MAYER | BROWN

May 2023

The Pensions Brief

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Dates to note over the next 12 months

30 June 2023

PPF levy deadline for submission of full block transfer certificates

1 October 2023

- New DC default arrangement illiquid investment disclosure requirements come into force
- New DC default arrangement asset allocation disclosure requirements come into force

31 January 2024

Deadline for schemes to send annual event report to HMRC (2022/32 tax year)

6 April 2024

- Abolition of lifetime allowance expected to come into effect
- New DB statutory funding regime expected to come into force

Key:

Important dates to note

For information

Issues affecting all schemes

Cyber security – Capita incident

The Pensions Regulator has published a statement on the recent cyber security incident experienced by Capita. The statement notes that it is now known that some data has been stolen during the incident and schemes that use Capita's services should check whether their data could be affected. The statement also covers:

- Communicating with members about the incident.
- Monitoring increased or unusual transfer requests.
- Data protection breach notification obligations.
- The importance of robust cyber security and business continuity plans.

The Information Commissioner's Office has also published a statement encouraging organisations that use Capita's services to determine if the personal data they hold has been affected and reminding them of their data breach reporting obligations.

For more information, please see our legal update.

Action

If they have not done so already, trustees of schemes that use Capita's services should contact Capita as a matter of urgency to establish whether their data is affected. If personal data under their control has been affected, trustees should establish and comply with their data breach notification obligations.

More generally, all trustees, whether or not they use Capita's services, should ensure they are complying with the security requirements of UK data protection legislation and are taking all reasonable steps to prevent cyber attacks.

Pensions dashboards – Revised connection deadline

Draft regulations have been laid before Parliament for approval that replace the statutory staging timetable for connection to the dashboards ecosystem with a single connection deadline for all schemes of 31 October 2026. The government has separately announced that a revised staging timetable will be published in guidance. The regulations also change the date to be used for the purposes of determining whether a scheme is subject to the dashboards requirements from the scheme year end date falling between 1 April 2020 and 31 March 2021 to the scheme year end date falling between 1 April 2023 and 31 March 2024. For more information, please see our legal update.

Legislation has also received Royal Assent that prohibits trustees from being indemnified out of scheme assets in respect of civil penalties imposed under the pensions dashboards legislation.

In addition, the Pensions Dashboards Programme has published FAQs on data matching. The FAQs cover:

- The importance of developing an approach to matching.
- What happens if a member doesn't have a National Insurance (NI) number.
- Examples of match criteria that don't use an NI number.
- What a possible match is and why it is important.
- The approach in the recently published Pensions Administration Standards Association guidance to choosing possible match criteria.
- Examples of possible match criteria.

Action

Trustees and administrators should continue with their dashboards preparation while awaiting further announcements on the guidance setting out the revised staging timetable. They may find the FAQs helpful when considering data matching.

ESG – Pensions Regulator initiative

The Pensions Regulator has published a blog post on ESG which provides more detail on its regulatory initiative in relation to statements of investment principles (SIPs) and implementation statements. The initiative will have two phases:

1. The Regulator will check that all trustees who are required to do so have published their SIPs and implementation statements on a publicly available website. Where schemes have not published their SIPs or implementation statements correctly, the Regulator will contact the trustees to ensure they do so.
2. This autumn, the Regulator will carry out a review of a cross-section of SIPs and implementation statements. This will be a qualitative review and will only look at the climate, ESG and wider sustainability-related provisions included in those documents. The Regulator expects to focus on the extent to which the government's July 2022 guidance on preparing SIPs and implementation statements has been followed by trustees. The outcome of the review will be shared with the industry to highlight good practice.

Action

No action required.

Transfer delays – mitigation of loss

The Pensions Ombudsman has decided that where a transfer value had reduced following a delay in processing the transfer, but the price of the units in which the transfer payment was then invested had also fallen, the transferring scheme could not rely on the fall in the unit price to mitigate the loss caused by the reduction in the transfer value.

Action

No action required.

Issues affecting DB schemes

Automatic enrolment – alternative quality requirements

The government has published a call for evidence on the operation of the automatic enrolment alternative quality requirements for DB and hybrid schemes as part of its triennial statutory review of those requirements. The call for evidence closes on 19 June 2023.

Action

Trustees and employers of DB and hybrid schemes that are being used for automatic enrolment should keep the progress of the call for evidence under review.

Sponsoring employer distress – Pensions Regulator guidance

The Pensions Regulator has refreshed its 2020 guidance on protecting DB schemes from sponsoring employer distress. The guidance's content is largely unchanged and the key points continue to include the following:

- Trustees should adopt a fully documented integrated risk management (IRM) approach, with workable contingency plans and suitable triggers in place.
- Practising IRM will highlight problems early on, and the sooner trustees act, the greater the prospects of protecting the scheme's position. Trustees should regularly review their risk management and governance procedures to make sure they are fit for purpose.
- Engaging regularly with the employer and with other creditors (where applicable) will help trustees to identify and manage key risks early on.
- If trustees delay putting robust scheme protections in place, other stakeholders, such as lenders, will be in a better position to exert control over and extract value from a distressed employer, potentially to the detriment of the scheme.
- Trustees should remain alert to pensions scams or unusual transfer activity and prepare a communications strategy to support members when they are facing uncertainty.
- If an employer is facing the prospect of insolvency, trustees should refer to the Pension Protection Fund's contingency planning guidance for employer insolvency.

The Regulator has also published a blog post on the refreshed guidance. The post urges trustees to revisit the guidance and highlights the importance of trustees:

- Having appropriate covenant monitoring in place as part of their IRM framework.
- Engaging with the Regulator and other key stakeholders at an early stage if their sponsoring employer is demonstrating signs of stress or distress.

Action

No action required, but trustees may find the guidance helpful if they encounter circumstances of sponsoring employer distress. Generally, this refreshed guidance is a reminder of the need for trustees to have in place processes such as written information sharing protocols and covenant monitoring so there is regular engagement with the employer.

Issues affecting DC schemes

LIFTS initiative – call for proposals

The government has responded to its call for evidence on the Long-term Investment for Technology and Science (LIFTS) initiative announced in the Spring Budget. The initiative aims to establish new investment vehicles to crowd-in investment from institutional investors, in particular DC pension schemes, into the UK's science and technology companies. The government has considered the responses to the call for evidence and is proceeding with a call for managed fund proposals by DC pension schemes (or consortia) and authorised asset managers which have at least one DC pension scheme willing to invest in the proposed fund. The call for proposals has been published by the British Business Bank and closes on 28 July 2023.

Action

Any trustees of DC schemes wishing to submit a proposal (whether alone or jointly with one or more other schemes) should ensure that their proposal is submitted by the 28 July 2023 deadline.

Mayer Brown news

Upcoming events

For more information or to book a place, please contact Katherine Carter.

- **Trustee Foundation Course**

  6 September 2023
  6 December 2023
- **Trustee Building Blocks Classes**

  8 November 2023 – Pensions dashboards
- **Quarterly webinars**

  28 June 2023 – Equality, diversity and inclusion: what does it mean for pension schemes?
  27 September 2023 – topic TBC
  13 December 2023 – topic TBC

Pro bono and CSR

- Duncan Watson and Henry Corrigan are advising a prob bono client on the update of an investment manager's terms and conditions and the appointment of a custodian.
- As part of the Afghan Pro Bono Initiative, Liam Kellett is working to reunite a British national of Afghan origin with his minor siblings who were left in Afghanistan when he was evacuated during Operating Pitting in 2021. He was their guardian following the death of their parents. In May, Liam and the team he is working with submitted an application to the UK government to waive the requirement for the client to pay approximately £5,000 to apply to be reunited with his siblings. He has no realistic prospect of being able to pay this fee. The team's work has included:
  - » Forensic analysis of, and submissions relating to, eight months of bank statements to prove inability to meet the cost of the application.
  - » Taking witness statements from the client and his siblings with the assistance of Dari interpreters.
  - » Collating and submitting all relevant identification and financial documentation for the parties.

  The team expects to hear back from the UK government in two to three months and is working on the main reunification application in the meantime. The Afghan Pro Bono Initiative is an ambitious collaborative project with 13 other law firms and the NGOs Safe Passage and Refugee Legal Support.
- Liam Kellett also recently volunteered at Weavers Adventure Playground, one of the charities that our London office is supporting in 2023. Liam restrung four guitars and tuned them up with a view to providing some guitar lessons during his next volunteering session.

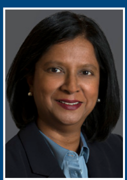
Mayer Brown legal updates

- Capita cyber security breaches – what do they mean for pension scheme trustees?
- Pensions dashboards – UK government announces new connection deadline

Our legal updates from the last three months are available here.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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