

UK: PENSIONS UPDATE – OCTOBER 2019

1. STATE PENSION AGE INCREASES RULED NOT DISCRIMINATORY

The High Court has held that changes to primary legislation introduced in stages since 1995 with the purpose of equalising and then increasing state pension age were not age and/or sex discriminatory and that there was no unlawful failure to notify the claimants of the changes. The Court concluded that there had been no discrimination (noting that the underlying objective of the changes is to correct a historic discrimination against men and to ensure the state pension regime remains affordable) and so even if discrimination had been made out, it could be justified. On notification, the Court found that no legitimate expectation that state pension age would not be altered without prior consultation had been created and that in any event successive governments had engaged in "*extensive consultation*" with widespread interested bodies before implementing the changes. While the Court was saddened by the claimants' stories, it noted that its role was limited as there is no basis for concluding that the policy choices resulting in the changes were not open to government - this was primary legislation debated in and settled by Parliament.

2. PENSIONS OMBUDSMAN DETERMINATIONS

PENSION LIBERATION¹

A victim of a pension liberation scam who transferred her pension out of the Local Government Pension Scheme (**LGPS**) has succeeded in her complaint against Hampshire County Council that the Council had failed to carry out proper due diligence before it transferred her pension from the LGPS to The Focusplay Retirement Benefits Scheme (the **Scheme**). The Pensions Ombudsman (PO) upheld the complaint against the Council on the grounds that:

- it had failed to consider correctly whether or not she had a statutory right to transfer; and
- it had failed to engage directly with the member regarding the concerns it should have had with her transfer request, had it been properly assessed.

Contents

1. State pension age increases ruled not discriminatory
2. Pensions Ombudsman determinations
3. Trustee stewardship and disclosure obligations update
4. Draft regulations implementing CMA Order
5. Pensions Regulator consults on the future of trusteeship and governance
6. PPF increases compensation levels
7. GMP equalisation/ conversion update
8. Government announces intention for January 2020 consultation on the RPI
9. Next steps for opposite sex civil partnerships
10. Exclusionary rule in public service pension scheme ruled discriminatory
11. New 'subjective' test for rectification of contracts
12. Law Commission report on the electronic execution of documents
13. FCA consults on pension transfer advice
14. Consultation on increased flexibility in the NHS Pension Scheme
15. DWP responds to consultation on Pensions Ombudsman powers and jurisdiction
16. On the horizon

¹ Mrs H (PO-21489)

The PO held that because the Council had wrongly concluded that the deferred member had a statutory right to transfer her funds from the LGPS (the member was not an "earner" for the purposes of the statutory transfer legislation), it had failed to act on the several "red flags" in relation to the transfer request, for example that the scheme was newly established by a steel stockholder company several hundred miles away from where the retired member lived, and it should have done more to advise the member (who the PO concluded on the evidence was not financially aware) about the risks of leaving the LGPS. The PO determined that the Council's failure to contact the member during the transfer process constituted maladministration, falling below the standard required of a prudent pension provider.

The PO directed the Council to reinstate the member's accrued benefits in the LGPS, or provide equivalent benefits, adjusting for any revaluation that had arisen since the transfer and allowing for any lump sum that the member had already received (subject to the caveat that the Council will be entitled to recover from the member any amounts she is able to recover from the scam Scheme). The Council was also directed to pay the member £500 for distress and inconvenience.

This case follows a July 2018 determination in which the member's complaint was upheld for similar reasons having exhibited the same "red flags". The message from these determinations seems to be that protecting members' pension funds on transfer is an important role for trustees and only an active dialogue with the member will suffice as regards discharging their responsibility for ensuring that members appreciate the risks of transferring out of a secure defined benefit environment.

Note that yesterday the Department for Work and Pensions also announced that the High Court has handed down three disqualification orders to directors who had liberated just under £12million worth of pension funds, confirming that pension liberation scams are still very much on the Government's radar.

RECOVERY OF OVERPAYMENTS CASE²

- 2.1 A member of the NHS Pension Scheme in receipt of a pension and a personal injury benefit who was informed that she had been overpaid by £106,890.50 since May 2007, has successfully argued that the Limitation Act 1980 applied to some of the overpayment, and was partly successful on a defence of change of position. The Deputy Pensions Ombudsman (DPO) held that she must repay £38,872.52 (57% of the balance of the overpayment remaining after the application of the 6 year limitation period) and was awarded £2,000 in respect of severe stress and inconvenience.
- 2.2 Applying the decision in *Webber*³, the DPO concluded that the cut-off date for recovery of overpayments in accordance with section 32 of the Limitation Act 1980 was six years prior to the date of receipt by the PO of the respondent's written response to the member's notice of complaint (in this case 16 March 2010).
- 2.3 On change of position, the member succeeded in arguing that she had spent the overpayment on improving "*her standard of living*" despite the fact that she was unable to produce detailed accounting evidence, and that she would not have done so absent the overpayment. The DPO found that in accordance with *Westminster*⁴ it would not to apply too demanding a standard of proof "*to an honest defendant*" in such circumstances. The DPO found that the overpayment represented a 43% increase in the member's income and was satisfied that the member's overspending was consistent with the percentage of overpayment. Accordingly, the member was not required to repay the 43% of the amount she had been overpaid which she would otherwise not have spent.
- 2.4 The decision is interesting given the large sums of public money involved. The DPO noted however that it did not consider it unfair to the public purse to allow the member to attempt to re-establish the lifestyle she would have had, had the repayment not occurred, and it was clear she would suffer financial hardship in repaying the full amount. In addition, the DPO was convinced by the honest dealings of the member noting her diligence in informing the NHS departments about her circumstances and being "generally open" about her benefits.

² Mrs K (PO-9785)

³ *Webber v Department for Education and another* [2016] EWHC

⁴ *National Westminster Bank plc v Somer International UK Limited* [2002] 1 All ER 198

3. TRUSTEE STEWARDSHIP AND DISCLOSURE OBLIGATIONS UPDATE

- 3.1 Changes to legislation governing trustees' investment duties and disclosure obligations designed to better reflect environmental, social and governance (ESG) and stewardship considerations came into force from 1 October 2019. The focus of the new changes is, essentially, to require trustees who are subject to the requirement in section 35 of the Pensions Act 1995 to prepare a statement of investment principles (SIP), to include additional investment policy information in the SIP and to publish that SIP and certain other information on a website. The new requirements on publication of the SIP were initially introduced for "relevant schemes" (that is, broadly, defined contribution schemes) by regulations in 2018⁵, but were extended to defined benefit schemes by the regulations in 2019⁶ which implemented requirements in the EU's Revised Shareholder Rights Directive.
- 3.2 Practitioners had expressed concerns that the regulations appeared to require trustees to give an implementation statement on the new policies (e.g. asset manager incentivisation) in their Annual Reports which may not have been in force in the scheme year to which the Annual Report relates, however, the DWP has published a factsheet summarising the new requirements (reproduced in the Appendix to this briefing) and which clarifies that the DWP only expects the implementation statement to report against the stewardship policy in place from 1 October 2019, to the end of the scheme year.

DWP publishes Shareholders' Rights Directive II Factsheet

4. DRAFT REGULATIONS IMPLEMENTING CMA ORDER

- 4.1 Following the implementation of the Investment Consultancy and Fiduciary Management Market Investigation Order 2019 on 10 June 2019 by the Competition and Markets Authority (CMA), the DWP issued draft regulations⁷ to transpose the aspects of the Order which impose duties on trustees into pensions legislation, and bring the monitoring and compliance of those trustee duties within the remit of the Pensions Regulator. The Pensions Regulator has also issued draft guidance on the Order.
- 4.2 In practice, there remains a tension as to how trustees satisfy the requirement to set objectives for investment consultants, where they don't themselves have investment expertise. Trustees may well look to their actuaries and legal advisers for input, but there remains a high risk that in considering input from their pre-existing investment adviser, the activity becomes circular and consultants essentially set their own objectives.
- 4.3 It is also interesting to note that while the requirement to set investment objectives is a continuing obligation, the way the draft regulations operate as regards the requirement to carrying out tendering for fiduciary management services is only a one-off obligation (albeit this doesn't stop trustees from doing their own continuing qualifying tender process, within the spirit of what's intended).
- 4.4 An additional difficulty arises as a result of the requirement that trustees wishing to appoint a fiduciary manager must consider two additional bids for fiduciary management services, rather than being able to compare the first fiduciary manager's bid with split services offered by other providers (albeit so long as the requirement for 2 other bids for bundled services has been met, trustees may consider additional bids for split services).

5. PENSIONS REGULATOR CONSULTS ON THE FUTURE OF TRUSTEESHIP AND GOVERNANCE

- 5.1 The Pensions Regulator has [consulted](#) on various proposals designed to promote its vision for the future of occupational pension schemes that all savers are in pension schemes that have excellent standards of governance that deliver good value. The consultation closed on 24 September.

⁵ The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018

⁶ The Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019

⁷ The draft Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2019

5.2 The consultation covered three main areas:

<p>Trustee knowledge and understanding, skills and ongoing learning</p>	<p>The Pensions Regulator:</p> <ul style="list-style-type: none"> plans to revisit the TKU code and is considering moving to competency-based standards seeks views on whether there should be a legislative requirement to demonstrate a minimum level of TKU is also considering if there should be higher expectations of TKU for professional trustees
<p>Scheme governance structures for effective decision-making</p>	<p>The Pensions Regulator's view is that pension boards benefit from diversity, it therefore seeks views on how this may be achieved including whether:</p> <ul style="list-style-type: none"> schemes should have to report to the Pensions Regulator on what actions they are taking to ensure diversity an accredited professional trustee should be required to sit on every board there are risks in having sole trustees (including a sole trustee director for a corporate trustee) in particular given diversity of representation is lost
<p>Consolidation of DC schemes</p>	<p>The Pensions Regulator is concerned about the quality gap between the governance of larger schemes and that of smaller schemes, many of which do not meet governance standards expected by the Pensions Regulator. The Pensions Regulator seeks views on winding-up issues arising from DC consolidation</p>

6. PPF INCREASES COMPENSATION LEVELS

- 6.1 The Pension Protection Fund (PPF) has started making increased payments to pensioners whose benefits were reduced below 50% of the value of their accrued pension due solely to the operation of the compensation cap, in accordance with the ruling by the European Court of Justice (ECJ) in the case of *Hampshire*⁸.
- 6.2 However, as we reported in the [March](#) edition of the UK: Pensions Update, the PPF's approach for calculating the increase (amongst other things) is currently being challenged in the Courts. The PPF has decided not to pay arrears on these increases until the proceedings are resolved, to avoid the risk of having to recover overpayments from members, should the court decide it should have taken a different approach.
- 6.3 In addition, if the ECJ follow the opinion of Advocate General Hogan in the *Bauer*⁹ case issued in May (in which the AG concluded that Article 8 of the Insolvency Directive¹⁰ imposes an obligation to protect 100% of members' pension benefits in the event of employer insolvency), the PPF may have to review its compensation regime to go beyond the minimum 50% level (albeit we would note that while the AG's opinion in the *Robins*¹¹ case had reached this same conclusion, the opinion was not followed by the ECJ).

⁸ Grenville Hampshire v The Board of the Pension Protection Fund [2018] (Case C-17/17)

⁹ Pensions-Sicherungs-Verein v Bauer [2019] EUECJ C-168/18

¹⁰ Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer

¹¹ Carol Marilyn Robins and Others v Secretary of state for Work and Pensions [2007] EU ECJ-278/05

7. GMP EQUALISATION/ CONVERSION UPDATE

Supplementary Lloyds hearing

- 7.1 The trustees of the Lloyds Banking Group pension schemes [announced](#) on 16 August that there will be a supplementary Court hearing to cover the question as to whether schemes must equalise GMPs in respect of past transfers out of their schemes. The hearing is expected in April or May 2020.
- 7.2 The hearing will not consider whether a different method of equalisation should be adopted for those members for whom the estimated cost of calculating and implementing the methods of equalisation outlined in the original judgment are the same as or greater than the projected additional benefits to which the members would be entitled as a result of equalisation. The judge postponed his discussion and decision on this in the original hearing, noting that the parties requested an opportunity to consider the judgment first and potentially make submissions on this.
- 7.3 Please see our [October 2018](#) special edition of the UK: Pensions Update for an overview of the original judgment handed down on 26 October 2018.

Notification of GMP Conversion to HMRC

- 7.4 A requirement of GMP conversion legislation is to notify HMRC on or before the conversion date that the GMP conversion will occur or has occurred and that it affects the earner.
- 7.5 Confusion has developed as to the form such notification must take in particular where notification is being made in respect of multiple earners. In its [August bulletin](#) HMRC confirmed that "*as HMRC have not tracked contracted-out rights since 6 April 2016, you do not need to send Form CA8476 when members' GMP rights are converted.*" While helpful, there remains a lack of clarity as to what form notification *should* take.

8. GOVERNMENT ANNOUNCES INTENTION FOR JANUARY 2020 CONSULTATION ON THE RPI

- 8.1 In [correspondence](#) between Sir David Norgrove, Chair of the UK Statistics Authority (UKSA) and Sajid Javid, the Chancellor of the Exchequer, regarding the UKSA's proposed reform of the Retail Prices Index (RPI), the Chancellor has announced that the government intends to consult on whether changes to the RPI should be introduced prior to 2030, and if so, when between 2025 and 2030.
- 8.2 The Chancellor's consent is required for a change to the RPI that may be fundamental and materially detrimental to the holders of the last index-linked gilts which mature in 2030. The reform would see the RPI aligned with the Consumer Prices Index including owners and occupier's housing costs (CPIH), which is roughly 1 percentage point lower every year than the RPI, which the Bank of England has confirmed would be both fundamental and materially detrimental.
- 8.3 While seemingly amenable to the arguments in favour of this course of action, the Chancellor noted that there are potential significant and diverse effects of the proposed change and so private and public sectors, households, firms and financial markets will need substantial time to prepare. The consultation is expected in January 2020 with responses published before the Spring Statement and the end of the financial year. As part of the consultation the government will consult on technical matters concerning how to implement the proposed alignment of RPI with CPIH.

Reform the RPI into the CPIH "by another name"

9. NEXT STEPS FOR OPPOSITE SEX CIVIL PARTNERSHIPS

- 9.1 The Government has stated its commitment to changing the law by 31 December 2019 to allow opposite-sex couples to form [civil partnerships](#). It has also sought views on whether opposite sex couples should be able to convert their marriage into a civil partnership and whether any changes should be made to the existing right to convert a same-sex civil partnership to a marriage. Any substantive changes to conversion rights are not expected before 2020.

10. EXCLUSIONARY RULE IN PUBLIC SERVICE PENSION SCHEME RULED DISCRIMINATORY

- 10.1 The Court of Appeal has upheld an appeal against an exclusionary rule in a public service pension scheme¹², which prevented the surviving partner of a scheme member from receiving survivor benefits because she was married to another person at the time of the member's death, on the grounds of discrimination.
- 10.2 Mrs Langford had been in a substantial and exclusive, but unmarried, relationship with the deceased but she remained legally married to her estranged husband. She was therefore prevented from receiving survivor benefits as a spouse of the deceased or as a financial dependant due to the exclusionary rule. Mrs Langford claimed discrimination on the grounds that an unmarried woman in her circumstances would have qualified for a survivors' pension.
- 10.3 This case turns on its specific facts (there was strong evidence that Mrs Langford and the member had been in a relationship akin to marriage for circa 15 years) but the judge noted that it may be possible in other circumstances for an exclusionary rule to be justified. It is also worth noting that the judge took a particularly dim view of the way the Minister approached meeting the procedural requirements of the case. While not directly affected by the judgment, trustees of private sector schemes may wish to consider the appropriateness of any similar exclusions in their own scheme rules.

11. 'SUBJECTIVE' TEST FOR RECTIFICATION OF CONTRACTS

- 11.1 The Court of Appeal¹³ has departed from the obiter comments of Lord Hoffmann in the *Charterbrook*¹⁴ case on the test for rectification for common mistake, instead finding that a contract may be rectified for common mistake where either:
- 11.1.1 the document fails to give effect to a prior agreed contract (i.e. the parties have contractually agreed to execute an agreement containing certain terms and the final agreement mistakenly contains different terms) – the 'objective test'; or
 - 11.1.2 the parties had a common intention in respect of a particular matter that the contract was intended to capture, but which, by mistake, the document didn't record – the 'subjective test'.
- 11.2 In the latter case, the test for rectification is subjective, and the parties must evidence that, as a result of communication between them, the parties understood each other to share the intention. While recognising that this subjective test may be harder to meet than an objective test, the Court considered that this was a "positive merit of such a test" since the primacy of the written contract should be upheld and instances of rectification should be rare. The case serves to reinforce the need for parties to ensure they understand the terms and consequences of any written agreements and that they have communicated a shared understanding as to how they should operate.

12. LAW COMMISSION REPORT ON THE ELECTRONIC EXECUTION OF DOCUMENTS

- 12.1 Following its consultation on electronic execution of documents in August 2018, the Law Commission has published a report setting out its conclusions on the current law on electronic signatures. The Law Commission confirmed that electronic signatures are valid subject to any formalities relating to the execution of the document have been complied with. In particular, the Law Commission confirmed that where a document must be signed "*in the presence of a witness*" the physical presence of the witness is required and that parties could not be "*confident*" that the current law allows for "*remote*" witnessing (i.e. where the witness is not physically present when the signatory signs the deed). The Law Commission has therefore made some recommendations to address some of the practicalities of electronic execution and the rules for executing deeds, including:
- 12.1.1 the creation of an industry working group to consider practical and technical issues around electronic signatures;

¹² *Langford v Secretary of Defence* [2019] EWCA Civ 1271

¹³ *FSHC Group Holdings Ltd v Glas Trust Corporation Ltd* [2019] EWCA Civ 1361

¹⁴ *Charterbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38

12.1.2 video witnessing for deeds; and

12.1.3 a future review of the law of deeds to consider broader issues around the effectiveness of deeds and whether the concept remains fit for purpose.

12.2 Notwithstanding its conclusion that the current law already provides for electronic execution, the Law Commission also suggests that Government may wish to consider codifying the law on electronic execution in order to improve the accessibility of the law.

13. FCA CONSULTS ON PENSION TRANSFER ADVICE

13.1 The Financial Conduct Authority (FCA) is consulting on proposals to address the conflict of interest created by contingent charging, as a result of its findings that too many advisers are delivering poor advice to consumers looking to transfer their defined benefits to a defined contribution arrangement in order to access their benefits more flexibly following the 2015 pension reforms. In particular, the FCA has identified that the issue predominantly arises in circumstances where the financial adviser only gets paid if a transfer proceeds. The FCA notes that between 2015 and September 2018 69% of consumers receiving advice were advised to transfer. Consultation closes on 30 October 2019.

"Too many advisers are delivering poor advice"

13.2 Broadly, the FCA is proposing:

- to ban contingent charging for defined benefit pension transfers and conversions, subject to an exemption for consumers in certain circumstances (e.g. in cases of extreme ill-health and financial hardship)
- that where contingent charging is permitted, advice firms must charge the same amount, in monetary terms, for advice to transfer as they charge when the advice is non-contingent
- to introduce 'abridged advice' to act as a low cost alternative for consumers for whom a pension transfer or conversion is unlikely to be suitable, which can be provided before they pay for full advice

13.3 Note that the ban on contingent charging will also extend to cases where an employer is paying for pension transfer advice or pension conversion advice for members – the FCA is proposing a new Handbook definition of "employer funded pension advice charge" as part of this change.

14. CONSULTATION ON INCREASED FLEXIBILITY IN THE NHS PENSION SCHEME

14.1 On 11 September 2019, the Government published a new consultation setting out its plans to amend the NHS Pension Scheme, broadly, to address the impact of the annual allowance taper on high-paid clinicians. The September consultation replaces the original consultation published on 22 July 2019. The consultation will close on 1 November 2019.

The annual allowance taper: The annual allowance of £40,000 may be reduced or 'tapered' for those whose 'threshold income' (total taxable income less any personal pension contributions) is over £110,000 and whose adjusted income (total taxable income plus annual pension growth) exceeds £150,000.

14.2 Should the proposals proceed (noting here that changes would be needed to primary legislation, payroll and the scheme's administration systems), implementation is expected by March 2020 (although it is intended that a modeller tool will be available for staff and NHS employers by the end of 2019).

14.3 Broadly, the original proposals centred on a new 50:50 option that would have allowed scheme members to opt at the start of a tax year to reduce both their accrual and contributions rates by 50%. The proposal was heavily criticised by the British Medical Association. The new proposals allow for flexible accrual such that clinicians could elect a target growth at the start of the year (e.g. 30% contributions for 30% accrual; increasing in 10% increments), with the option of fine-tuning this with retrospective effect once the individual is clearer on their earnings towards the end of the tax year.

14.4 There is also a proposal to consult on the principle of allowing the phasing of the "*pensionability*" of certain one-off substantial pay increases to smooth spikes in pension growth and a higher annual allowance tax charge that is not replicated in subsequent years. The government invites responses on how this might be achieved.

- 14.5 It was also announced that HM Treasury will review how the tapered annual allowance supports the delivery of public services such as the NHS, and in the meantime, NHS Employers have published [guidelines](#) which give employers permission to implement a number of "optional, temporary measures locally".

15. DWP RESPONDS TO CONSULTATION ON PENSIONS OMBUDSMAN POWERS AND JURISDICTION

- 15.1 As reported in our [September 2018](#) edition of the UK: Pensions Update, a reshuffle of the functions carried out by the Pensions Ombudsman (PO) and the Pensions Advisory Service (TPAS) also resulted in the creation of an "Early Resolution Service" and the DWP confirmed its intention to legislate for the new structure "at the latest by April 2020". In August 2019, the DWP published its response to the December 2018 consultation on the PO's powers and jurisdiction. The key takeaways from the consultation response are:

Early Resolution Service	<ul style="list-style-type: none"> Parties can choose whether to use the ERS or the existing more formal route. Where the ERS route results in an agreed settlement, the PO will be able to close cases but where it does not, parties will still have access to the more formal route The PO will not have the power to formalise any agreement reached during the ERS route – parties may enforce their own settlements by other means (e.g. court proceedings for a breach of contract) ERS will be available at any stage of a scheme's IDR process and IDR may be bypassed entirely if all parties agree
Signposting	<ul style="list-style-type: none"> The Government will work to improve signposting who can make complaints to the PO which will require secondary legislation
Widening of Jurisdiction	<ul style="list-style-type: none"> The Government is keen to ensure that employers are able to bring disputes/ complaints against GPPs on behalf of themselves

- 15.2 In addition to the above the PO has issued its Corporate Plan outlining its priorities for the next three years and its key deliverables for [2019/20](#). The priorities and deliverables build on the points discussed in the DWP's consultation and the recommendations coming out of the Tailored Review of the PO in July 2019 - in particular providing more detail on how the PO will strengthen its governance structure and improve the customer journey. Broadly the Plan outlines that such improvements will be achieved through internal mechanisms (e.g. a Stakeholder Engagement Strategy, customised Case Management System, a new and refreshed website and the appointment of an Interim Chair – Caroline Rookes) and external routes (e.g. by seeking changes to legislation and signposting where necessary).

16. ON THE HORIZON

Pensions Regulator to consult on climate change

Following the launch of the Government's Green Finance strategy setting out steps the government is taking to transition to a green financial system and address financial risks associated with climate change, The Pensions Regulator will, working with the Prudential Regulation Authority, Financial Conduct Authority and the Financial Reporting Council, produce guidance for pension schemes on climate-related practices. The Pensions Regulator expects to consult on the guidance in late 2019.

Defined benefit funding code and legislation

The Pensions Regulator was expected to consult in the summer on various options for a revised defined benefit funding framework under a new code, depending on the legislative timetable. In parallel, the Government is expected to clarify the existing defined benefit funding regime.

Pensions Bill 2019

A Pensions Bill is expected in late 2019 to bring forward legislation on, *inter alia*, pension dashboards, collective defined contribution schemes, new powers for the pensions regulator and potentially pension superfunds (although note that the DWP's response to consultation on pension superfunds has not yet been published).

Pension Superfunds

On 7 December 2018 the DWP issued its consultation on defined benefit pension scheme consolidation vehicles (the so-called "superfunds") and is currently developing an authorisation framework to safeguard the benefits of members moving into superfunds. Receiving superfunds will need the Pensions Regulator's authorisation to operate. The DWP consultation closed on 1 February 2019 and the response is expected later this year.

APPENDIX

DC Schemes	DB Schemes
<p>Update their Statement of Investment Principle (SIP) for policies on financially material considerations, non-financial matters, and stewardship (except the information concerning capital structure, management of actual and potential conflicts of interest and another stakeholder) by 1 October 2019.</p>	<p>Update their Statement of Investment Principle (SIP) for policies on financially material considerations, non-financial matters, and stewardship (except the information concerning capital structure, management of actual and potential conflicts of interest and another stakeholder) by 1 October 2019.</p>
<p>Trustees need to be transparent about their scheme's arrangements with their asset managers including how the arrangement incentivises the asset manager to act in accordance with trustee policies and the duration of the arrangement. Trustees need to include this information (and the information concerning capital structure, management of actual and potential conflicts of interest and another stakeholder) in their SIP by 1 October 2020.</p>	<p>Trustees need to be transparent about their scheme's arrangements with their asset managers including how the arrangement incentivises the asset manager to act in accordance with trustee policies and the duration of the arrangement Trustees need to include this information (and the information concerning capital structure, management of actual and potential conflicts of interest and another stakeholder) in their SIP by 1 October 2020.</p>
<p>Trustees must publish their SIP free of charge online from 1 October 2019, but they do not have to publish their asset manager policy nor the part of their stewardship policy concerning capital structure, management of actual and potential conflicts of interest and other stakeholders until 1 October 2020.</p>	<p>Trustees of a DB scheme will have to publish their SIP free of charge online from 1 October 2020, but they will not have to publish information detailing how they have implemented their engagement policy, including voting behaviour by, or on behalf of, trustees (including the most significant votes cast by trustees or one their behalf) and state any use of the services of a proxy voter until 1 October 2021.</p>
<p>An implementation statement, reporting against the policies in the SIP should be published from 1 October 2020, but they will not have to include any information detailing how they have implemented their asset manager policy and how they have implemented the part of their stewardship policy concerning capital structure, management of actual and potential conflicts of interest and other stakeholders until 1 October 2021.</p>	<p>Trustees need to prepare their annual report for the previous year within 7 months of the end of the scheme year.</p> <p>By 1 October 2021, trustees need to produce and publish online, detailing how they have implemented their engagement policy, including voting behaviour by, or on behalf of, trustees (including the most significant votes cast by trustees or one their behalf) and state any use of the services of a proxy voter.</p>
<p>Trustees need to prepare their annual report for the previous year within 7 months of the end of the scheme year.</p> <p>In a scenario where the implementation statement would cover a period before the new SIP requirements come in to force, and the scheme did not voluntarily have a stewardship policy in place, the implementation statement would only be required to report against the stewardship</p>	<p>The information in the Annual Report which must be published online, whether published on a single page or across more than one page, should be made available on a webpage in a way which enables the information displayed to be printed by the reader using widely used</p>

DC Schemes

policy in place **from 1 October 2019 to the end of the scheme year.**

By 1 October 2021, trustees need to produce and publish online information, detailing how they have implemented their asset manager policy and updated engagement policy, including voting behaviour by, or on behalf of, trustees (including the most significant votes cast by trustees or one their behalf) and state any use of the services of a proxy voter.

The information in the Chair's Statement and the Annual Report which must be published online, whether published on a single page or across more than one page, should be made available on a webpage in a way which enables the information displayed to be printed by the reader using widely used web browsers using the menus available via the browser, or functionality on the page itself.

The webpage on which the information that must be published is displayed should be such that the relevant information in the Chair's Statement and the Annual Report should be capable of being downloaded and stored using a modern web browser, again either via the browser menus or the page's functionality.

DB Schemes

web browsers using the menus available via the browser, or functionality on the page itself.

The webpage on which the information that must be published is displayed should be such that the relevant information in the Annual Report should be capable of being downloaded and stored using a modern web browser, again either via the browser menus or the page's functionality.

CONTACTS



Hywel Robinson
Partner

T +44 20 7006 8387
E hywel.robinson@cliffordchance.com



Clare Hoxey
Partner

T +44 20 7006 8899
E clare.hoxey@cliffordchance.com



Sarah McAleer
Partner

T +44 20 7006 8808
E sarah.mcaleer@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2017

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Bangkok • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Doha • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • Jakarta* • London • Luxembourg • Madrid • Milan • Moscow • Munich • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.