HMRC (a draft template is included at Annex C). Where trustees fail to comply with a valid payment notice, they will become jointly liable for the IHT (and interest) that they failed to pay; and
- **payment of tax-free lump sum death benefits** — information for the PR to determine if the deceased's lump sum and death benefit allowance has been exceeded. The information that can be requested from trustees is information as to the identity of each of the beneficiaries, the net amount they were actually paid and for each of those payments by how much (if any) they were reduced because of an adjustment under a payment notice. The information must be provided within one month beginning with the date on which the trustees receive the request.

Comment

With two technical notes now in circulation and another one due shortly, HMRC are clearly trying to help trustees and administrators as much as they can by giving them advance notice of how they expect the new system to work. This is welcome given that final guidance is unlikely to be published until shortly before the new requirements come into effect.

We will continue to monitor developments in the coming weeks with a view to developing further information for trustees to help them understand and implement the new requirements from April 2027.

TPR finalises new enforcement approach

Following last year's consultation on proposals (see [WHIP 118](#)) TPR has published its finalised [enforcement approach](#) which is aimed at introducing "*a more focused, agile and outcomes-driven model that is better aligned with the changing risks in the pensions landscape, with a stronger emphasis on delivering real-world results*". Its enforcement approach is designed to support the wider aims of its corporate plan (covered in [WHIP 124](#)) and is shaped by the following five strategic objectives:

- targeted enforcement that tackles the key risks and harms to members with the greatest impact – TPR says it monitors trends and evaluates outcomes to ensure its enforcement actions drive behavioural change, deters misconduct, and delivers meaningful benefits to members, particularly those who are vulnerable or at greater risk. This includes lower-income workers and members most likely to experience financial hardship in retirement.
- drive impactful enforcement through assertiveness, agility and collaboration – TPR confirms it works closely with its partners and external stakeholders to share intelligence, drive compliance, and coordinate responses across the pensions sector including the Pension Scams Action Group and the Pension Protection Fund. Where issues fall outside its regulatory remit or overlap with others, it refers or coordinates with the appropriate bodies to secure the best results.
- decisive action addressing non-compliance, regulatory breaches and economic crime – TPR says its approach is targeted and proportionate, prioritising cases that align with its strategic priorities. It will apply streamlined processes to ensure consistent, effective action.

- enhanced transparency to influence behaviour, raise standards, build trust and support a safer pensions system – it publishes enforcement outcomes to highlight risks, clarify its expectations, and drive improved compliance and behaviours. Where appropriate, TPR also informs affected individuals with the aim of being as transparent as legal and confidentiality constraints allow; and
- data-driven enforcement delivering value and better outcomes - TPR will continue to strengthen its use of data, analytics and digital capability to target enforcement activity where it delivers the greatest impact. This includes using data to identify emerging and evolving risks, prioritise cases, and support faster, more consistent decision-making across the enforcement lifecycle.

TPR says its enforcement work is informed by a range of sources, including:

- its own monitoring, intelligence, and supervisory activity;
- reports from schemes and employers;
- whistleblowers;
- complaints and enquiries;
- other regulators and public bodies;
- publicly available information; and
- self-reporting by those it regulates.

It prioritises its enforcement activity by assessing three key factors: impact, scale, and complexity, and evaluates the level of significance for each.

TPR publishes research into barriers to investing in private markets

TPR [has published research](#) setting out its findings in relation to research it conducted with 40 key stakeholders (including investment consultancy firms, trustees, individual pension schemes, key industry bodies and supply side stakeholders, including some investment managers) about market opportunities, available investment vehicles, limitations, barriers, enablers and appetite of private sector defined benefit (DB) and DC pension schemes for private market investments.

The research showed pension schemes want to invest in private market assets, but are facing barriers including:

- gaps in knowledge and understanding;
- tension between fiduciary duty and targets for private market investment;
- some constraints in legislation including in respect of alignment in the treatment of performance-based fees in contract and trust-based arrangements and some provisions within the current regime of employer-related investments;
- the level of fees (especially performance related fees) and the opaque nature of additional costs and charges;
- market uncertainty and a lack of suitable investment opportunities.

The research sets out some actions trustees should consider taking to support their investments in private markets. The research has been shared with the Government to help them to better understand the market and to potentially inform actions that could be taken to help facilitate a suitable supply of investible assets for pension providers, as outlined under the Mansion House Accord.

Pensions Dashboards – to 31 October 2026 and beyond

As the statutory deadline for all pension schemes and providers to connect to the pensions dashboards ecosystem approaches at the end of this month, the Pensions Dashboards Programme has [reminded](#) schemes and providers that connection to the pensions dashboards ecosystem is not a one-off exercise. Once connected, there are ongoing responsibilities to maintain connection, keep data accurate and ensure systems remain secure. Trustees and providers should ensure they understand where these responsibilities sit and how they are shared across themselves, their third-party administrator, integrated service provider and other third-party providers.

Although a date has yet to be confirmed as to when the Pensions Dashboard will be made available to the public, the Pensions Administration Standards Association (**PASA**) has published a new [dashboards toolkit](#), developed in conjunction with TPR. It outlines the types of reporting which it may be helpful for trustees, scheme managers, administrators and providers to capture so they can understand how member behaviour may change once pensions dashboards become available and consider whether any emerging trends require further action.

PASA publishes new guided retirement guidance

PASA has also published new [guidance](#) on operational readiness for guided retirement, designed to help trustees, administrators and providers begin to assess how ready they are to deliver guided retirement in practice. As covered in our latest [What's Happening in DC](#) briefing, DC master trusts and FCA regulated schemes will not be required to design and make their guided retirement solution available until between July and September 2029. However, PASA's Guidance sets out five practical questions schemes can start asking themselves now to help them understand whether operational changes may be required. These are:

- are we involving administration early enough?
- do we have the data to support guided retirement?
- are we designing a retirement "event" or supporting a retirement journey?
- can the operating model support guided retirement at scale?
- can we actually pay retirement income reliably?

High Court rectifies scheme rules to remove Courage restriction on amendment power

In the wonderfully named recently published case of [Soufflet Bairds Malt Limited & Anor v Susan Dear](#) the High Court granted rectification of two pension scheme deeds to remove unintended Courage-type fetters on the power of amendment. A so-called Courage fetter is named after the 1987 High Court case of *Re Courage Group's Pension Schemes* in which it was suggested that a restriction to a scheme's amendment which prevents any reduction in a member's "secured" or "accrued" benefits stops schemes from breaking the link to a member's final pensionable salary on a closure of the scheme to future accrual.

The Bairds Malt Pension Scheme was established by interim trust deed dated 12 April 1990, which was replaced by a definitive deed and rules dated 18 June 1993, neither of which contained *Courage* fetters. The scheme's rules were replaced by a deed executed on 15 January 2004 (**2004 Deed**), which was intended to consolidate the scheme rules following its merger with the Moray Fir Scheme in 2000. The 2004 Deed and a subsequent deed dated 11 June 2012 (**2012 Deed**) each contained an amendment power with a restriction that prevented amendments affecting "*benefits already accrued or secured*" without affected beneficiaries' consent.

The scheme was closed to future accrual on 31 March 2010 and was subsequently administered on the basis that members' pensionable earnings were fixed at closure. It was accepted by all parties that the provisos in the 2004 Deed and the 2012 Deed constituted *Courage*-type fetters which, absent rectification, meant the 2010 closure did not break the final salary link for members still in service at that date meaning that pensions were required to be calculated by reference to salary at date of leaving the scheme rather than at 31 March 2010. This resulted in an additional £8 million of scheme liabilities.

In a short judgment, Chief Master Schuman granted rectification of both the 2004 Deed and the 2012 Deed and deleted the Courage-type fetter. In so doing, he noted in particular explanatory guides prepared by advisors to accompany the various drafts of the 2004 Deed which stated that the amendment clause "*continues to apply the same restrictions on amending the Scheme as featured in the current governing document*" and the absence of any reference to the change in minutes of the trustee meetings held at the time. He also took account of subsequent events and noted that on multiple occasions, both shortly after the 2004 deed was executed and again in the period leading up to the closure to future accrual in 2010, the final salary link was treated by both the employer and the trustee as a matter for negotiation. As to preparation of the 2012 Deed, the Court referred to evidence that its purpose was to restate the scheme's existing provisions in a clearer and more administratively convenient form and not to make substantive changes.

Comment

Whilst sponsors and trustees are often reluctant to incur the costs of a rectification claim, the judgment is a useful reminder of how straightforward such a claim can be where clear contemporaneous evidence (or indeed the lack of evidence in the case of the trustee minutes) exists to allow the court to assess the parties' intentions at the time of making the erroneous amendment. In this case, it was only necessary to appoint one representative beneficiary, a deferred member who joined the scheme in 2000, to represent the interests of the beneficiaries opposing rectification. The employer and the trustees were judged to be suitable representatives of the remaining beneficiaries and participating employers in favour of rectification.

Whilst witness statements were prepared for six witnesses who gave evidence of their involvement in executing the 2004 Deed and the 2012 Deed, it was the documentary evidence (trustee minutes, actuarial advice, correspondence with advisers and, most importantly, the explanatory guides) that the Court found particularly compelling in granting rectification.

Rare determination in which Pensions Ombudsman upholds complaint regarding distribution of death benefits

In the recent determination of [Mr H v ReAssure Limited](#) the Deputy Pensions Ombudsman upheld a complaint regarding the distribution of death benefits. As the decision to distribute a death benefit lump sum is usually a discretionary one, the Ombudsman does not ordinarily interfere with the trustees' decision. Provided trustees have identified all the potential beneficiaries and followed certain well-established principles in making their decision, neither the court nor the Ombudsman will ordinarily interfere with the decision. Broadly, these principles are that trustees must:

- take all relevant matters into account and ignore all irrelevant matters;
- ask themselves the right questions;
- direct themselves correctly in law - in particular, they must interpret scheme rules correctly; and
- not come to a perverse decision.

In this context, 'perverse' means a decision which no reasonable decision-maker could have come to on the basis of the facts of the case. However, this determination is a rare example in which there were real flaws in the decision-making process and ReAssure Limited was directed to retake its decision having made any further enquiries it deemed necessary to enable it to exercise its discretion properly. They were also ordered to pay Mr H £500 in recognition of the significant distress and inconvenience caused to him.

The member in this case died leaving a wife, three stepchildren and two biological children from previous relationships. Mr H was one of the member's biological children and a minor at the time of the member's death. The member died without making a will or completing a death benefits nomination form.

ReAssure Limited identified the member's wife and Mr H as potential beneficiaries. However, they chose to exercise their discretion under the scheme rules to pay the lump sum death benefit to the member's personal representatives, noting concerns that the family situation was complex given reports obtained from the member's brother and his other biological son that the member's marriage was on the verge of collapse and he had intended to separate from his wife had he not become terminally ill. There were concerns that if they paid the funds to Mr H, they could face challenge from the member's wife which would be difficult to defend. By paying the lump sum death benefit to the member's personal representative (which was the member's wife), it was felt parties could appeal to the estate under inheritance laws.

The Deputy Pensions Ombudsman upheld Mr H's complaint and concluded that:

- ReAssure Limited had an obligation to identify the persons who qualified as "Eligible Recipients" under the scheme rules and then make a decision to allocate the death benefit between one or more of them. The member's wife, brother and all of his children and stepchildren qualified as Eligible Recipients by being Relatives. Mr H also qualified as a Dependant. ReAssure failed to recognise or consider many of the Eligible Recipients, including the member's brother, his other biological son and the stepchildren.

- On its own evidence, ReAssure Limited misused its discretion. It chose to allocate the death benefits to the member's personal representatives in order to avoid making a determination between the Eligible Recipients it had identified. In law, a discretion must be exercised personally. ReAssure Limited had no power to delegate the allocation decision to the personal representatives and paying the death benefit to the personal representatives so that it could take the decision for it, was a misuse of the power.
- ReAssure Limited's decision included a number of irrelevant or erroneous considerations including fear of challenge and the availability of a court application under inheritance laws. Furthermore, its decision to pay to the personal representatives so that all relevant factors could be considered was based on error. The personal representatives did not have the same wide discretion that ReAssure Limited had under the scheme rules.
- The material that ReAssure Limited obtained was not all opinion. Much of it was factual about family circumstances and events, even if not verified by documentary evidence. There is in any event no general obligation to disregard information that is opinion but only to take care in relying on it. It was a matter for ReAssure Limited to decide what weight, if any, to give to such information acting in the manner of a reasonable trustee.

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