SLAUGHTER AND MAY/

PENSIONS ESSENTIALS

June 2024

QUICK LINKS

Party Manifestos

Providing information to the Pensions Regulator

Pensions Ombudsman process

HMRC update

PASA guidance on master trust transitions

Gender pensions gap

Ombudsman determination on enhanced redundancy rights following TUPE transfer

Watch list

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

PARTY MANIFESTOS

We now have the manifestos for the major parties and, although pensions are not a key issue for any of them, they do feature in them all. So, what can we expect after next week's general election whoever wins?

Labour Party: The Labour Party manifesto says that a Labour government will:

- Act to increase investment from pension funds in UK markets. It is not clear how this will be achieved and whether a Labour government would continue with the current proposals to allow surplus to be refunded from ongoing schemes.
- Adopt reforms to ensure that workplace pension schemes take advantage of consolidation and scale, to deliver better returns for UK savers and greater productive investment for UK PLC. This appears to be in line with the current direction of travel and the intentions of the Pensions Regulator.
- Undertake a review of the pensions landscape to consider what more is needed to improve pension outcomes and improve security in retirement. This could potentially lead to far reaching reforms but, without more detail, it is impossible to say whether this is the case or even guess what such reforms might entail.
- Adopt reforms to workplace pensions to deliver better outcomes for UK savers and pensioners. This suggests that a Labour government would enact regulations under the Extension of Automatic Enrolment Act 2023 to reduce the age of eligibility for auto-enrolment to 18 (from 22) and to provide that contributions are payable from the first pound earned (instead of on earnings over £6,240).

The Labour Party has also been reported as no longer planning to reverse the abolition of the lifetime allowance, noting that "*thousands of people approaching retirement [are] in limbo because of errors in legislation*". This means that the regulations that HMRC has already said are required to make the post LTA tax regime work as intended are likely to go ahead.

Conservative Party: Presumably, a Conservative government would keep on doing what they were already doing and pursue the reforms that have already been consulted on, including refunds of surplus, extending collective defined contribution schemes and introducing a public consolidator. In addition, the Conservative manifesto says that a Conservative government would not introduce any new taxes on pensions and would maintain the 25% tax free lump sum and tax relief on pension contributions at their marginal rate. In addition, it would not extend National Insurance to employer pension contributions.

Liberal Party: The Liberal Party said in their manifesto that they would:

- Require pension funds to show that their investments are consistent with the Paris Agreement and create new powers for regulators to act if banks and other investors are not managing climate risks properly. It is not entirely clear what this would add over and above existing climate change reporting requirements.
- Review employment law rights including rules concerning pensions so that those in the gig economy don't lose out.

- Develop measures to end the gender pension gap in private pensions (see below for more on this).

Practical points:

- *Watch out for pensions proposals from the new Government.*
- *Pensions changes do not seem to be at the top of agendas so we are unlikely to see more developments until the Autumn.*

PROVIDING INFORMATION TO THE PENSIONS REGULATOR

The Pensions Regulator has extensive powers to obtain the information it needs to carry out its functions and regulate pension schemes. A recent case shows that both the Regulator and the courts will take action to enforce these powers and impose penalties on those who do not comply with them.

The Pensions Regulator has wide powers to obtain the information it needs to carry out its functions. In particular, it can:

- **Issue information notices:** Section 72 Pensions Act 2004 allows the Regulator to give notice in writing requiring anyone to provide documents or information relevant to the exercise of its functions. The notice must specify the time limits for producing the information and the method for supplying it. The Regulator says that if an individual requires more time, they should contact it as soon as possible.
- **Call people for interviews:** Section 72A Pensions Act 2004 (a fairly new provision introduced in 2021) allows the Regulator to issue a written notice requiring anyone to attend an interview at a specified time and place "*to answer questions and provide explanations*" on specified matters. The Regulator will also need to provide information including an explanation of why it is carrying out the interview and the interview process.
- **Carry out inspections:** Sections 73 to 75 Pensions Act 2004 allow the Regulator to enter premises and carry out an inspection to check that an occupational pension scheme is being operated in compliance with legislation or in connection with an investigation into the use of the Regulator's moral hazard powers. The premises that can be inspected include: the members' place of employment; where administrative documents relating to the scheme are kept or scheme administration is carried out; or where administrative documents relating to the employer's business are kept or the administration of that business is carried out. The Regulator says that although it will usually give reasonable notice, there may be occasions where no notice is appropriate.

The Regulator has issued an enforcement policy setting out how it will use these powers and what it will do with the information it collects. In particular, it says that:

- It may seek information, documents and explanations from trustees, employers or anyone else (including scheme members and advisers) that it reasonably believes could have relevant information. It is not limited in who it asks for information or the number of requests or notices it may issue.
- It will give a reasonable period of time or notice for providing information. The assessment as to what is a reasonable amount of time takes into account the anticipated volume, complexity, and accessibility of information or the preparation time reasonably required before attending an interview or being inspected.
- Examples of the type of information the Regulator may ask for include: scheme constitution documents, trustee minutes, scheme policies and procedures, risk registers, bank statements, investment reports, correspondence and advice.

Under section 77 Pensions Act 2004, there are criminal sanctions for failing to comply with the Regulator's information gathering powers. Failure to comply with an information notice or interview request or preventing or obstructing an inspection are offences which render an individual liable to fines or imprisonment. In addition, anyone who intentionally alters, suppresses, conceals or destroys a document is guilty of an offence. The Regulator can also issue fixed penalties of up to £50,000 as well as daily escalating penalties for non-compliance with these powers.

A recent case illustrated the importance of being aware of the Regulator's powers and acting promptly on information requests. The Regulator had formally requested information on 10 June 2020 as part of an investigation into allegations of fraudulent evasion relating to employee pension contributions. The individual intentionally failed to provide the

information by the deadline of 8 July 2020. As a result, the Regulator brought a prosecution and the individual pleaded guilty to intentionally and without reasonable excuse suppressing documents he was required to produce under section 72 of the Pensions Act 2004 and has been fined £7,500 and ordered to pay costs of £7,500. Although this was not the maximum fine that could have been imposed, both the court and the Regulator took the failure to provide information seriously and this is consistent with the approach that has been taken previously.

***Practical points*:**

- *Don't ignore information requests from the Pensions Regulator.*
- *If there are problems complying with a request, engage with the Regulator as soon as possible and seek advice.*

PENSIONS OMBUDSMAN PROCESS

The Ombudsman operates an early resolution service which members can use in parallel or as an alternative to their scheme's internal dispute resolution procedure. Growing demand for the Ombudsman's services and resource constraints mean that in the future, this service will generally only be available where scheme processes have been exhausted.

In a recent blog, the Ombudsman noted that demand for his office's services has increased significantly for a number of years and that this trend seems likely to continue. However, this increased demand is "*outstripping [the] capacity to resolve cases for complainants and respondents in a timely fashion*". To deal with this, the Ombudsman has carried out an in-depth review of its operating model, looking at options for improved efficiency. He says that there is now a "*clear plan for tackling our historical caseload and reducing our queue lengths and waiting times*."

More detail on what this plan will mean for those bringing complaints and those defending them will emerge in coming months but in the meantime, it is clear that there will be an increased reliance on scheme internal dispute resolution procedures ("**IDRPs**").

Existing regulations provide that where a dispute is covered by a scheme's IDRP, the Ombudsman cannot generally investigate a complaint until a decision has been reached under that procedure and notified to the member. There are exceptions to this where the Ombudsman concludes that there is no real prospect of a decision being reached or it would be reasonable for him to investigate.

The Ombudsman notes that these requirements were relaxed in 2018 when the Pensions Advisory Service moved its (informal) dispute resolution function to the Ombudsman's office and the early resolution service was established. This provides "*an informal and streamlined approach to dispute resolution… [which] relies on the willingness of all parties to resolve a complaint informally and is run on the basis of consent and cooperation*". The Ombudsman's factsheet on the service said that it is available where the member has not completed the scheme's IDRP, although it does require "*a complaint to have at least been raised informally with the respondent*".

The Ombudsman is now changing its approach and says that going forward, the early resolution service will require complainants to exhaust their scheme's IDRP before it will consider investigating a complaint. The hope is that this change will allow some complaints to be resolved by trustees without the need for input from the Ombudsman.

In terms of timing, the Ombudsman says that it will "*be moving from piloting some aspects of the change to full implementation by autumn this year.*"

***Practical points*:**

- *Ensure members are aware of the scheme's IDRP process.*
- *Be aware of this change where members may want to complain to the Ombudsman.*

HMRC UPDATE

As the requirements around the new lump sum allowances introduced in April to replace the lifetime allowance continue to bed-down, HMRC has issued a newsletter setting out some practical information on how the new regime should work and what scheme administrators are required to do.

As we have explained in previous bulletins, the lifetime allowance was replaced from 6 April 2024 by two new allowances which restrict the amount of tax free lump sums that can be paid to or in respect of an individual. In very broad terms, the tax free lump sums that an individual can take tax free during their lifetime as part of their normal benefits (which would include a pension commencement lump sum, 25% of any uncrystallised funds pension lump sum and standalone lump sums) will count towards a new lump sum allowance of £268,275. These amounts will also count towards the new lump sum and death benefit allowance of £1,073,100 which relates to all tax free lump sums paid to or in respect of an individual and will also apply to certain lump sum death benefits and the tax free element of serious ill health lump sums. There are tax consequences for exceeding these allowances.

Part of the new allowances will be used up every time a relevant lump is paid to or in respect of a member and this includes where a lump sum was paid before the new regime came into force. To calculate how much of the new allowances has been used up by past payments, it will generally be assumed that 25% of a member's lifetime allowance used prior to 6 April 2024 was in the form of tax free lump sums. Where a member thinks that this will not reflect the benefits they actually took (for example they did not take maximum tax free cash), they can apply to a scheme for a "*transitional tax-free amount certificate*" which shows the amount of lump sum allowances actually used. The newsletter reports that HMRC have created a tool for members (and personal representatives in the case of death benefits) to check if they are entitled to a transitional certificate.

There is also a reminder for schemes of the information that a transitional certificate should contain, including:

- The individual's name, address and National Insurance number;
- The lifetime allowance previously used amount, expressed as a percentage of the standard lifetime allowance; and
- The individual's lump sum and lump sum and death benefit transitional tax-free amount.

The certificate can be in any form but if any of this information is missing, any document would not qualify as a certificate.

Where lump sums exceed the new allowances, HMRC issued guidance in December on how the resulting tax should be reported and deducted via payroll for some types of lump sums. This newsletter provides further guidance on lump sum death benefits for members under 75, serious ill health lump sums and stand alone lump sums.

***Practical points*:**

- *Be aware of how to deal with requests for transitional certificates and the information required.*
- *Ensure proper processes are in place for when lump sum allowances are exceeded.*

PASA GUIDANCE ON MASTER TRUST TRANSITIONS

The Pensions Administration Standards Association has updated its guidance on transfers to master trusts - either from an occupational DC scheme or from another master trust exiting the market. This guidance reflects both the legal and practical considerations on such a transfer and has been updated as a result of experience since it was first issued in 2019.

The guidance is aimed at situations involving transitions of members to and from master trusts, focussing on master trust to master trust and single employer schemes to master trust transfers. It assumes a transfer does not involve a distressed situation or an imposed wind-up and that the receiving master trust is selected after appropriate due diligence.

The guidance looks at a number of aspects of a transfer, including:

Fiduciary duties: Trustees of the transferring scheme will need to consider the advantages and disadvantages of the transfer for their members and ensure legal and regulatory requirements are complied with. This means that they will need to undertake due diligence on the receiving scheme and consider how it compares to theirs, including looking at charges, quality of governance and administration, member services, benefit and investment options, security of benefits and ongoing value for money.

Planning the transition: The guidance sets out the practical issues that will need to be dealt with as part of the transition and time scales. These include consultation with members, auto-enrolment, payroll, data audit, member queries, asset transfer and issues around winding up the transferring scheme.

Communications: As well statutory consultation requirements for employers, the guidance considers the need to clearly communicate with employees about the receiving scheme including the need to complete expression of wish forms, fund selection, target retirement ages, options and registering on member websites. It also considers how to ensure that communication with members is as effective as possible.

Data: There is a checklist of issues to consider around the transfer of data and ensuring that data is in an acceptable format to transfer. This includes the need for trustees to consider the quality of their data and to rectify any historic issues which become apparent as a result of the data cleanse. It also looks at the practicalities of the data transfer and how to test that data has been properly transferred.

Assets: The transition of assets could involve either an in specie transfer, a cash transfer or the re-registration of assets held on an insurance platform. Each option will entail different charges, some of which may be mitigated and different out of market risks for members. The guidance lists the issues that should be considered in relation to asset transfers.

Practical points:

- *Consider guidance if looking at a transfer to a master trust.*
- *Have regard to PASA's detailed sample project plan.*

GENDER PENSIONS GAP

The gender pensions gap is broadly the difference between the private pension that men and women can expect to receive. Government statistics from June 2023 showed that there is still a significant gender pensions gap with women receiving around 35% less than men. To find ways of addressing pension inequalities, the Pensions Equity Group was set up and it has now issued a guide for employers on addressing the gender pensions gap.

In 2023 Government figures showed a gender pensions gap of around 35% (based on data from 2018 to 2020). However, the gap is not uniform across all age groups, at its smallest it is 10% for those aged 35-39 and the largest gap is 47% for those aged 45-49. The gap also varies by scheme type and is largest for those women who only have DC benefits. The Government noted that the trajectory of the pensions gap is similar to the gender pay gap which shows a relatively small gap until 40 when it triples due to different labour market trajectories of men and women.

The Pensions Equity Group was launched in May 2023 and is made up of a coalition of pension companies and organisations, working together to tackle pension inequalities. It aimed to develop ways of addressing inequalities, starting with the gender pensions gap. It also aims to share best practice approaches to help employers address inequalities and find practical tools to empower individuals.

The Group has now issued guidance for employers aimed at reducing the gender pensions gap. It encourages employers to identify their gender pensions gap by analysing the take up of pensions and contribution rates by gender. It also suggests possible ways of tackling the gap including ensuring that benefits build up as normal during periods of maternity leave and paying contributions in excess of the minimum required by auto-enrolment. It is also important to ensure that employees know about the gap and the guidance looks at ways of raising awareness.

In welcoming the guidance, the Pensions Regulator took the opportunity to remind schemes and sponsors about its own guidance on equality, diversity and inclusion, although this mainly focuses on diversity on the trustee board.

Practical points:

- *Sponsors should consider whether there is a gender pensions gap.*
- *Consider guidance on options for addressing it and communicating with members.*

OMBUDSMAN DETERMINATION ON ENHANCED REDUNDANCY RIGHTS FOLLOWING TUPE TRANSFER

A recent Ombudsman determination considered whether a member retained a right, following a TUPE transfer to a new employer, to an unreduced early retirement pension, available when a member left service at the request of the employer. The Ombudsman concluded that the member was not entitled to the benefit.

This determination shows the importance of carefully considering the meaning of words used in a trust deed.

R was a member of a scheme which provided unreduced early retirement benefits from age 60. In addition, where an active member left service "at the request of the employer", they could receive unreduced early retirement benefits from minimum pension age (which was 50 for some members and 55 for others). In 2010, as part of a benefit restructuring exercise, the employer agreed that the unreduced early retirement benefit would also apply where a deferred member was made redundant although this was never reflected in the scheme rules.

In 2016, R (who was over his minimum pension age of 50) was told that his employment would be transferred to a new employer but that an unreduced early retirement pension would not be available from the transferring employer's scheme. The new employer subsequently went into administration in 2019 and R was made redundant. R complained that he should have been entitled to an unreduced early retirement pension from the transferring employer's scheme from 2016, or failing that, from 2019.

The Ombudsman determined that R was not entitled to an unreduced early retirement pension. He referred to a decision of the Court of Appeal in *AGCO v Massey Ferguson Works Pension Trust Ltd* which considered when an entitlement to an unreduced early retirement pension arose where the rules provided for it where a member "*retires from Service at the request of the Employer*". The Court said that "*it is requiring too much of this phrase to suppose that it is intended to include cases where the employer not merely requests but successfully enforces retirement. The natural meaning of "request" suggests that the employee can choose whether or not to comply with the request.*" The majority of the Court concluded that the rule could not therefore apply to a compulsory redundancy situation.

Although the rule in *AGCO* was not on all fours with the rule in this case, both rules referred to "*the request of the employer*". The Ombudsman concluded that in this case, R left employment as a result of the operation of TUPE rather than at the request of the employer. The TUPE transfer could not be said to be voluntary as there was no option for R to remain in employment with his original employer, he could either transfer to the new employer or employment would be terminated on the transfer date.

The Ombudsman also considered the contractual promise from the employer to provide unreduced early retirement benefits on redundancy to deferred members but concluded that it was clear that this only applied where a deferred member was made redundant by the original employer and R was not – he was made redundant by his new employer after the TUPE transfer.

Practical points:

- *Always consider the meaning of wording in scheme rules carefully.*
- *Be aware of any terms which apply where a member leaves service at an employer's request and how the courts have interpreted those terms.*

WATCH LIST

For upcoming developments see our new pensions horizon scanning webpage. Note that the dates in this table may all be delayed as a result of the July general election.

No	Topic	Effective date or expected effective date	Further information/action
1	Changes to DC scheme governance and disclosure	Late in 2024.	Consultation expected on phased introduction of new value for money framework for all DC schemes (excepting some small schemes). Draft regulations to extend CDC to multi-employer schemes expected in 2024. Proposals on consolidators for small DC deferred pots expected late 2024, a taskforce has been set up.
2	DB consolidation	Legislation “as soon as Parliamentary time allows”, for new compulsory framework for superfunds. Public consolidator to be established by 2026, consultation on features closed on 19 April 2024.	TPR updated interim guidance - issued August 2023. Consultation is ongoing on PPF becoming a public consolidator and the conditions that should attach to its operation as such.
3	Changes to pensions tax allowances	Lifetime allowance removed on 6 April 2024 and two new tax-free cash allowances introduced.	Further amending Regulations expected in 2024/25.
4	Repayment of surplus	The reduction in the tax charge took effect on 6 April 2024. Consultation closed on 19 April 2024.	Tax charge on repaying surplus reduced from 35% to 25%. Consultation has closed on facilitating repayment of surplus in ongoing schemes and appropriate safeguards for members.
5	Funding and investment strategy requirements for DB schemes	Legislation came into force 6 April 2024. Funding and investment strategy in place 15 months from date of the first valuation obtained on or after 22 September 2024. Revised Code of Practice from TPR expected to be published later in 2024.	Consultation on covenant guidance expected later in 2024. TPR has consulted on the form of the strategy statement.

No	Topic	Effective date or expected effective date	Further information/action
6	Notifiable events for DB schemes on corporate and financing activity	Significant uncertainty about publication of Government response to consultation on draft Notifiable Events (Amendment) Regulations.	TPR will consult on update to Code of Practice 2 (Notifiable Events) and accompanying guidance once DWP have published their finalised regulations and consultation response.
7	Pensions dashboards	Compulsory connection deadline of 31 October 2026 for schemes with 100 or more active and/or deferred members at year end between 1 April 2023 and 31 March 2024; staging timetable set out in DWP guidance. Application for deferral (in limited circumstances existing at 9 August 2023) must be made by 8 August 2024.	All registerable UK-based schemes with active and/or deferred members.
8	Corporate transparency	The Economic Crime and Corporate Transparency Act 2023 introduces requirements on identity verification, corporate directors and limited partnerships. The requirement to have a registered email address and for registered offices to meet certain requirements came into force on 4 March 2024. Other provisions are due to come into force later in 2024.	All corporate trustees and schemes using Scottish Limited Partnerships. More detail about what the Act requires can be found in our briefing.

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650

Published to provide general information and not as legal advice. © Slaughter and May, 2024.
For further information, please speak to your usual Slaughter and May contact.

www.slaughterandmay.com

586378042