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UK: PENSIONS UPDATE – MARCH 2020

In light of recent events as a result of COVID-19, in this edition we cover some of the key considerations for trustees and employers, taking into account the recent guidance from TPR and include a link to some brief video messages from the Pensions partners at Clifford Chance.

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1. CORONAVIRUS UPDATE – TPR SUSPENDS REGULATORY INITIATIVES

1.1 "*These are unprecedented, challenging and uncertain times for trustees, employers, administrators and, crucially, savers*" says the Pensions Regulator (**TPR**) in its COVID-19 guidance to trustees, employers and administrators updated on 20 March 2020 - we couldn't agree more. We would encourage trustees and employers to keep an eye on the guidance issued by TPR which will be updated over the coming weeks as TPR responds to feedback, intelligence and the evolving risks of the Coronavirus and we would note in particular that ***TPR has confirmed that it is temporarily suspending all of its regulatory initiatives, and is postponing the publication of its Corporate Plan, its long-term strategy and its consultation on bringing together its codes of practice to form one single code.***

1.2 In this fast-changing environment where all those involved with pensions are working to protect savers and the sustainability of employers, we have set out below some key considerations for trustees and employers taking into account the guidance from TPR.

Trustees "*Trustees need to be alive to risks that would have significant consequences for your scheme and members*" - TPR	
Contingency planning	As TPR highlights, a priority for trustees should be continuity of pensioner and bereavement payments. Trustees should confirm their contingency plans with key services providers, taking into account the likelihood of staff shortages and office closures. In light of the restrictions on in-person meetings, trustees should be making appropriate arrangements for scheduling virtual meetings and calls to ensure continuity of meetings to address key scheme issues arising both as a consequence of current circumstances and in the ordinary course (albeit trustees are likely to need to delay all non-essential

	work for now). If a deed needs to be executed, corporate trustees may need to change their usual execution processes.
Impact on members	Trustees may wish to consider whether they should be contacting impacted members (in particular those with DC arrangements who may have been considering retirement over the next few months and whose pensions will have been impacted by falling stock markets). Trustees may wish to update the scheme website if they have not already done so to address common member queries and manage expectations for response times over the coming weeks or months.
Scheme funding	Trustees should keep an open dialogue with employers as to how the Coronavirus is impacting scheme funding but remain conscious (as TPR acknowledges) that in the short term at least interaction with employers will be complicated by the many new demands on their time. TPR has said it will be setting out its position for March and April valuations in its Annual Funding Statement, to be published after Easter. Trustees with contingent support from employers or the broader group (e.g. guarantees, letters of credit etc) should consider whether they remain appropriate, acknowledging the difficulties employers may be facing. NB, the PPF has said that trustees submitting contingent asset arrangements for certification may only do so online and must not send hard copies. Where trustees have concerns about an employer's ability to meet existing recovery payments they should refer to TPR's guidance on corporate distress and consider whether to contact TPR.
Scheme investments	While it is hoped the impact of Coronavirus on the markets will be short term, the trustees should consider whether their investment strategy remains appropriate and fit for purpose. Trustees should already have robust monitoring processes in place, but these should be checked and updated as necessary.

Employers "*We know this is a challenging time for everyone and we recognise the strain this is putting on employers*." - TPR	
Employer contributions	Employers should consider any impact on their ability to pay contributions to the scheme and whether either or both of their pension scheme trustees and TPR should be notified of concerns. We understand that TPR has seen a rise in the number of deferral requests and notes that these may be appropriate in the circumstances (albeit there will be issues for trustees and employers to work through). Employers may wish to investigate whether they can suspend contributions under their scheme rules and consider how the rules interact with the scheme funding documents and how automatic employment requirements will continue to be met.
Resourcing issues	Workloads are likely to have increased for HR employees dealing with employee queries regarding payroll, absence and pensions. Employers will need to ensure they have a plan for addressing resourcing issues and what approach will be taken to pension enquiries - e.g. can a Q&A webpage for employees be established?
Prioritisation	Employers will need to consider which projects should be prioritised and which can be deferred, taking into account legal requirements (particularly relevant, for example, to

	payments under Schedules of Contributions for DB schemes and automatic enrolment requirements).

1.3 For employees who would otherwise be laid off during the COVID-19 outbreak, the Government is introducing the Coronavirus Job Retention Scheme. Employees asked to stop working, who would otherwise be laid off, can agree to become "furloughed workers". HMRC will reimburse 80% of their wages up to £2,500 per month, to safeguard these workers from being made redundant. The Scheme will cover the cost of wages backdated to 1 March, and is initially open for 3 months but may be extended. HMRC is working urgently to set up the portal which will process employers' claims.

1.4 Employers are not required to pay the shortfall in wages, if they are able to agree with furloughed workers that they will only be paid what HMRC will reimburse. However any such agreement is subject to the employees usual contractual and statutory employment rights which continue to apply. Whatever wages the employees do receive will count towards "qualifying earnings" under pensions auto-enrolment legislation and so employer and employee pension contributions will remain payable (albeit at reduced levels if wages are only paid at 80% levels, and capped at £2,500). HMRC will reimburse Employer National Insurance contributions and minimum employer automatic enrolment pension contributions on the wages it reimburses (i.e. for monthly paid employees, 3% employer pension contributions on the reimbursed wages above the lower limit on qualifying earnings of £512 per month prior to 6 April and £520 per month from 6 April). Many employers pay pension contributions at higher levels or using a different definition of pensionable pay and therefore the reimbursement from the Government may only partially cover employer pension costs.

1.5 Separately employers with less than 250 employees will be able to reclaim up to 2 weeks' Statutory Sick Pay for an employee whose sickness absence is due to COVID-19. Statutory Sick Pay also counts towards "qualifying earnings" under pensions auto-enrolment legislation.

2. PENSION SCHEMES BILL 2019-21 – CRIMINAL SANCTIONS & CLIMATE CHANGE RISK

2.1 *Note that the progress of the Pension Schemes Bill 2019-21 through the House of Lords has been delayed while Parliament passes urgent legislation in response to the Coronavirus.*

2.2 In light of concerns raised by the pensions industry about the breadth of the criminal sanctions proposed in the Bill (see our previous client briefings[1]for further background), proposals were made by peers as it was debated in the committee stage of the House of Lords. Disappointingly these changes (some of which would have made the legislation much clearer) were not taken forward, although efforts are continuing. It is expected that TPR will consult on and publish specific guidance on its approach to prosecuting the new offences, and we hope that such guidance will be as robust and precise as possible.

2.3 Amendments have been made to other aspects of the Bill as part of the committee stage, including in particular the changes proposed by the Department for Work and Pensions (**DWP**) which will introduce new provisions into the Pensions Act 1995 regarding trustees' governance duties in relation to climate change risk. Broadly, the new provisions would:

2.3.1 *create additional climate change risk obligations on trustees* (e.g. the Secretary of State would have very broad regulation making powers to, amongst other things, require trustees to set a strategy for managing their scheme's exposure to climate risks and measure their performance against those targets. Trustees would also have to prepare documents and publish prescribed information relating to the effects of climate change on the scheme); and

2.3.2 *include compliance powers for TPR* (e.g. TPR would have the power to issue compliance notices on, and ultimately be able to fine, trustees and third parties (such as asset managers) who fail to comply with the new requirements).

[1] See our UK Pensions Update: Special Edition October 2019 and UK Pensions Update: January 2020 Edition.

2.4 The DWP would also have the power to issue guidance to which trustees would have to have regard.

2.5 These new provisions would apply on top of the increased investment disclosure requirements that began applying to trustees (for the most part) from October 2019 and concerns have been expressed in the industry that such additional stringent requirements on trustees would give government bodies power to interfere with the investment strategies set by trustees. So far, it looks as if (as with previous changes in this area) no changes will be made to the fundamental rules as to how climate change should be taken into account by trustees (namely, that it can only be a relevant factor insofar as it positively affects financial performance/risk).

3. CONSULTATION ON PENSIONS CLIMATE RISK GUIDE

3.1 On 12 March 2020, the Pensions Climate Risk Industry Group (PCRIG) published guidance for pension trustees on assessing, managing and reporting climate-related risks in line with recommendations from the Taskforce on Climate-Related Financial Disclosures (**TCFD**). The TCFD developed a set of climate-related financial disclosures on governance, strategy, risk management and metrics and targets, which firms can adopt on a voluntary basis.

"*Climate change is a core financial risk which pensions trustees must consider when setting out their investment strategy.*" TPR

3.2 The guidance is open for consultation until 7 May 2020 and PCRIG intends to publish the final guidance in the autumn.

3.3 While the government's original intention had been that all large asset owners, including pension schemes, would be disclosing in line with TCFD recommendations by 2022, as noted in section 2 of this briefing, provisions requiring pension schemes to assess the impact of climate change on their investments and report that information to scheme members, are being included in the Pension Schemes Bill 2019-21.

3.4 The draft PCRIG guide aims to help trustees evaluate the way in which climate-related risks and opportunities may affect their strategies by making use of the recommendations of the TCFD. The guidance is split into three sections:

- Part I sets out PCRIG's assessment of the legal requirements for pension scheme trustees to consider climate-related risk in their decision making and more detail on the recommendations made by the TCFD.
- Part 2 sets out a suggested approach for the integration and disclosure of climate risk assessment in the typical governance and decision-making framework of pension trustee boards, indicating (where applicable) how these align with the TCFD recommended disclosures.
- Part 3 contains technical details on recommended scenario analysis and metrics that trustees could use to record and report their findings.

3.5 Trustees should bear in mind that the guidance is not (and does not claim to be) binding law. In particular, the summary of legal requirements does not include what is probably the most fundamental legal requirement, namely that climate change is only a relevant factor for trustees to the extent it positively affects financial performance/risk.

4. TPR ISSUES DB FUNDING CODE CONSULTATION

4.1 On 3 March 2020, TPR issued the first of its two consultations regarding the revision of its Defined Benefit Code of Practice (**DB Code of Practice**). Despite the events of recent weeks, the consultation remains open and TPR has said it will consider timing in the coming weeks. The consultation is currently scheduled to run until 2 June 2020 and TPR intends to carry out the second consultation (focussing on the draft code itself) later in 2020 (it is expected that the revised code will come into force at the end of 2021). The revised DB Code of Practice will form a new and amended module to the single code of practice which TPR has currently placed on hold due to other pressures as a result of the Coronavirus.

4.2 The consultation considers three key areas: (i) TPR's proposed regulatory approach to scheme funding (the twin-track approach to submitting DB scheme valuations termed "Fast Track" and "Bespoke"); (ii) employer covenant (i.e. the extent to which the employer covenant should remain a key aspect of scheme funding, including how it should be assessed and for how long reliance can be placed on it); and (iii) TPR's 'general principles' which it

proposes should underpin scheme funding and which will also "*underpin any potential enforcement action*" TPR takes.

4.3 A bedrock of the consultation is TPR's goal of improving the resilience of maturing DB schemes to facilitate an efficient and well-managed "end game" phase for DB schemes which, according to TPR means schemes should progressively reduce their reliance on sponsoring employers as they mature (the consultation refers to TPR's expectation of maturity over a period of 15 to 20 years for most schemes). TPR's view is that many of the core principles set out in the consultation are consistent with its messages over the last few years (e.g. integrated risk management and the importance of long-term planning) and that trustees of well-run, well-funded schemes should not have to alter significantly what they are already doing to comply with the revised Code.

4.4 It is important to bear in mind that the consultation relates to a Code of Practice, not binding legislation. Codes of Practice do not change the law (although they will often be relevant in interpreting it). It is also worth bearing in mind that the specific criteria for Fast Track are not mandated – and indeed, changing the calculation of your scheme's technical provisions in order to fit within Fast Track or otherwise comply with criteria TPR recommends may be inconsistent with the requirement that changes to technical provisions must be justified by a change in "legal, economic or demographic circumstances".

What are Fast Track and Bespoke?

4.5 TPR intends the "Fast Track" to represent the appropriate objective standard against which scheme-specific funding arrangements should be assessed. Schemes adopting the Fast Track approach must demonstrate that their valuation meets a set of quantitative and objective guidelines. Part 3 of the consultation sets out the technical analysis for Fast Track in great detail but some keys point to note include the following:

- While some aspects of Fast Track will be quantitative (e.g. discount rates for setting the long-term objective (**LTO**) are likely to have to be in the range of Gilts +0.5% to Gilts +0.25%) other aspects will be more qualitative (e.g. non-financial assumptions for setting the LTO are likely to be scheme-specific but trustees will need to make additional disclosures to justify them).
- TPR considers that in most cases trustees should place a reducing level of reliance on the direct covenant beyond the period for which there is good visibility. TPR suggests this is likely to be for the short-to-medium term (i.e. 3 – 5 years) for most schemes, subject to legitimate deviations where trustees may be able to take a justifiably longer view (e.g. where employers have long-term government contracts).
- TPR confirms that it is not proposing to set guidelines that promote or prohibit any category or type of investment. TPR expects larger schemes to calculate scheme-specific sensitivity of their liabilities to interest rates and inflation (typically done by the scheme actuary) and TPR's preference is to use a TPR-defined stress test (using the PPF's methodology as a starting point) for measuring investment risk so it can ensure it fits TPR's needs and can be revised from time to time.
- Recovery plans (**RPs**) should be shorter for schemes with stronger covenants. TPR proposes no longer than 6 years for those with strong and tending to strong covenants; 9 years for those with tending to weak and 12 years for those with weak covenants. TPR is consulting on whether schemes with strong covenants should have only 3 year recovery plans.
- TPR is consulting on prohibiting (for the Fast Track) back-end loading payments in RPs - apart from inflation linked increases - and having guidelines which define the shape of the RP (e.g. requiring a minimum proportion of deficit reduction contributions (**DRCs**) to be committed in the first half of the recovery period). TPR is proposing that asset outperformance above that assumed in the TPs should not be used when calculating the RP.

- TPR intends to set clear expectations on scheme equitability (namely, the treatment of the scheme compared with historical and expected payments to other stakeholders e.g. dividends, intercompany loans and material management bonuses referred to as "value leakage"). Exceptional distributions (e.g. large one-off dividends) are deemed by TPR to be "transactions" and trustees should consider these in line with TPR's guidance on corporate transactions.
- TPR clarifies that it does "*not automatically recognise dividends as an essential business cost and consider that the payment of these in preference to paying an appropriate level of DRCs is likely to be detrimental to the covenant*."

4.6 "Bespoke" on the other hand offers greater flexibility to account for scheme and employer-specific circumstances. Bespoke is not "bad" or a "second-best" option, but trustees choosing this approach will have to submit more supporting evidence on their approach, including how they propose to manage additional risk and can expect greater regulatory scrutiny.

When will Bespoke be used and how will it be assessed?

4.7 The intention is that TPR will use the Fast Track as the starting point and consider the extent to which and why a Bespoke arrangement deviates from Fast Track assumptions and parameters. Note that TPR provides common examples of where it expects the Bespoke route may apply in the consultation which trustees and employers may find useful when considering the specific circumstances underpinning their valuations. TPR notes that broadly, trustees may decide to use Bespoke where:

4.7.1 An aspect of Bespoke is different from the equivalent requirements of Fast Track but despite the differences the arrangement represents an outcome at least as good as Fast Track and/or trustees can evidence there is no additional risk being run by the Bespoke arrangement (for example where the trustees consider that they have justification for assuming longer-term visibility of the employer covenant when compared to the 3-5 years currently proposed for Fast Track);

4.7.2 Trustees consider it appropriate to take additional, managed risk relative to the tolerated level of risk set out in Fast Track; or

4.7.3 Trustees are unable to meet some or all the standards expected in Fast Track (e.g. stressed schemes).

TPR makes it clear that the Bespoke approach can be equally compliant with legislative requirements on scheme funding.

What does TPR say about the employer covenant?

4.8 While pensions funding legislation does not expressly refer to the role of the employer covenant, TPR acknowledges that it is a relevant factor in trustee decisions, in particular in determining the appropriate funding and investment risks to take. The consultation focuses on how the employer covenant should be assessed and for how long reliance can be placed on it. Of particular interest is likely to be the following:

- TPR is proposing to allow trustees to imbed some reliance on the employer covenant and to allow more immature schemes to assume and take more investment risk on their way to low dependency funding.
- While the consultation explores several options for how this may be achieved, TPR's proposal is to integrate the employer covenant into Fast Track technical provisions via the discount rate (by recognising the employer covenant as a key security mechanism to support assumed/actual investment risk) given it most closely reflects current practice.
- TPR is consulting on whether its current guidance on employer covenant should become more formulaic (e.g. based on financial metrics/employer affordability) rather than scheme-specific as it is now, or whether current guidance should be expanded.

• TPR proposes retaining its current employer covenant grading system (CG1-4) for the purposes of setting Fast Track guidelines, but recognises that there are arguments for increasing the number of ratings, and it welcomes views on this as well.
• As noted previously, TPR believes it is inappropriate to assume indefinite reliance on the employer covenant and proposes that this should be limited to the period over which there is good 'covenant visibility' (e.g. 3 to 5 years in most cases).

4.9 Finally, note that alongside the consultation, TPR has also published a report from the government Actuary's Department on the impact of setting the LTO under the revised DB Code of Practice titled 'Modelling the long-term funding objective'.

5. TPR RESPONDS TO ITS CONSULTATION ON THE FUTURE OF TRUSTEESHIP AND GOVERNANCE

5.1 TPR issued its response to its consultation on the future of trusteeship and governance on 10 February 2020 (see our UK Pensions Update: October 2019 Edition for background). The consultation focused on three areas (i) trustee knowledge and understanding **(TKU)**, skills and ongoing learning; (ii) scheme governance structures for effective decision-making; and (iii) driving DC consolidation.

5.2 Of key interest to stakeholders is likely to be that TPR confirms that it will not, for the time being, require every scheme to have an accredited professional trustee, although TPR notes that it may revisit this idea in the future.

TKU, skills and ongoing learning

Review and consult on TKU content in TPR's Code of Practice (originally intended for early 2021)	TPR will review and update its Code of Practice so that its expectations for the content and level of TKU that trustees need to attain remain appropriate to protect savers (albeit note that this review is currently on hold due to the Coronavirus). It will look to incorporate the TKU expectations communicated in its 21st century trusteeship campaign as part of this work and intends to simplify how it presents TKU expectations, so that these are differentiated by trustee role-type and type of scheme (i.e. DB, DC and public service schemes).
No statutory minimum qualification or CPD will be required	TPR does not plan to change current TKU legislation to require qualifications or CPD to demonstrate how TKU is acquired and maintained. It will instead "*look to articulate a range of acceptable methods for demonstrating TKU*" when it reviews and revises TKU content and related guidance.
"Regulatory initiative" on TKU	TPR also intends to run a "regulatory initiative" (which involves TPR contacting a large number of schemes about a particular risk and engaging with those that have not addressed the identified risk) on TKU once the revised content and guidance is in place and after a reasonable period has been given for schemes to adjust.
Exploration as to whether expectations for ongoing learning should be set	TPR will explore whether to set expectations on what is appropriate for ongoing learning, including setting indicative numbers of hours and types of activities that count towards learning. TPR suggests that 15 hours per year is reasonable for lay trustees, and professional trustees will be expected to follow the industry-based standards, which is currently set at 25 hours per year.
Trustee toolkit to be reviewed	TPR accepts that the Trustee toolkit could be improved and intends to review the Trustee toolkit over the course of 2020-2021 to see whether and where it can make improvements (and will collaborate with industry to fill in subject-specific gaps). Again, we expect this review is likely to be delayed.
Targeted employer campaign to be run	TPR intended to run a targeted employer campaign over the course of this year "*to remind employers of their duties in law*" – for example the right for trustees to have paid time off. In addition TPR intends to address areas where employers can "have positive

	impact on the performance of the pension scheme" e.g. trustee recruitment. Again, we expect this campaign will be delayed.

Scheme governance structures for effective decision-making:

Industry working group to be established to improve diversity on scheme boards	TPR plans to create an industry working group to address the issue of diversity of scheme boards - among other deliverables, the group will give a clear definition of what is meant by diversity and inclusion and provide good practice guidance on the topic. It will also engage with employers to recognise the benefits of the trustee role for employee development. TPR will be the first chair of the group, with others assuming this role later.
No requirement to report on board diversity	TPR will currently not pursue the introduction of a requirement for schemes to report on the steps they are taking to increase diversity on their boards (albeit it does not rule out revisiting this in the future if evidence suggests a firmer approach is needed).
No requirement for a professional trustee	As noted above TPR confirms that it will not, for the time being, require every scheme to have an accredited professional trustee.
No changes to the regulation of sole trusteeship schemes	The Association of Professional Pension Trustees (**APPT**) is developing an industry code for sole trusteeship that TPR supports. While TPR notes that it still has "*concerns about some aspects of sole trusteeship*", particularly around conflicts of interest and ensuring saver engagement, it is not proposing to make any changes to how it regulates schemes using a sole trusteeship model, but it will continue to keenly scrutinise such schemes and intends to commission research on the scale and reach of sole trusteeship schemes.

Driving DC consolidation:

TPR will not take a 'blanket approach' to consolidation	TPR's view is that having fewer but better governed schemes in the market will be good for savers because they should then "*benefit from more efficiently run pensions, with the right people in place to make good investment decisions*". However, in response to concerns from respondents to its consultation, TPR states that it will not take a 'blanket approach' to consolidation, confirming that if a scheme is well-run and can demonstrate it is offering value for members, TPR will not push the trustees to consider consolidation.
Assignment to new trustees while guarantee remains with insurer preferable on winding up schemes with guarantees	TPR notes that, with respect to the winding up of schemes with guarantees, the approach of assigning the scheme to a new trustee while the guarantees remain with the existing insurer is clearly the preferable approach in terms of member outcomes. TPR will investigate this further with the DWP to better understand why it is not an option that all insurers are willing to consider. NB requiring NEST to take schemes with guarantees was apparently a popular option of respondents but TPR states that this would require legislative change and is not something that could be achieved in the short term.
No TPR guidance for schemes with guarantees	TPR does not plan to provide guidance for schemes with guarantees in the immediate future but notes that the DWP intends to produce statutory guidance to help trustees establish whether their scheme is offering value for members (in connection with the DWP's consultation "Investment innovation and future consolidation") and that this guidance is likely to make specific reference to schemes with guarantees and how the trustees might value the benefits offered in such schemes.

6. DWP RESPONDS TO ITS CONSULTATION ON INCREASING THE GENERAL LEVY

6.1 On 4 March 2020 the Department for Work and Pensions (**DWP**) published its response to its consultation on increasing the General Levy (see our UK Pensions Update: January 2020 Edition for background) announcing its decision to implement "Option 1" as set out in the consultation i.e. to increase levy rates by 10% on 1 April 2020, with further increases from April 2021 informed by a wider review of the levy with an industry working group. For schemes with 2-11 members, the increases were to be as follows: for occupational pension schemes, the rate rises from £29 to £75 per annum per scheme and for personal pension schemes, the rate rises from £12 to £30 per annum per scheme. The government laid the Occupational and Personal Pension Schemes (General Levy)(Amendment) Regulations 2020 (**2020 Regulations**) before both houses of Parliament.

However, in light of the unprecedented circumstances following the coronavirus outbreak, on 27 March 2020, the government laid an order to revoke the 2020 Regulations. The levy rates will, therefore, not be increasing on 1 April 2020. The government has said that it will now focus on reviewing the structure of the levy and will be engaging with industry over the course of the next few months.

7. HMRC ISSUES GMP EQUALISATION GUIDANCE

7.1 On 20 February 2020, HMRC published its long-awaited guidance on some of the pensions tax issues arising when equalising benefits for the effect of guaranteed minimum pensions (**GMPs**). As previously indicated by HMRC, the guidance does not cover the tax implications of equalising GMPs through conversion.

7.2 The guidance focuses specifically on the dual record keeping methods for achieving equalisation approved in the *Lloyds*[2] case, and sets out HMRC's view as to how GMP equalisation benefit adjustments will impact on the annual allowance (**AA**) and the lifetime allowance (**LTA**). HMRC is clear throughout the guidance that it relates to benefit adjustments where the reason for the adjustment is "*solely for GMP equalisation*" i.e. it does not cover "*other benefit adjustments*" that might be made alongside GMP equalisation and notes that, in practice, where other benefit adjustments are made, the tax position may be different to that set out in the guidance.

AA considerations	HMRC confirms that, generally, increased entitlements resulting from GMP equalisation will not constitute "*new accrual of benefits*" requiring a test against the AA in respect of deferred members. In particular: • pre-6 April 2006 deferred members are not brought into scope of the AA as the benefit adjustment is in respect of GMP benefits accrued prior to 6 April 2006; • similarly, deferred members who benefit from the AA carve-out are not affected on the basis that GMP equalisation benefit adjustments are a series of percentage increases attributable solely to the application of s.67 of the Equality Act 2010; and • finally, while HMRC confirms that there is no need to revisit the past, the revised benefit amount following GMP equalisation will need to be taken into account in both the opening and closing benefit calculations for the purposes of assessing the AA in the tax year of implementing GMP equalisation (as well as tax years thereafter).
LTA considerations	HMRC confirms that, generally, benefit adjustments solely for GMP equalisation purposes should not prejudice applicable LTA protections. In particular individuals should not lose any type of fixed protection in place given any increase to their benefits solely for GMP equalisation will not be considered to be "*benefit accrual*" and individuals who were deferred members pre-6 April 2006 will not lose their enhanced protection on the basis that they have not had any "*relevant benefit accrual*". However:

[2] *Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank Plc and others* [2018] EWHC 3343 (Ch)

	• those with primary and individual protections must notify HMRC without "*undue delay*" where their re-calculated benefits result in the value of the rights protected being higher than originally notified to HMRC; • The guidance states that for individuals who were not deferred members by 6 April 2006, the GMP adjustment added to their benefits accrued after 6 April 2006 may result in "*relevant benefit accrual*" and that when carrying out relevant accrual calculations, the value of the member's rights as at 5 April 2006 needs to include the adjustment for GMP equalisation valued at that date; • where increases in the value of a member's benefits resulting from GMP equalisation means that a member would now be in scope for an LTA protection, the individual can approach HMRC with evidence to support their late notification; and • finally, note that a GMP equalisation benefit adjustment may trigger a retest against the LTA in certain circumstances (e.g. for pensions in payment, on the basis that the original BCE2 (benefit crystallisation event which occurred when the member became entitled to payment of the pension) requires correction by reference to the revised increased starting pension) with the result that an LTA charge may be due. Note that where the pension commenced before 6 April 2006, the GMP equalisation adjustment will not trigger a BCE2 in the scheme.
Practical implications	The guidance notes some practical implications for both trustees and members, for example: • where a retest against the LTA results in an LTA charge being due, the member may need to correct a previous self-assessment tax return and trustees may also need to provide updated information to HMRC; • members who have been given an annual BCE statement showing the percentage of the LTA used up will need updated statements with the corrected figure going forwards; • where arrears of pension are paid as a lump sum and the scheme operates PAYE, this may result in greater tax being deducted from the member than would have been the case under the accruals basis (the amount of pension a member is entitled to in the tax year), and so members will have to contact HMRC to claim the correct tax treatment.

7.3 The actions required by members and trustees will need to be considered and carefully communicated when schemes move towards implementation of GMP equalisation projects.

7.4 HMRC promises further guidance on some trickier points that are missing such as lump sum and death benefit payments "*as soon as possible*". HMRC also states that it will "*continue to explore the tax implications for schemes choosing to use the conversion methodology*", however, while the timing for this was unlikely to be quick under normal circumstances, in light of recent events we expect there will be a delay in the publication of any further guidance in this area.

8. MARCH 2020 BUDGET ANNOUNCEMENT

8.1 The Chancellor of the Exchequer, Rishi Sunak, presented his Budget to Parliament on Wednesday 11 March 2020. The following announcements were made regarding pensions and have been included in the Finance Bill 2020 which was published on 19 March 2020:

Call for evidence on pension tax administration	Those earning around or below the level of the personal allowance and saving into a pension may benefit from a top-up on their pension savings equivalent to the basic rate of tax, even if they pay no tax, but only where their pension scheme relief is administered in a certain way. The government has committed to reviewing options for addressing these differences and will shortly publish a call for evidence on pensions tax relief administration.
Tapered annual allowance for pensions	To support the delivery of public services, particularly in the NHS, the two tapered annual allowance thresholds will each be raised by £90,000. This means that from 2020-21 the "threshold income" will be £200,000, so individuals with income below this level will not be affected by the tapered annual allowance, and the annual allowance will only begin to taper down for individuals who also have an "adjusted income" above £240,000. For those on the very highest incomes, the minimum level to which the annual allowance can taper down will reduce from £10,000 to £4,000 from April 2020. This reduction will only affect individuals with total income (including pension accrual) over £300,000. Proposals to offer greater pay in lieu of pensions for senior clinicians in the NHS pension scheme will not be taken forward.
Lifetime allowance for pensions	The lifetime allowance will increase in line with CPI for 2020-21, rising to £1,073,100.

9. CONSULTATION ON THE REFORM TO RPI METHODOLOGY

9.1 On 11 March 2020, HM Treasury and the UK Statistics Authority (**UKSA**) published their joint consultation on proposed changes to the Retail Prices Index (RPI) methodology.

9.2 The Chancellor of the Exchequer's consent is required for a change to RPI that may be fundamental and materially detrimental to the holders of certain index-linked gilts, the last of which mature in 2030. The consultation is in response to recommendations from the UKSA that the publication of RPI should cease, but that given such abolition would take time (it requires primary legislation), the Chancellor of the Exchequer should, in the meantime, give his consent to effectively turn RPI into CPIH "*by another name*".

9.3 In light of the potentially significant and diverse effects of the proposed change and the fact that private and public sectors, households, firms and financial markets will need substantial time to prepare, the consultation seeks views on:

9.3.1 the technical approach intended to be taken to transition between the current and new methods and data sources of RPI;

9.3.2 the potential impact of the UKSA's proposal on the holders of index-linked gilts and potential broader impacts to the index-linked gilt market; and

9.3.3 whether changes to RPI should be introduced prior to 2030, and if so, when between 2025 and 2030.

9.4 The consultation will run for six weeks until 22 April 2020. The government and the UKSA intended to respond to the consultation before the Parliamentary summer recess (albeit query whether that timing will be delayed in light of recent events).

10. EXPRESS TRUST REGISTRATION REQUIREMENT UPDATE

10.1 As we reported in our UK Pensions Update: January Edition, the UK had until the 10 January 2020 to implement legislation on the expanded EU requirement for all UK express trusts to register with HMRC's Trust Registration Service (**TRS**) *whether or not they incur a tax consequence*, and while regulations were brought into force in December 2019 transposing other requirements of the Fifth Money Laundering Directive, they did not address the trust registration requirements.

10.2 On 23 January 2020, the government published its long-awaited response to its consultation on the transposition of the EU requirements (which closed in June 2019) and on 24 January 2020 HMRC issued its technical consultation accompanied by draft legislation on the implementation of the trust registration requirements which closed on 21 February 2020 (HMRC is currently analysing feedback). From a UK perspective concerns have been raised that casting the net too widely given the ubiquity of trusts in English law and the resulting onerous nature of the proposed TRS requirements may not be proportionate given that many trusts present a low risk of being manipulated for money laundering and terrorist financing purposes.

10.3 From a pensions perspective however, it is helpful that the draft legislation explicitly excludes both (i) registered pension schemes (given they are already subject to regulation by either the Financial Conduct Authority or TPR); and (ii) life assurance only schemes where they don't incur tax (although if such a trust were to become a taxpaying trust, it would then be required to register with the TRS in order for the trust tax return to be issued). Pension scheme trusts that are not registered with HMRC on 'Pension Schemes Online' or 'Manage and Register Pension Schemes' will be required to register on TRS.

11. STATUS OF PROPOSED AMENDMENTS TO IFRIC 14

11.1 Following a board meeting of the International Accounting Standards Board (**IASB**) on 25 - 27 February 2020 and in line with the recommendation in the Staff Paper accompanying the meeting, the IASB has decided not to finalise the proposed amendments to IFRIC 14 and will, instead, "*consider the project's direction at a future meeting*" which will be welcomed by employers of defined benefit pension schemes.

11.2 By way of background, in June 2015 the IASB consulted on proposed changes to IFRIC14 (which prescribes when it is possible for an employer to recognise a balance sheet asset for a pension scheme that is in surplus on the IAS19 basis). However, concerns were raised regarding an element of the proposed changes which would have had the result that an employer may no longer be able to account for a surplus assuming the gradual settlement of liabilities over time if the pension scheme trustees have a unilateral power to buy-out benefits in member names in a single event (regardless of whether or not the scheme's funding position would make this practically impossible). The impact of this is could be that an employer would only be able to recognise an asset if there is a surplus in the pension scheme calculated on a buy-out basis (rather than an IAS19 surplus). The employer would also have to recognise an additional liability if they are making past service deficit contributions.

11.3 However, the changes were postponed following an IASB meeting in September 2017 at which the IASB decided that before finalising the proposed amendments to IFRIC 14, it would perform further work to assess whether it should instead establish a more principles-based approach that is broader in scope.

12. ON THE HORIZON

Given the uncertainty at this time it is difficult to comment on what will remain on the immediate horizon for pensions. That said, we will continue to keep our clients updated on key developments in the pensions sector as we try, so far as possible, to continue with business as usual.

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