

Quarterly briefing

September 2020

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



Q3

September 2020

On the front cover this quarter:
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Abbreviations

AA: Annual Allowance
CETV: Cash equivalent transfer value
CJEU: Court of Justice of the European Union
CJRS: Coronavirus Job Retention Scheme
CMA: Competition and Markets Authority
CPI: Consumer Prices Index
DB: Defined benefit
DC: Defined contribution
DRC: Deficit repair contribution
DWP: Department for Work and Pensions
ESG: Environmental, social and governance
EU: European Union
FCA: Financial Conduct Authority
GAA: Governance Advisory Arrangements
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
IGC: Independent Governance Committees
LTA: Lifetime Allowance
MAPS: the Money and Pensions Service
MLD5: Fifth Money Laundering Directive
PA95: the Pensions Act 1995
PASA: Pensions Administration Standards Association
PPF: Pension Protection Fund
PTM: Pensions Tax Manual
RPI: Retail Prices Index
SIP: Statement of Investment Principles
TPR: The Pensions Regulator
TRS: Trust Registration Service

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Coronavirus

COVID-19 continues to pose challenges for employers and trustees alike, and over the last quarter we have seen further updates from various industry bodies to guide and support schemes through the crisis.

TPR issues updates on easements

As promised, before the 30 June 2020 expiry of its COVID-19-related easements, TPR issued updated guidance on reporting duties and enforcement activity.

The updated guidance outlines how TPR is “continuing to support schemes in these challenging times”. Decisions on regulatory action will continue to be made on a case-by-case basis, taking “a flexible and pragmatic approach where breaches are COVID-19 related”.

However, from 1 July, trustees have had to resume reporting certain key information to TPR, to ensure risks are managed and savers protected. This includes reporting suspended or reduced DRCs, late valuations, non-agreement of recovery plans, delays in CETV quotations and payments, and failures to prepare audited accounts.

As an exception to the general return to business as usual, TPR has extended the easement giving DC and automatic enrolment providers 150 days to report late payments of contributions (rather than the usual 90 days). This extension will be reviewed again at the end of September.

Transfers and scams

TPR’s easement allowing schemes to temporarily pause transfers came to an end on 30 June, although it has reminded trustees that there is flexibility in the legislation, providing additional time to issue CETV quotations for reasons outside the trustees’ control.

The focus on transfers, and protecting members from scams, remains. Amongst other things, industry bodies produced a joint guide at the end of May² for pension savers on “COVID-19 and your pension”, which outlines “all the protections that are in place, and directs savers where they can go to seek free, impartial guidance”.

Trustees should continue to issue a template letter³ to all DB members requesting a CETV quote, and should report unusual or concerning transfer activity to the FCA.

Changes to the CJRS

The CJRS has been extended to run until 31 October 2020, but (with some exceptions) was closed to new entrants on 30 June. From 1 July onwards, furloughed employees can work part-time. From 1 August, the level of grant the employer receives will begin to reduce each month. HMRC and TPR guidance has been updated to reflect these changes⁴.

TPR has also extended the easement for employers who do not run a full 60-day consultation when temporarily reducing DC pension contributions, provided that certain conditions are satisfied⁵. This easement now applies until 30 September 2020.

For further detail on other easement changes and reporting requirements, see 7 Days¹

See our Hot Topic for a CJRS timeline⁶

1 See [7 Days](#) (22 June 2020)

2 See [7 Days](#) (1 June 2020)

3 See our Alert: [TPR issues guidance on communicating to members during COVID-19](#) (29 April 2020)

4 See [7 Days](#) (15 June 2020)

5 See our Alert: [Automatic enrolment and pension contributions: COVID-19 guidance for employers](#) (updated 5 June 2020)

6 Hot Topic: [Coronavirus – furlough and automatic enrolment](#) (updated 25 June 2020)

DB update

New interim regulatory regime for Superfunds

In June, TPR launched a new interim regulatory regime for DB consolidators (ie “superfunds” and other new models)⁷, pending the establishment of a full legislative framework. The new guidance came into effect immediately, and aims to establish the “high bar” TPR expects new superfunds to meet to ensure both savers and the PPF are adequately protected.

The guidance is intended to cover how trustees of a superfund’s pension scheme should approach managing the funding and governance risks associated with this model. It also explains how they will be assessed and regulated. As with the DC master trusts⁸ model, TPR will perform initial and ongoing assessments of superfunds.

Updates to TPR’s separate guides for trustees and employers contemplating a move to a superfund will follow “in due course”, but TPR is clear that every such transfer will have to go through its clearance process. In addition, TPR states that it does not expect a superfund to accept a transfer from a scheme that has the ability to buy out, or which is on course to do so, within the foreseeable future (five years being the example given).

Businesses in financial difficulty – new legislation

Expedited as a result of the COVID-19 pandemic, the Corporate Insolvency and Governance Act 2020⁹ received Royal Assent on 25 June 2020. It is designed to provide businesses in financial difficulties with the flexibility and breathing space they need to continue trading and/or to explore a potential rescue or restructuring.

Two new options are introduced, intended to enable a corporate rescue. Neither will be an “insolvency event” for pensions purposes, meaning there is no trigger of a section 75 debt or a PPF assessment period. Whilst enabling corporate rescue may ultimately benefit a related DB scheme, the Act could have some potentially significant consequences for pensions.

Moratoria

The first new option is a free-standing moratorium. Subject to certain conditions, an employer may be able to obtain a moratorium for up to a year, providing it with a payment holiday from certain debts. Companies are obliged to continue some payments but, in our view, these will not include DRCs or payments in respect of section 75 debts.

While a company is subject to a moratorium, trustees cannot (subject to limited exceptions) enforce any contingent assets, or serve a winding-up petition.

If winding-up proceedings are started, or the company enters administration within 12 weeks of the end of the moratorium, certain debts are then given super-priority. This could push floating charge holders and unsecured creditors, including a DB scheme, further down the priority list.

Restructuring plan

Sitting alongside schemes of arrangement and company voluntary arrangements, the second new option is a restructuring plan. Provided certain conditions are met, even dissenting classes of creditors or members may be bound by a court-sanctioned restructuring plan (known as “cross-class cram down”). However, as the court’s job is to ensure that any dissenting class is not worse off, it seems that the court must at least take into account the effect a restructuring package would have on a DB scheme.

More detail will follow in the coming months, and TPR intends to develop its guidance as the superfunds market evolves

DB trustees should understand the potential pensions ramifications of the Act

7 See our Alert: [New interim regulatory regime for Superfunds](#) (22 June 2020)

8 See our Alert: [Pension Schemes Act 2017 – new regulatory regime for master trusts](#) (3 May 2017)

9 See our Alert: [Corporate Insolvency and Governance Act 2020 – the pensions implications](#) (13 July 2020)

DB update cont.

PPF and TPR

Where the company in question is or has been an employer of a DB scheme, in certain circumstances, new regulations¹⁰ provide for the PPF to take over the exercise of the trustees' creditor rights in relation to a moratorium, or to have the same creditor rights as trustees in respect of a restructuring proposal (exercising certain voting rights in their place). The PPF is required to consult with trustees before exercising such rights in their place.

TPR¹¹ and the PPF¹² have both issued brief guidance notes on the Act.

TPR – scheme funding

On 16 June 2020, TPR published a “major rewrite” of its COVID-19 Funding and Investment Guidance¹³. Designed to consolidate various strands of guidance, it provides an update on TPR's view of the impact of the pandemic, explains how TPR continues to adapt its regulatory approach, and gives “guidance for trustees dealing with difficult decisions”.

In relation to the reduction or suspension of DRCs, whilst TPR recognises the need for some arrangements to continue, it does not expect trustees “to unquestioningly extend their original suspension arrangements on a three-month rolling basis”. Trustees' due diligence should now allow greater insight into an employer's short-term liquidity than when lockdown began¹⁴.

Annual funding statement analysis 2020

At the end of June, TPR published its analysis of the expected positions of DB pension schemes with valuation dates between 22 September 2019 and 21 September 2020 (known as “Tranche 15” or “T15”). The technical analysis “gives further context” to TPR's 2020 Annual Funding Statement¹⁵. The report acknowledges the “significant and uneven impact of the COVID-19 crisis on scheme employers”, and notes that it has excluded trends in employer affordability from this year's analysis for that reason.

DB funding code progress

In the light of the pandemic, the deadline for responding to TPR's first-stage consultation on its new DB funding code¹⁶ was pushed back to 2 September 2020¹⁷, with the possibility of a further extension. The second stage of the consultation (on the draft code itself) is now not expected until next year, with the new code likely to come into force “late 2021 at the earliest”.

Despite calls “to rethink or abandon” the new code, on the basis that it “was written in different, more benign, economic conditions”, TPR is pressing ahead. It believes that the issues the consultation raises are “even more important and relevant in the light of COVID-19”.

However, when it consults on where “Fast Track” guidelines should be set, TPR has said that “it will be essential to have regard to prevailing market conditions and where the majority of the landscape sit at that time”. It will also review the parameters of the long-term objective “in light of the change in market conditions”, informed by “further modelling based on a range of economic scenarios”.

Scheme funding and DB transfer easements not extended beyond 30 June 2020 – see page 3

10 See [7 Days](#) (13 July 2020)

11 See [7 Days](#) (6 July 2020)

12 See [7 Days](#) (13 July 2020)

13 See [7 Days](#) (22 June 2020); Alert [DB scheme funding and investment: TPR's COVID-19 guidance for trustees](#) (30 March 2020)

14 See our [Corporate Briefing](#) (July 2020)

15 See [7 Days](#) (6 July 2020); Alert [2020 funding statement – trustees and employers must work together](#) (1 May 2020)

16 See Alert [TPR publishes first part of consultation on revised code for scheme funding](#) (3 March 2020)

17 See [7 Days](#) (18 May 2020)

Pension Schemes Bill

Affecting both DB and DC schemes, the Pension Schemes Bill¹⁸ continues its progress through Parliament, although it is unlikely to receive Royal Assent until “later this year”.

Of prime interest is the raft of new powers for TPR, designed to enable the regulator to fulfil its mantra of being “clearer, quicker, and tougher”. These include new criminal offences for failure to comply with a contribution notice (punishable by an unlimited fine), and for avoidance of an employer debt or conduct risking accrued scheme benefits¹⁹ (both of which are punishable by an unlimited fine and/or up to seven years in prison).

TPR will have the power to impose a civil penalty of up to £1 million (as an alternative) in any of the above cases, and also where a person knowingly or recklessly provides it (or, in certain circumstances, the trustees) with false or misleading information.

The Bill also broadens the circumstances in which contribution notices can be imposed – including introducing a snapshot test focusing on the potential weakening of a sponsoring employer’s resources resulting from an act or course of conduct (including a failure to act).

To further strengthen TPR’s armoury, the Bill lays the groundwork for changes to the notifiable events regime and extends its information gathering powers.

In addition, as currently drafted, the Bill will introduce:

- a requirement for trustees of DB schemes to determine (with the agreement of the employer) a strategy for ensuring that pensions and other benefits under the scheme can be provided over the long term (“funding and investment strategy”)
- if implemented, a recent Lords’ amendment requiring open DB schemes (schemes expected to remain open to new members either indefinitely or for a significant period of time) to be regulated differently for scheme funding purposes
- a framework for “collective money purchase schemes” (or “CDC”). HMRC has published draft legislation (and accompanying notes), detailing pensions tax measures for such schemes, enabling them to operate in the same manner as existing UK-registered pension schemes²⁰
- provisions enabling pensions dashboards (amendments during the Bill’s progress could require MAPS to provide this service, prevent commercial dashboards from operating until MAPS’ dashboard has been running for a year, and restrict financial transactions via the dashboard until Parliament approves these with primary legislation)
- restrictions on the right to a statutory transfer, unless prescribed conditions are met (following recent changes, including the member having received guidance through MAPS)
- further governance and reporting duties in relation to climate change risk²¹. A related consultation on requirements relating to ESG and climate risk is due later this year.

The non-government amendments made to the Bill during the Lords’ report stage will be considered in the Commons, so it remains to be seen which of them will make the final cut.

As the Parliamentary summer recess began on 22 July 2020, the Bill will not be considered further until September

18 See Alert: [The Pension Schemes Bill returns](#) (9 January 2020)

19 See our [Corporate Briefing](#) (July 2020)

20 See [7 Days](#) (27 July 2020)

21 See our upcoming [Finance & investment briefing](#) for more

DC update

Review of default charge cap and cost disclosure

On 25 June 2020, the DWP published a Call for Evidence seeking views on the effectiveness of costs, charges and transparency measures in protecting pension member outcomes²². Back in 2017, the Government carried out an examination of the level and scope of the default fund charge cap, which had been designed to protect automatically enrolled members from high or unfair charges. Whilst it concluded that the cap was operating as intended and did not make any changes, the DWP committed to reviewing the level and scope of the cap again in 2020.

The Call for Evidence, together with a Pension Charges Survey, will now inform the Government's review. Potential proposals for revising the cap include bringing transaction costs and certain life assurance add-ons into scope, lowering its level, and restricting the use of flat fee structures for small pots.

The DWP is also exploring policy options for increasing the use of the Cost Transparency Initiative's templates²³ as a standardised form of disclosure, to promote better understanding and comparison of costs.

The Call for Evidence runs until 20 August 2020. The DWP "will engage with industry and other interested stakeholders both formally and informally" throughout its review, and aims to bring forward proposals "later this year".

The cap currently stands at 0.75%

Updated TPR guidance on temporary closure of investment funds

In May, TPR updated its "DC scheme management and investment: COVID-19 guidance for trustees" to include a new section on when the temporary closure of investment funds creates a default arrangement²⁴. The guidance confirmed that, where trustees have redirected scheme contributions into alternative funds following a fund being temporarily closed (or "gated"), this could result in the alternative funds becoming default arrangements. They would therefore be subject to the charge cap and the requirement to have a SIP.

TPR expects schemes that discover that they have unintentionally created a default arrangement to "immediately take steps to ensure this arrangement meets the legal requirements". TPR states that it "will continue to take a pragmatic approach to decide whether it would be appropriate to take action in individual circumstances". But TPR notes that, in the case of chair's statements, it has "no discretion" and "will continue to impose fines for non-compliance".

TPR updated its guidance again on 30 June 2020²⁵ to include advice on redirecting contributions back into the original fund when it reopens. It warns that "if, having taken legal advice, you determine that the pre-existing expression of choice no longer applies, and contributions are directed back to the original fund without obtaining a new expression of choice from the member, that original fund would fall within the definition of a 'default arrangement'". Whether or not a member's pre-existing expression of choice still applies "will depend on the individual circumstances, including the precise terms of the consent given, and of any correspondence with members after the fund was gated".

Schemes should take legal advice to assess their position

22 See Alert: [Review of default charge cap and cost disclosure](#) (29 June 2020)

23 See [7 Days](#) (27 May 2019)

24 See [7 Days](#) (26 May 2020); see also our [Finance & investment briefing](#) (June 2020)

25 See [7 Days](#) (6 July 2020); see our forthcoming DC Briefing for more

GMP equalisation update

HMRC publishes further GMP equalisation tax guidance

On 16 July 2020, HMRC published a GMP equalisation newsletter²⁶ designed to supplement existing guidance in the PTM relating to benefit adjustments solely for periods of contracted-out pensionable service between 17 May 1990 and 5 April 1997 inclusive. Following on from HMRC's February GMP tax guidance²⁷, which addressed considerations relating to the AA and LTA, the latest newsletter covers the impact of GMP equalisation on both past and future lump sum payments.

Where payments have already been made, HMRC notes that "whether or not a lump sum payment is authorised depends on whether the payment conditions that applied at the time of the payment have been met". For example, serious ill health, trivial commutation, small and winding-up lump sums will not cease to be authorised payments purely because, due to GMP equalisation, further entitlement is identified "that the scheme administrator could not reasonably have known about at the time". In relation to "top-up" payments to previous lump sums, the payment conditions in force at the time the top-up payment is made (and not those at the date of the original payment) must be satisfied.

The newsletter does not consider other benefit adjustments that may occur at the same time as any GMP equalisation, or as a result of GMP conversion. However, it provides a brief update in relation to GMP conversion, which HMRC describes as "complex", noting that "its effects within the pension tax rules may have wider impacts" (for example, when testing against the AA, where a "deferred member carve out" applies, or where an individual has LTA protection).

HMRC states that it is "unable to provide supplemental guidance on conversion, as more detailed work needs to be done on the wider issues associated with that methodology". Schemes wishing to use the conversion method are therefore advised to consider any tax implications that may arise in accordance with the existing legislation and guidance within the PTM, and to seek advice as appropriate.

PASA publishes Data Guidance

PASA's GMP Equalisation Working Group issued its guidance on data issues²⁸ on 14 July.

The guidance contains advice on the data aspects of GMP equalisation projects, and is "quite technical in places". It introduces the concept of "Calculation Solutions" (in relation to pensioners' and dependants' pensions) – that is, different techniques available to deliver the comparator pension and to establish the level (if any) of underpayment. The solution chosen and the data to be used will be mutually dependent.

The guidance also addresses a number of potential data problems and possible workarounds, and gives a suggested schedule of the data which will be required for equalisation work. However, "no liability members" (namely, where benefit entitlement has been extinguished by a past payment) and dealing with arrears are not covered in detail.

Whilst the guidance is likely predominantly to be of use to administrators and actuaries, it also highlights the importance of taking legal advice in various areas.

Still awaited

- Further HMRC guidance on conversion and PASA guidance.
- A consequential hearing in the *Lloyds*²⁹ case, relating to historical transfers out, was heard in May. Judgment is expected shortly.

26 See [7 Days](#) (20 July 2020)

27 See our Alert: [HMRC releases GMP equalisation tax guidance](#) (21 February 2020)

28 See [7 Days](#) (20 July 2020)

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

In other news

See our recent Alert³² for further detail on investment disclosure and governance requirements, including the Order

Update on CMA Order timing requirements

On 2 June 2020, the CMA updated its guidance³⁰ on the Investment Consultancy and Fiduciary Management Market Investigation Order 2019, to include details on the process and timing for compliance statements under that Order. The Order implements the package of requirements put in place following the CMA's investigation, which found that certain features of the markets for investment consultancy and fiduciary management services adversely affect competition in connection with the supply and acquisition of those services to and by pension schemes³¹.

As things stand, schemes must submit a compliance statement to the CMA by 7 January 2021. DWP regulations designed to integrate the Order into pensions law, and to transfer responsibility for enforcement from the CMA to TPR, were due to come into force on 6 April 2020. However, their publication has been delayed due to COVID-19. Until they come into force, the Order continues to apply, meaning that trustees need to report any non-compliance to the CMA.

FCA consultation and review on value for money

On 24 June 2020, the FCA published a consultation paper on proposals “designed to promote value for money for the members of workplace personal pension schemes”³³. These proposals “aim to make it easier for IGCs and GAAs to compare the value for money of pension products and services, enabling them to be more effective in assessing value for pension scheme members”. The consultation closes on 24 September, with any changes then due to come into effect during 2021.

The FCA also published the findings of its review examining how IGCs and GAAs – which act in the interests of members of workplace personal pension schemes – ensure those members receive value for money.

DB pension transfers: FCA statement, consultation and update

On 5 June 2020, the FCA published a package of measures³⁴ designed to address weaknesses in the DB transfer market (following its 2019 consultation). It includes steps to reduce conflicts of interest by banning contingent charging (where a financial adviser only gets paid if a transfer goes ahead), as well as “help for advisers who want to do the right thing and provide good quality advice to their customers”. The package also includes support for consumers who are considering whether to transfer out of a DB scheme, or who have transferred out. The changes generally come into force on 1 October 2020.

A policy statement sets out the FCA's proposals, and final rules and guidance, on pension transfer advice (particularly focused on DB to DC transfers). To address ongoing conflicts, advisers must now consider an available workplace pension as a receiving scheme for a transfer and, if they recommend an alternative solution, demonstrate why that alternative is more suitable.

Advisers will also now be able to provide an abridged advice process which will help consumers access initial advice at a more affordable cost. The abridged process can only result in a recommendation not to transfer, or a statement that it is unclear whether a consumer would benefit from a pension transfer without giving full advice.

30 See [7 Days](#) (8 June 2020)

31 See [7 Days](#) (10 June 2019)

32 See Alert: [Reminder! Changes to Investment disclosure and governance](#) (5 June 2020)

33 See [7 Days](#) (29 June 2020)

34 See [7 Days](#) (8 June 2020)

In other news cont.

The draft guidance on advising on transfers sets out the FCA's expectations of how firms should apply current Handbook rules and guidance when giving DB transfer advice, through best practice and case study examples of suitable and unsuitable advice. The deadline for comments is 4 September 2020.

MLD5 – Trust Registration

Designed to strengthen existing requirements in the battle against money laundering and terrorist finance, MLD5 came into force in January. The Government's response to the consultation³⁵ on consequential changes to the TRS was published on 15 July 2020, alongside relevant draft legislation³⁶. The response confirms that, as expected, HMRC's current policy will continue, with UK registered pension schemes exempted from the requirement to register separately with the TRS. Further detail on the parameters of the exemptions will be set out in forthcoming guidance.

Call for input on dashboard data standards

The Pensions Dashboards Programme, set up by MAPS, launched a call for input³⁷ in July on data standards for the pensions dashboards, examining the working papers on data scope and definitions that were published in April. Responses, which will help deliver an initial set of data standards, should be submitted by 31 August 2020.

TPR Corporate Plan and supervisory activities

Issued at the end of June, TPR's Corporate Plan³⁸ sets out its priorities for the year ahead, "adjusted to reflect the realities of how the pensions landscape has changed because of the pandemic". TPR will keep these under review "as the impact of the pandemic develops and may publish revised intentions later in the year as necessary".

At the start of July, TPR issued an update on its supervisory activities³⁹ during COVID-19. TPR is currently contacting those schemes it is supervising to set out how it will be engaging with them in the short term, focusing on "near-term risks", and setting out expectations where TPR has "identified specific areas to discuss". TPR will continue to review its engagement with schemes, with a view to returning to its full evaluation cycle "later in the year".

Annual benefit statements

A response to the DWP's November 2019 consultation on "simpler annual benefit statements"⁴⁰ is expected imminently. Amongst other things, the consultation looked at the relationship between simpler statements and innovative communication tools (including pensions dashboards), and how savers could be encouraged to open their statements.

TPR is continuing to take a pragmatic approach to delays to annual publications and/or member communications such as DC annual benefit statements, accepting that the impact of COVID-19 may mean that schemes need additional time to issue them to members. However, schemes are advised that they should still "look to" providing members with a timescale as to when they expect statements to be issued.

A date for the introduction of dashboards remains to be confirmed

35 See [7 Days](#) (27 January 2020)

36 See [7 Days](#) (20 July 2020)

37 See [7 Days](#) (6 July 2020)

38 See [7 Days](#) (29 June 2020)

39 See [7 Days](#) (6 July 2020)

40 See [7 Days](#) (4 November 2019)

Cases

Court of Appeal

Safeway v Newton

The latest judgment⁴¹ in a string of cases on equalising retirement ages retrospectively has been released.

In 2017, the Court of Appeal referred a question to the CJEU regarding a scheme's ability to equalise its retirement ages retrospectively. In 2019, the CJEU⁴² held that EU law prevented retroactive "levelling down" (ie reducing all benefits to the less favourable basis), even where the rules of a scheme permitted retrospective amendment (as they did in this case).

On the case's return to the Court of Appeal, the Court held that the introduction of section 62 of the PA95 (which implied an equal treatment rule into all UK occupational pension schemes with effect from 1 January 1996) closed the *Barber* window, as this brought domestic law into compliance with EU equal pay provisions. On the facts of this case, retrospective changes to equalise benefits by "levelling down" were therefore effective from that date.

This is a significant decision, although its practical effect is likely to be limited. It is only likely to affect schemes that attempted (and had the power) to equalise retrospectively under their trust deed and rules between 1 January 1996 and 6 April 1997, when section 67 of the PA95 (protection of subsisting rights) came into force.

High Court

Hughes v PPF

In 2018, in *Hampshire v the PPF*⁴³, the CJEU decided that the EU Insolvency Directive required Member States to guarantee that each individual employee receives compensation corresponding to at least 50% of the value of their accrued pension entitlement.

The High Court has now ruled⁴⁴ on a further challenge brought against the PPF in light of the above. The case concerned several matters in relation to PPF compensation, including the application of the compensation cap, with the judge concluding that it constituted unlawful age discrimination. In addition, the court held that a claim against the PPF for arrears of compensation (resulting from any underpayment due to the application of the compensation cap) would be subject to a six-year limitation period.

The PPF is studying the detail of the judgment carefully to decide its next steps, and will work closely with the DWP (as the Government sets PPF compensation cap levels)⁴⁵.

RPI round up

Moves between indexation measures remains a hot topic:

- in *Univar UK Limited v Smith and others*⁴⁶, the court granted a rare rectification, where an update to scheme rules had unintentionally hard-coded RPI
- in *Carr v Thales Pension Trustees Ltd*⁴⁷, and again in *Ove Arup v Trustees of the Arup UK Pension Scheme*⁴⁸, the court held that trustees did not have the power to switch from using RPI to CPI.

41 See our case summary: [Safeway v Newton \(Court of Appeal, 13 July 2020\)](#)

42 See our case summary: [Safeway v Newton \(CJEU, 7 October 2019\)](#)

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

44 See our case summary: [Hughes v PPF \(High Court, 22 June 2020\)](#)

45 See [7 Days](#) (22 June 2020)

46 See our case summary: [Univar UK Limited v Smith and others \(High Court, 19 June 2020\)](#)

47 See our case summary: [Carr v Thales Pension Trustees Ltd \(High Court, 22 April 2020\)](#)

48 See our case summary: [Ove Arup v Trustees of the Arup UK Pension Scheme \(High Court, 5 May 2020\)](#)

By a deed dated May 1996, the scheme's amendment power was exercised in an attempt to equalise retirement ages retrospectively

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.

 In the current climate, our regular seminars are going ahead as webinars and we are also offering smaller virtual roundtables on specific topics. You are advised to check our website for all the latest information on www.sackers.com/events

ESG, climate change and stewardship update	6/10/2020	Webinar (12:30pm-1:15pm) This webinar will highlight the new requirements coming into force in October 2020, with a particular focus on implementation statements.
Quarterly legal update	12/11/2020	Webinar (12:30pm-1:15pm) This webinar will provide an essential overview of significant developments affecting occupational pension provision in the UK for employers and trustees.

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

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Recent publications



Our [Corporate briefing](#) takes a look at the latest developments in pensions for employers and corporate investors.

Our latest Hot Topic on key DC issues for employers to consider can be found [here](#).

Our Hot Topic on DB superfunds and what trustees need to know can be found [here](#).

The [Pensions & Investment Litigation briefing – June 2020](#) reviews recent case law and examines the practical lessons for trustees and employers.