

Quarterly briefing

September 2019

Highlighting significant developments in pensions law, covering key areas such as pensions reform, regulatory developments, new legislation and cases



Q3

September 2019

Caroline Legg (Partner), Liam Goulding (Associate), Charlotte Bailey (Associate)

Abbreviations

APPT: Association of Professional Pension Trustees

BEIS: Department for Business, Energy & Industrial Strategy

CJEU: Court of Justice of the European Union

CMA: Competition & Markets Authority

CTI: Cost Transparency Initiative

DB: Defined benefit

DC: Defined contribution

DWP: Department for Work and Pensions

ECHR: European Convention on Human Rights

ESG: Environmental, social and governance

EU: European Union

FCA: Financial Conduct Authority

FRC: Financial Reporting Council

GDPR: General Data Protection Regulation

GMP: Guaranteed Minimum Pension

HMRC: HM Revenue & Customs

HMT: HM Treasury

ICO: Information Commissioner's Office

LGPS: Local Government Pension Scheme

PASA: Pensions Administration Standards Association

PLSA: Pensions and Lifetime Savings Association

PMI: Pensions Management Institute

PPF: Pension Protection Fund

PRA: Prudential Regulation Authority

PSIG: Pension Scams Industry Group

PTSWG: Professional Trustee Standards Working Group

SIP: Statement of Investment Principles

TKU: Trustee knowledge and understanding

TPO: The Pensions Ombudsman

TPR: The Pensions Regulator

WPC: Work and Pensions Select Committee

In this issue

Current legal agenda 3

Regulatory

TPR 4

CMA 5

HMRC 6

HMT 6

Transfers 7

Investment 8

In other news

Guidance and standards 9

Charges 9

Public sector 10

Upcoming legislation 10

Cases

CJEU 11

Court of Appeal 11

Update on previous cases 11

Electronic format

You can access electronic copies of all our publications at:

www.sackers.com/knowledge/publications

Environment

In line with our approach to corporate social responsibility (CSR), we monitor closely the number of copies printed of this publication. The paper and print manufacturing has been done in compliance with ISO14001 environmental management standards. Our paper, Satimat Green, contains 75% post-consumer waste and 25% virgin fibres, which are certified for FSC® chain of custody.

For more information on our CSR policy, please visit our website at www.sackers.com/about/csr

Current legal agenda

GMP equalisation update

Since the High Court confirmed in late 2018 that pension benefits need to be equalised for the effect of GMPs¹, the pensions industry continues to work towards ensuring that schemes are able to implement equalisation smoothly.

HMRC working group – tax issues guidance awaited

HMRC's June pension schemes newsletter² carried an update on its GMP equalisation working group. The newsletter explains that the group is "making good progress in exploring a number of approaches" to the pensions tax issues that could arise as result of GMP equalisation, but that it does not expect to produce updated guidance before the autumn.

PASA publishes GMP Equalisation Call to Action

The cross industry GMP Equalisation Working Group published its "Call to Action"³ in July. The group, chaired by PASA, has identified areas that it urges schemes to start working on now. These include understanding and progressing GMP reconciliation and rectification, reviewing the quality of the data needed for GMP equalisation, and managing "impacted transactions" (namely, transactions which need to be completed now but, if the scheme has not equalised for the effect of GMPs, may need to be revisited as part of a future equalisation project).

Further best practice guidance is expected by the end of September, covering methodology, tax, data, impacted transactions and reconciliation and rectification.

Further GMP guidance on the way

GDPR – one year on

25 May 2018 saw the dawn of a new era in the protection of personal data, with the GDPR building on and extending existing data protection provisions to create a regime "fit for the digital age". As the ICO said at the time⁴, when it comes to compliance with the GDPR, "25 May is not the end. It is the beginning". Our Alert⁵ contains tips on what schemes should be doing to ensure continued compliance.

GDPR – carry on complying

Getting your scheme Brexit ready

With Boris Johnson now at the helm, Brexit, deal or not, seems to be promised by 31 October 2019.

Trustees should look to ensure, to the extent possible, that their scheme will be able to continue to operate as usual when the UK finally leaves the EU. TPR's January statement on Brexit remains the latest official guidance for schemes⁶.

Investment trailer

Investment and ESG continue to dominate headlines, with new regulations out in June adding to the requirements already in place, and a host of bodies issuing materials – see page 8. Our forthcoming Finance & investment briefing has an in-depth look at the latest changes and guidance for schemes on how to meet the new requirements.

1 See our Alert: [The High Court decides – how to solve a problem like GMP equalisation](#) (26 October 2018)

2 [Pension schemes newsletter 111 – June 2019](#) (HMRC, 26 June 2019)

3 [GMP Equalisation Call to Action](#) (PASA, 16 July 2019)

4 [Elizabeth Denham's speech at the Data Protection Practitioners' Conference](#) (ICO, 9 April 2018)

5 See our Alert: [GDPR – one year on](#) (23 May 2019)

6 [Statement on the UK's exit from the EU](#) (TPR, 24 January 2019)

Regulatory

TPR

Single code of practice

In July, TPR announced⁷ that, over the next year, it will review its codes of practice to reflect the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (designed to implement the second European Pensions Directive, known as “IORP II”⁸). It expects that this will involve combining the content of its 15 current codes of practice to form a single, shorter, code.

Codes to reduce from 15 to 1

The intention is to make the codes of practice “quicker to find, use and update”, so that schemes can be more responsive to changes in regulation. The new single code will be developed in phases, with an early focus on the material most affected by IORP II. Trustees will need to be able to demonstrate that they have “an effective system of governance” in place within 12 months of publication of the updated code.

TPR intends to launch a formal consultation later in the year after engaging with stakeholders for feedback on the proposed design and content.

DB funding changes timetable

In May, TPR published a blog⁹ addressing what it and the Government are “doing to make the funding standard for DB schemes clearer” so as to “provide better protection and outcomes for savers”. This followed the announcement of a range of measures in the 2018 White Paper¹⁰, including changes to the legislation and a revised code of practice on DB funding.

TPR plans to undertake two formal consultations in revising its funding code. The first, initially expected during the summer, will focus on “options for a clearer framework for DB funding”. The second consultation – on the draft code itself – will take place in 2020, once TPR has “more clarity on the intended primary and secondary legislative package”. We expect some of the detail in the forthcoming Pensions Bill – see page 10.

TPR corporate plan 2019-22

21st century trustee – Phase 2

TPR published its corporate plan for 2019-22¹¹ in May. The Plan¹² and accompanying press release set out how, “as part of TPR’s more proactive and targeted approach” to supervision, hundreds more schemes can expect to be contacted in the next year. It also confirms that Phase 2 of TPR’s 21st Century Trustee programme can be expected shortly.

Consultation on the future of trusteeship and governance

TPR has published a consultation¹³ on the future of trusteeship and governance. The document discusses the problem of badly run pension schemes and considers how the trustee model could be made more effective.

Possible new minimum standards for trustees

Questions posed by TPR include the possibility of introducing legislation requiring trustees to demonstrate how they have acquired a minimum level of TKU (eg through training or qualifications), whether there should be a minimum level of ongoing learning for trustees, and whether all schemes should be required to appoint an accredited professional trustee. Board diversity, whether sole trustees are able to run pension schemes appropriately, and removing barriers to consolidation, particularly for small schemes, are also explored.

The consultation, to which we will be responding, closes on 24 September 2019.

7 [Single code of practice statement](#) (TPR, July 2019)

8 See our Alert: [IORP II – green light for good governance](#) (24 October 2018)

9 [Protecting DB savers: our expectations are clear](#) (TPR, 9 May 2019)

10 See our Alert: [Protecting DB Pension Schemes – the Government’s White Paper](#) (20 March 2018)

11 [Corporate Plan 2019 - 2022](#) (TPR, 16 May 2019)

12 [TPR tightens its regulatory grip to deliver better outcomes for pension savers](#) (TPR, 16 May 2019)

13 [Future of trusteeship and governance consultation](#) (TPR, 2 July 2019)

Regulatory cont.

Default investment governance

TPR has announced¹⁴ a new drive to “scrutinise” trustees to ensure they are meeting their legal obligations and properly governing default investment arrangements.

Trustees of DC and hybrid schemes providing DC benefits must review their default strategy every three years, or promptly after significant changes in investment policy or in the demographic profile of relevant members. The review should also consider how the return on investments in the default arrangement is in line with the trustee board’s aims and objectives.

As part of the pilot, trustees have been asked to review guidance outlining TPR’s expectations, and to confirm if the strategy and performance of their scheme’s default arrangement have recently been reviewed and remain suitable. TPR will, in a new approach, walk non-compliant trustees through “simple steps to comply with the law”, in an attempt to increase engagement and drive up standards.

CMA

Investment consultants market investigation

On 10 June 2019, the CMA published the Investment Consultancy and Fiduciary Management Market Investigation Order 2019¹⁵ (“the Order”).

The CMA’s Investment Consultants Market Investigation¹⁶ had found that features of the markets for investment consultancy and fiduciary management services adversely affect competition in connection with the supply of those services to pension schemes. Its final report set out a package of measures to remedy, mitigate or prevent the adverse effects on competition, and the Order gives effect to these remedies.

Trustees, fiduciary managers, and investment consultants must ensure their practices are in line with the Order’s requirements. Anyone found to be non-compliant risks being taken to court by the CMA.

The DWP recently released a consultation seeking views on draft regulations¹⁷ which aim to integrate the Order into pensions legislation. Amongst other things, the regulations will:

- require trustees of occupational pension schemes, subject to certain limited exceptions, to carry out a tender process for fiduciary management services, and to set objectives for their investment consultants
- enable TPR, rather than the CMA, to oversee the requirements relating to pension schemes.

The consultation runs until 2 September 2019 and the regulations are scheduled to come into force on 6 April 2020¹⁸.

TPR has now issued its own consultation¹⁹ on guidance designed to help trustees comply with the new requirements. It is inviting responses on a suite of guidance, covering competitive tendering for fiduciary management services; tendering and setting objectives for providers of investment consultancy services; and choosing an investment governance model.

TPR’s consultation closes on 11 September.

Objectives set by trustees will require regular review

The Order will apply to pension schemes from 10 December 2019

14 [TPR lifts the bonnet on default investment governance](#) (TPR, 11 June 2019)

15 [The Investment Consultancy and Fiduciary Management Market Investigation Order 2019](#) (CMA, 10 June 2019)

16 [See 7 Days: CMA publishes final report on investment consultancy market](#) (17 December 2018)

17 [The Occupational Pension Schemes \(Governance and Registration\) \(Amendment\) Regulations 2019](#)

18 [See Alert: Consultation on tougher rules on investment governance](#) (2 August 2019)

19 [Draft guidance consultation \(in response to CMA recommendation\)](#) (TPR, 31 July 2019)

Regulatory cont.

HMRC

Draft Finance Bill 2019-20: Changes to priority order in insolvency cases

The order of creditor priority on an employer insolvency is governed by legislation. Preferential debts are paid after fixed charges and the expenses of the insolvency, but before the holders of floating charges and all other unsecured creditors.

The draft Finance Bill published in July²⁰ includes proposals to amend insolvency legislation with effect from 6 April 2020, moving HMRC up the creditor hierarchy on the distribution of assets. It will become a secondary preferential creditor in respect of certain tax debts held by a business on behalf of its customers and employees (such as Value Added Tax and Pay As You Earn income tax). This change, first trailed at Budget 2018, aims to enable more of those taxes paid in good faith to go to fund public services.

If enacted, this measure will impact occupational pension scheme trustees' ranking on an insolvency and therefore the amount they may ultimately recover.

Consultation on the draft legislation is open until 5 September 2019, with the Finance Bill 2020 expected to be introduced into Parliament following the Budget in autumn.

HMT

Call for evidence: Financial Services Future Regulatory Framework Review

HMT has issued a call for evidence²¹ seeking views on regulatory coordination in the financial services sector. Responses are required by 18 October 2019.

This is the first phase in a number of planned interventions by HMT to determine the long-term effectiveness of the regulatory regime. It will look at whether more can be done to better coordinate the work of each regulator and to limit unnecessary burden. The wider review will then take stock of the overall approach to regulation of the financial services sector, including how regulation may need to adapt in the future, in particular when the UK leaves the EU.

Ranking on insolvency to change

20 [Policy paper: Changes to protect tax in insolvency cases](#) (HMRC, 11 July 2019)

21 [Financial Services Future Regulatory Framework Review](#) (HMT, 19 July 2019)

Transfers

Transfers, particularly those from DB to DC schemes, remain a hot topic, with numerous publications of note over the last quarter.

New scams code in force

Revised code on combating pension scams

PSIG has issued version 2.1 of its Code of Good Practice in Combating Pension Scams²². This update came into force on 10 June 2019, and should be used for all transfer requests processed on or after that date. Amongst other things, changes address updates on the cold calling ban, TPR and the FCA's ScamSmart campaign, TPR's Threat Assessment, TPO determinations and implications, and the rise of claims management firms.

PASA launches DB transfers guidance

On 8 July 2019, PASA announced the launch of the first instalment of its DB transfers guidance²³. Created by PASA's DB Transfers Working Group, the Guide to Good Practice covers "standard" transfers, with a second instalment addressing "non-standard" or "complex" transfers due towards the end of 2019. The guidance aims to improve the member experience through faster, safer transfers, to increase efficiency for administrators, and to aid communication and transparency in processing transfers.

Too much advice "is still not of an acceptable standard"

Further supervisory action on DB transfers – FCA and TPR

In June, the FCA published the results of the data it has received from firms carrying out DB transfers, setting out the next steps in its supervisory work²⁴. The FCA is concerned that firms continue to recommend that large numbers of consumers transfer out of DB pension schemes, despite its stance that transferring is likely to be unsuitable for most clients.

The FCA's supervisory work will aim to "drive up the quality of advice". It is visiting firms to complete an assessment of their approach to DB advice, focusing on their business models and processes which can give rise to harm. It will write to other firms where it has identified "the potential for harm", setting out its expectations and the actions firms should take.

FCA acts to protect consumers transferring from DB schemes

Following on from the above, the FCA has now issued a consultation²⁵ on plans to ban contingent charging (ie where a fee for advice is only paid when a transfer goes ahead) on DB transfer advice, with the WPC having recently reiterated its call for "urgent action" in this area²⁶.

The consultation also proposes strengthening the FCA's requirements in relation to "ongoing" advice, which can result in charges being paid throughout a 20 to 30 year retirement period. Other measures include improving charges disclosure; having to demonstrate customers' understanding of advice; increasing professional development requirements for pension transfer specialists; and extending the data the FCA may collect from financial advisers.

The consultation is open until 30 October 2019.

The FCA is also seeking feedback on a package of potential measures to protect consumers in non-workplace pensions²⁷, including requiring providers to offer one or more investment solutions, reducing charge complexity and increasing transparency. It is seeking feedback until 8 October 2019, and will then consult on new rules in early 2020.

Finally, the FCA has published rules and guidance²⁸ designed to help consumers either in, or who enter into, drawdown to make investment decisions that meet their needs in retirement.

22 [Version 2.1 of the Code of Good Practice in Combating Pension Scams](#) (PSIG, 10 June 2019)

23 [DB Transfers Guidance](#) (PASA, 8 July 2019)

24 [FCA announces further action on defined benefit transfers](#) (FCA, 19 June 2019)

25 [CP19/25: Pension transfer advice: contingent charging and other proposed changes](#) (FCA, 30 July 2019)

26 [See 7 Days: WPC publishes correspondence on contingent charging](#) (20 May 2019)

27 [FS19/5: Effective competition in non-workplace pensions](#) (FCA, 30 July 2019)

28 [Policy Statement 19/21 – Retirement Outcomes Review: feedback on CP19/5 and our final rules and guidance](#) (FCA, 30 July 2019)

Investment

**Additional
transparency
requirements
coming into force**

Further changes to SIPs and investment disclosure

On 6 June 2019, the Government published the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations²⁹ (“the Regulations”). The Regulations are intended to implement the aspects of the latest Shareholder Rights Directive (which had to be transposed into UK law by 10 June 2019) relating to workplace pension scheme stewardship and governance. The changes are intended to improve transparency of information on how trustees engage with their asset managers.

See our Alert³⁰ and the forthcoming Finance & investment briefing for further details.

TPR has issued a statement³¹ on the Regulations, advising schemes to start the compliance process now in order to meet the deadlines. The PLSA has also published a guide³² aimed at helping pension funds understand the SIP and reporting changes which start to take effect from 1 October this year³³ (eg to include trustees’ policies on “financially material considerations”, including ESG), and to support them in achieving good practice into the future.

TPR revises guidance on DC investments

On 27 June 2019, TPR published revised investment governance guidance for DC schemes³⁴, reflecting the above changes to legislation for DC schemes, and with the intention of providing further clarity and guidance for trustees.

Updated DB investment guidance is expected in the coming months.

Government launches Green Finance Strategy

The BEIS has published the Government’s Green Finance Strategy, “Transforming finance for a greener future”³⁵, in response to the Green Finance Taskforce’s March 2018³⁶ report.

**“Mobilising finance
for clean and
resilient growth”**

Among other things, the Government aims to develop guidance for pension schemes in relation to climate related financial disclosures. Alongside TPR, it has established an industry group to work on this and expects to consult on a draft later this year.

The FCA, FRC, PRA and TPR issued a joint declaration³⁷ welcoming the publication, and setting out their understanding of the risks and opportunities of climate change.

29 [The Occupational Pension Schemes \(Investment and Disclosure\) \(Amendment\) Regulations 2019](#)

30 See our Alert: [Further changes to SIPs and investment disclosure](#) (12 June 2019)

31 [New shareholder engagement requirements for trustees](#) (TPR, June 2019)

32 [ESG & Stewardship: A practical guide to trustee duties](#) (PLSA, June 2019)

33 See our Alert: [Government response: clarifying and strengthening trustees’ investment duties](#) (12 September 2018)

34 [DC Investment Guidance](#) (TPR, June 2019)

35 [Green Finance Strategy, “Transforming finance for a greener future”](#) (HMT & BEIS, 2 July 2019)

36 [Report of the Green Finance Taskforce](#) (March 2018)

37 [Joint statement on climate change](#) (FCA, FRC, PRA and TPR, July 2019)

In other news

Guidance and standards

PASA publishes cyber security guidance for pension schemes

On 6 June 2019, PASA published its cyber security guidance³⁸ for pension schemes. The guidance is intended to provide practical support for trustees in formulating a robust and effective review of how they safeguard their schemes from cyber security issues. It covers five main areas: risk assessment, governance, risk management, controls and incident management.

Professional trustee standards framework delayed

The launch of a professional trustee accreditation framework, which was due to happen in July, has been delayed until later this year as the process is “more complex than first envisaged”. Having been developed by the PTSWG, the framework will be run by the PMI and APPT.

CTI launches tools and templates

Finalised templates and tools³⁹ for institutional investors (such as pension schemes) to use to receive standardised costs and charges information from asset managers were launched by the CTI in May.

The new templates and guidance for asset managers and other suppliers of services to pension schemes aim to enable them to report costs and charges in a standardised format. They have been designed to allow trustees to make costs and charges comparisons across different investment management suppliers and asset classes, making it easier for trustees to scrutinise and challenge costs and performance, and to ensure savers are getting the best value for their investments.

The CTI, supported by the PLSA, the Investment Association, and the LGPS Scheme Advisory Board, recommends trustees engage with their investment management suppliers immediately. It expects asset managers to be in a position to report against year-ends from as early as December 2019 using the new CTI tools.

Guide to the treatment of pensions on divorce

In what will be its final report, the Pension Advisory Group has published an “essential guide to the treatment of pensions on divorce”⁴⁰. The guide is aimed at family judges, lawyers and pension experts, and is intended to encourage fairer settlements and to help manage liability.

The Guide “demystifies this area and establishes clear ground rules”

Charges

Pension Charges Bill 2017-19 introduced to Parliament

On 8 May 2019, the Pension Charges Bill 2017-19⁴¹ had its first reading in the House of Commons. It is a private member’s bill, sponsored by Angela Eagle, a former Labour Minister of State for Pensions. The Bill’s aim is “to require pension providers to publish standardised information on charges for pension products” and to make provision for a cap on such charges.

38 [Cyber Security Guidance](#) (PASA, 6 June 2019)

39 [Cost Transparency Initiative](#) (May 2019)

40 [A Guide to the Treatment of Pensions on Divorce](#) (The Pension Advisory Group, July 2019)

41 [Pension Charges Bill 2017-19](#)

In other news cont.

Public sector

Consultation on changes to the LGPS and NHS pension schemes

In May, the Ministry of Housing, Communities & Local Government published a consultation⁴² seeking views on policy proposals to amend the rules of the LGPS in England and Wales. It closed on 31 July 2019.

The consultation covers amendments to the requirements governing local fund valuations (from the current three year to a four year cycle), and measures aimed at mitigating the risks of making such a switch. It also includes proposals for flexibility on exit payments, and for policy changes to the employers required to offer LGPS membership, to reflect developments in the further and higher education sectors.

The Government is also consulting on the NHS Pension Scheme⁴³, in relation to possible tax changes, until 14 October 2019. This comes in response to much publicised concerns from senior clinicians about breaching their annual allowances. The consultation puts forward a suggested “50:50 option”, halving pension contributions in exchange for halving the rate of pension growth.

Changes to teachers’ pension schemes published

Changes to teachers’ pension schemes have also been published, alongside a response to the original consultation⁴⁴. The amending regulations⁴⁵ come into force on 1 September 2019 and make various changes, including in relation to survivor pension rights for civil partners and same sex couples (see under Cases, the *Walker* judgment), and on the removal of the nomination form requirement for unmarried partner benefits in the wake of *Brewster*⁴⁶.

Upcoming legislation

Pensions Bill still awaited

Trailed as “one of the most significant pieces of pensions legislation of the decade”, the Parliamentary Under-Secretary of State for Pensions and Financial Inclusion, Guy Opperman, promised a Bill to address multiple aspects of pensions legislation⁴⁷. Originally hoped for by the end of May, delays to Brexit proceedings, and the Conservative leadership elections, mean that the Bill has not yet been delivered.

When it does arrive, we expect it to cover collective DC schemes and pensions dashboards, as well as making changes to provisions relating to GMP conversion, and the proposed new powers for TPR⁴⁸. While the Bill was originally expected also to cover DB consolidation, the DWP confirmed recently that it will need “more time” to introduce this “difficult area” into legislation.

As Parliament is now in recess until 3 September 2019, it will be autumn before we see the Bill.

Bill – without DB consolidation provisions – delayed

42 [Local Government Pension Scheme: Changes to the Local Valuation Cycle and the Management of Employer Risk](#) (Ministry of Housing, Communities & Local Government, May 2019)

43 [Senior clinicians’ pensions: more flexibility](#) (Department of Health and Social Care, 22 July 2019)

44 [Teachers’ pension scheme regulations: proposed changes](#) (Department for Education, 18 July 2019)

45 [The Teachers’ Pensions Schemes \(Amendment\) Regulations 2019](#)

46 See our case summary: [Brewster – In the matter of an application by Denise Brewster for Judicial Review \(Northern Ireland\)](#)

47 [Pensions minister: Looking ahead to 2019/20 in pensions](#) (Money Marketing, 5 April 2019)

48 See our Alert: [A stronger Pensions Regulator – the Government responds](#) (12 February 2019)

Cases

CJEU

PSV v Bauer (Advocate General's opinion)⁴⁹

The CJEU will again be required to consider the scope and interpretation of Article 8 of Directive 2008/94/EC (which protects employees' pension rights in the event of their employer's insolvency) in a reference from the German Federal Labour Court.

PPF compensation caps called into question again?

The Advocate General's opinion (the first stage in the court's process) calls into question the current interpretation of Article 8 (ie that it requires Member States to guarantee each individual employee compensation corresponding to at least 50% of the value of their accrued entitlement⁵⁰). In his view, Article 8 instead imposes an obligation "to protect all of the old-age benefits affected by an employer's insolvency" in certain circumstances.

We await the CJEU's eventual judgment, and any response from the PPF.

Court of Appeal

Langford v The Secretary of State for Defence⁵¹

The Court of Appeal has unanimously held that a rule in a pension scheme, which prevented the surviving partner of a deceased member receiving a pension because she remained married to another person, amounted to unlawful discrimination contrary to Article 14 of the ECHR.

Update on previous cases

Written statement on Walker v Innospec and survivor benefits review

Guy Opperman MP has made a written statement⁵² in Parliament on the Supreme Court's judgment in *Walker v Innospec*⁵³, and on the Government's response to the review of differences in survivor benefits in occupational pension schemes⁵⁴.

Public sector schemes will now be informed of what changes need to be made to ensure same sex civil partners and spouses receive the same survivor benefits as widows of opposite sex spouses. Private sector schemes should take their own advice to ensure they are also legally compliant.

McCloud / Sargeant case – Government denied leave to appeal

In 2018, the Court of Appeal held⁵⁵ that transitional provisions put in place as part of reforms to the Judicial and Firefighters' pension schemes constituted unlawful direct age discrimination. In June, the Supreme Court denied the Government's request for an appeal.

The Chief Secretary to the Treasury has since confirmed⁵⁶ that the difference in treatment will now need to be remedied across all public service pension schemes.

The matter will now be remitted to the Employment Tribunal to determine a remedy. The Government will engage with employer and member representatives, and the devolved administrations, regarding its proposals to the Tribunal and in respect of other public service pension schemes.

Remedying the issue may add £4bn per annum to scheme liabilities from 2015

49 See our case summary: [PSV v Bauer \(AG opinion, 8 May 2019\)](#)

50 See our case summary: [Grenville Hampshire v the Board of the Pension Protection Fund \(Judgment of the CJEU\)](#)

51 See our case summary: [Langford v The Secretary of State for Defence \(Court of Appeal, 17 July 2019\)](#)

52 Written statement: [Walker v Innospec Judgment and Response to Survivor Benefits Review](#) (4 July 2019)

53 See our case summary: [Walker v Innospec \(Supreme Court, 12 July 2017\)](#)

54 [Occupational pension schemes: review of survivors' benefits](#) (DWP, June 2014)

55 See our case summary: [The Lord Chancellor and Secretary of State and another v McCloud and Mostyn and others and Sargeant v London Fire and Emergency Planning Authority and others \(Court of Appeal, 20 December 2018\)](#)

56 Written statement: [Public Service Pensions](#) (15 July 2019)

Upcoming seminars



We offer an extensive programme of client workshops and seminars. In addition to the quarterly legal updates, our seminars, which are led by our experts, offer clients the opportunity to ask questions and to share experiences on particular topics.

Documenting your investment policies – tips and traps	01/10/19	Breakfast seminar (9:00am-10:30am) Aimed at pension scheme trustees and managers, this session will look at what investment practices and policies DB and DC schemes must have in place and what they need to cover.
Documenting your investment policies – tips and traps	03/10/19	Lunch time webinar (12:30pm-1:15pm) Aimed at pension scheme trustees and managers, this webinar will look at what investment practices and policies DB and DC schemes must have in place and what they need to cover.
Pensions for new trustees	24/10/19	All day workshop (9:00am-3:30pm) Aimed at new trustees or those wanting a refresher on DB, DC and hybrid schemes, this session will look at key legal issues for trustees
Quarterly legal update	07/11/19	Breakfast seminar (9:00am-10:30am) The latest legal and regulatory developments in the pensions world

If you would like to attend any of our seminars, please contact our marketing team at marketing@sackers.com.

A selection of short videos and webinars on topical pensions-related issues and aspects of our firm is available on our website: www.sackers.com/knowledge/multimedia

Sign up



Stay up to date with all the latest legal developments affecting retirement savings by signing up to our free publications on www.sackers.com/knowledge/publications.

These include 7 Days, our weekly round up, Alerts where topical issues in pensions are covered in depth and Briefings which summarise essential issues in pensions.

Recent publications



Our 2019 [guide to buy-ins, buy-outs and longevity transactions](#) considers the increasingly active bulk annuity market and offers practical tips for trustees.