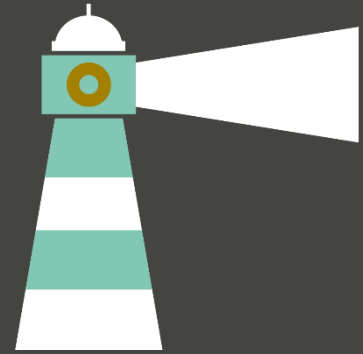


What's Happening in Pensions



Issue 98 – November 2022

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Pension protection levy: The PPF has published its long-term funding strategy review and concluded that it can significantly reduce the total amount of levy it charges. This was accompanied by a consultation on proposals for the 2023/24 pension protection levy.

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Investment consultancy and fiduciary management: The CMA has given the required confirmation that its requirements on trustees as regards setting strategic objectives for investment consultants and tendering for fiduciary management services have ceased to be in force from 1 October 2022. Trustees will now have to give the confirmations to the Pensions Regulator in their annual scheme return.

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Retained EU Law (Revocation and Reform) Bill: The Government has introduced a Bill with the potential to result in the repeal of swathes of EU-derived legislation by virtue of a 'sunset clause' which provides for certain retained EU law to fall away automatically on 31 December 2023 unless it is specifically saved.

PENSIONS RADAR: You may also be interested in the latest edition of [Pensions Radar](#), our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our [Sustainable Business Hub](#) includes a section on [ESG and sustainable finance issues for pension schemes and their sponsors](#).

'Mini-Budget' and fall-out

The now former Chancellor of the Exchequer Kwasi Kwarteng delivered his 'Mini-Budget' [Growth Plan](#) on 23 September 2022. Alongside significant assistance with energy bills for individuals and businesses, he announced cuts to income tax, National Insurance and stamp duty, and cancellations of the 2023 corporation tax rate increase and the health and social care levy. The spending was to be funded by borrowing but no plans for repaying the borrowing were announced and the Office for Budget Responsibility (OBR) was not asked to report. This led to turmoil in the gilt market, with many DB pension schemes having to take urgent action and the Bank of England intervening to calm the market. Many key measures were quickly reversed, the Chancellor was sacked and Liz Truss later resigned as Prime Minister.

New Chancellor of the Exchequer Jeremy Hunt made an urgent public statement on the morning of Monday 17 October to announce the reversals with the aim of reassuring markets as early as possible, followed by a fuller statement to Parliament. He said that he will announce new "fiscal rules" and other measures, accompanied this time by an OBR report, on 31 October. That has now been delayed until 17 November but it will be a full Autumn Statement.

The following very briefly summarises points of interest for a pensions readership. Our Tax department's [briefing](#) gives a broader overview of the wider announcements and reversals.

Gilt market turmoil

DB pension schemes invest heavily in gilts as a way of as closely as possible matching their investments to their liabilities. This is because pension liabilities are valued for most purposes by reference to gilt yields and so such schemes' asset and liability values move in a corresponding way. Under very common liability driven investment (LDI) arrangements, managers use derivatives to leverage gilt holdings in order to increase exposure to gilts and free up assets for return-seeking investment with the aim of improving the scheme's funding position. Schemes are typically required to post cash collateral for the purpose of riding out fluctuations in the value of gilts, which have normally been gentle.

The loss of market confidence in the UK Government led to a sharp rise in long-term gilt yields (meaning the same as a fall in the value of the gilts). This led to large and urgent calls by LDI managers for schemes to post additional cash collateral in order to maintain their hedging positions. A failure to satisfy these margin calls can lead to the LDI manager reducing leverage or even cancelling hedging, which would leave the scheme exposed to the market risks it was seeking to avoid, at just the time when key markets are at their most volatile. Many schemes turned to their sponsor for a loan or advanced contributions in order to meet the call. In absence of such support, they needed to liquidise assets at a less than ideal time. After other options were exhausted, some schemes had to sell gilts at the worst imaginable time.

This prospect of a 'doom spiral' in markets led to the Bank of England's limited intervention with the intention of stabilising the gilts market: it promised to buy long-term gilts up to a high limit until 14 October 2022. It later extended this to other types of gilt. The Bank [ended](#) its support on that date, after extending the programme to include index-linked gilts, but continues to delay its planned sale of existing gilt holdings.

After dealing with the margin calls, affected schemes have been urgently reviewing their investment strategy and LDI managers have in many cases been proposing reductions in leverage levels. The Pensions Regulator issued a [statement](#) for pension scheme trustees on 12 October 2022 on managing investment and liquidity risk in the current economic climate. It also [responded](#) to questions from the Chair of the Work and Pensions Select Committee, which later launched an inquiry.

On a more positive note, some schemes have found that they are much closer to their endgame than they would otherwise have been, with buy-ins and buy-outs much more affordable due to annuity pricing and/or a funding level improvement. Schemes in this position may need to act quickly in order to lock in favourable terms.

Post script: We have written about these developments in our recent briefing ['Liability-driven investment \(LDI\) – Reflections on the mini-budget and the road ahead'](#).

Income tax and National Insurance

As things stand after the reversals, the basic rate income tax rate (outside of Scotland) remains 20% indefinitely and there will continue to be a 45% additional rate tax band for the highest earners. National Insurance rate cuts of 1.25% and the abolition of the health and social care levy will still be implemented. All of this is of course subject to the agenda of new Prime Minister Rishi Sunak and there is growing speculation that there could be fundamental changes to tax relief on pension contributions and possibly the freezing of or changes to pension tax allowances as a means of helping restore stability to public finances.

DC illiquid investment

There was also an announcement in the Mini-Budget about excluding performance fees from the DC charges cap. This was followed by a consultation on this and other measures aimed at encouraging investment by DC schemes in illiquid assets. See the separate item below regarding that consultation.

Inflation and pension schemes

Actuarial risk

The Institute and Faculty of Actuaries has issued a [risk alert](#) to its members on the impact of high inflation on actuarial practice.

Its message on pensions and life assurance reads:

"Members working within the areas of pensions and life insurance may be faced with increased challenges in managing investments or hedging strategies for inflation-linked liabilities.

There may be an enhanced risk where actuaries cannot match underlying liabilities with a suitable asset or choose to adopt "delta-hedging" as an approximate matching technique. Both higher levels of inflation, and possible increased volatility, may mean that monitoring and re-balancing become expensive or problematic.

Those working in pensions and/or life insurance may wish to consider the following:

- *retirement factors for deferred members may require to be reviewed to ensure that they are appropriate and consistent with preservation legislation;*
- *the need to consider any matching or mismatched exposure;*
- *the impact of any caps and collars on cashflows;*
- *possible member or political pressures to ignore caps or apply discretionary increases, especially where the cost of living is outstripping pension increases; and*
- *the likelihood of inflation causing underpinning biting in the future."*

Occupational pension schemes

A 10.1% CPI inflation figure was [announced](#) for the year to September 2022. The September figure is a key one because it is the one used for statutory indexation. It also feeds into deferred pension revaluation orders. Statutory indexation and revaluation are of course subject to caps but the statutory requirements are minima and scheme rules often go further, with many also using the September inflation figures.

Some schemes still apply RPI increases, sometimes uncapped, very often because there is no power to switch to CPI. The RPI figure for the year to September is 12.6%. The figure for CPIH, with which RPI is expected to be aligned from 2030, is 8.8%. A legal challenge to that alignment decision has recently failed: see the separate item below.

Schemes that apply caps may be asked by members to consider additional discretionary increases and should check if they are required by their scheme rules to consider whether or not to grant them or whether there are any other procedural requirements, such as a requirement to inform the sponsoring employer when scheme increases are running behind inflation.

State pensions

The September figure is also the one used for the state pension 'triple lock'. Former Prime Minister Liz Truss sought to end intense speculation about the future of the triple lock by announcing at Prime Minister's Questions on 19 October that it will be applied in 2023. If that is done, state pensions would be increased by order by 10.1% from April 2023. But that certainty was short-lived, after Liz Truss resigned the following day. We await news of new Prime Minister Rishi Sunak's position on state pension increases.

The triple lock (meaning an annual state pension increase of the highest of 2.5%, national average earnings inflation and CPI price inflation) is a discretionary policy rather than a legal requirement, but it was a manifesto promise. Legislation requires the Secretary of State to make an annual order increasing state pensions by at least the rise in national average earnings (which would be 5.5%). Anything above earnings inflation is at the discretion of the Secretary of State. The triple lock was suspended this year when post-furlough wage increases led to an anomalous high earnings inflation figure.

Pension protection levy

The Pension Protection Fund has published its [long-term funding strategy review](#) and concluded that it can reduce the total amount of levy it charges without risking the long-term security of members' benefits. The [2023/24 levy consultation](#) therefore proposes collecting £200 million in levy, a near halving of the amount it has aimed to collect this year (£390 million).

The reduction is to be achieved by reducing the sensitivity of levies to insolvency risk (i.e. so that changes do not have such a large impact) as well as changes to the levy scaling factor and scheme-based levy multiplier that will benefit all levy-paying schemes. The great majority of schemes will therefore see their levy reduced.

The consultation includes a draft determination and some appendices and guidance (being only those to which substantive changes are being proposed). The published materials do not include the contingent assets appendix or guidance, so material changes in the rules regarding guarantees and other contingent assets are not expected. Schemes will wish to consider their contingent asset cover in light of their probably reduced levy.

Other points of interest include the following:

- Asset and liability stress factors are being updated to reflect the asset class categorisation that is being introduced by the Pensions Regulator into scheme returns for 2023. The stress test for equities is to be relaxed and applied the in same way across all quoted equities.
- The 2022/23 adjustment for schemes where employer insolvency risk increased due to the impact of the pandemic will not apply for 2023/24. Slightly under 10% of schemes took advantage of this. But the COVID easement offering more time to pay is continued.
- Scorecard 6 ('Group Small') was not performing as expected and has been revised.

Beyond 2023/24, the PPF would like to make further levy reductions as its self-sufficiency is cemented. It is constrained in doing this by legislation, however, so it is in discussions with the Government regarding possible amendments. For example, the PPF can only increase the total levy by a maximum 25% year-on-year, which means that the lowering of levies restricts its ability to respond to unforeseen events. In the extreme, if the PPF charges a zero levy in any year, it can never raise a levy again (i.e. because 25% of £0 is £0).

The consultation closes at 5pm on 10 November 2022. The final rules are expected to be published by the end of December.

Pensions dashboards

Regulations and guidance

The Government has laid final [pensions dashboards regulations](#) before Parliament for approval. It has also [responded](#) to its additional consultation, published [draft deferred connection guidance](#) and made a [commencement order](#) to bring the legislation into force.

The consultation response and the regulations confirm that the Government has listened to industry requests for more notice of the dashboards becoming available to the public: there will now be six months to prepare for that, rather than 90 days.

Other changes from the indicative draft regulations consulted on (see [WHiP Issue 94](#)) include those indicated in the interim response (see [WHiP Issue 97](#)), which were as follows:

- There will be delayed staging dates for master trusts (by two months – now 31 August 2023), the largest DC schemes (by two months – now 30 September 2023) and public sector schemes (by five months – now September 2024). Master trusts may still connect from April 2023 if they will be ready.
- Staging for DB/DC hybrid schemes will be different from the original proposals. Rather than the staging date being the earlier of the dates that would apply if the different sections were different schemes, hybrid DB/DC schemes will now be treated as entirely DB for these purposes and the relevant DB scheme staging date will apply, based on the number of 'relevant members' in the whole scheme. This will often be later than under the original proposals but it could be earlier or the same.
- Schemes will have to agree a connection date with MaPS within their three month window. Due to the staging bands, there will be high demand for dates toward the end of the window, so some schemes may have to connect earlier than they would wish.
- Where a member's individual benefits are hybrid (for example DC with a DB underpin), trustees will have a discretion whether to use the DC or DB methodology so as to best represent the value of the benefits.
- Where a DB benefit has different tranches, perhaps with different retirement ages or bridging pensions, the final regulations will give schemes flexibility to give members information that best represents the benefit: either a combined value covering all the tranches of benefit, along with a single common retirement date, or a separate set of values for different combinations of tranches of benefits, along with a retirement date in relation to each.
- A simplified revaluation approach will be allowed for calculating DB deferred pensions "in cases where it would not be possible to provide a full calculation without incurring disproportionate costs or outside of a reasonable timescale; and where trustees or managers are content that the alternative accrued value would not be misleading as to the value of the benefits". Schemes that may be able to take advantage of this option are generally those that do not currently calculate revaluation increases annually. The option will only be available for two years from the scheme's connection date.
- Pension and DC pot values disclosed by schemes to the dashboards may now be based on a benefit statement that is up to 13, rather than 12, months old. This is to allow for small variations in the dates when benefit statements are issued from year to year.
- References to 'normal pension age' (NPA) will be changed to 'retirement date', which is consistent with the disclosure of information regulations and actuarial standard TM1, and clearer in meaning. This will also ensure that members who have passed their NPA but have not yet retired can use the dashboards to see their prospective benefits.
- Schemes wholly in PPF assessment at their staging date will be exempt while they are in assessment. (The PPF itself is not subject to the requirements.)
- Schemes in winding-up will still need to connect under the staging timeline but will not have to provide benefit values and data if they do not think it appropriate to do so.

The draft guidance concerns applications for delay of a scheme's staged connection date. A 12 month extension is possible but only in limited circumstances where administration services are being transferred or retendered.

The commencement order has brought into force most of the pensions dashboards provisions of the Pension Schemes Act 2021, including the forthcoming obligations on pension schemes.

Money purchase illustrations

The Financial Reporting Council [has published](#) a new version of Actuarial Standard Technical Memorandum 1, on producing statutory money purchase illustrations. The revised standard applies to all statutory illustrations issued on or after 1 October 2023. It is being introduced so that the information in illustrations used for benefit statements will correspond with the information that schemes are required to supply to the pensions dashboards ecosystem.

DC illiquid investment

A new [consultation](#) on draft [regulations](#) and [statutory guidance](#) has been published, closing on 10 November 2022, with the aim of encouraging DC schemes to invest more default fund assets in illiquid investments.

Following an earlier consultation on principles (see [WHIP Issue 95](#)), the Government has confirmed its intentions as follows and is now consulting on draft regulations and guidance reflecting them:

- "Well-designed" performance fees will be excluded from the DC automatic enrolment scheme default fund charges cap from 6 April 2023. To qualify, the fees must be:

"(a) payable by the trustees or managers of a pension scheme to a fund manager in relation to investments managed by the fund manager for the purposes of the scheme;

(b) calculated only by reference to investment performance, whether in terms of the capital appreciation of those investments, the income produced by those investments or otherwise;

(c) only payable when—

(i) investment performance exceeds a pre-agreed rate, which may be fixed or variable; or

(ii) the value of those investments exceeds a pre-agreed amount;

(d) calculated over a pre-agreed period of time; and

(e) subject to pre-agreed terms designed to mitigate the effects of short-term fluctuations in the investment performance or value of those investments"

Trustees will be required to have regard to the statutory guidance when considering whether fees meet the criteria.

Disclosure requirements will apply where such fees are excluded. The existing provisions allowing the smoothing of performance fees will be repealed but with transitional provisions.

- Relevant schemes (i.e. schemes providing money purchase benefits other than just from AVCs) will have to disclose and explain their policy on investment in illiquid assets in their default fund statement of investment principles. This must be done from 1 October 2023 when the default SIP is revised and by 1 October 2024 at the latest. 'Illiquid assets' is defined as *"assets which cannot easily or quickly be sold or exchanged for cash and, where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme"*.
- Such schemes will also have to disclose in their chair's statement the percentage of assets in their default funds allocated to different prescribed asset classes, including age-specific analysis. Again, look-through to assets held in a collective investment scheme is required. This disclosure must be included in the annual report for the first scheme year ending after 1 October 2023 and subsequent reports. Trustees will be required to have regard to the statutory guidance when making the calculations.

The draft regulations also include provisions affecting collective money purchase schemes.

TPR EDI action plan

The Pensions Regulator [has published](#) an action plan, produced in partnership with the pensions industry (including Travers Smith), to improve diversity and inclusion across trustee boards.

The action plan sets out steps the Regulator will take, in partnership with the Diversity and Inclusion Industry Working Group (IWG). The Regulator will set trustees clear expectations on diversity along with providing practical tools and information on recruiting diverse candidates, creating and maintaining an inclusive culture, engaging with employers on diversity and ensuring communications to scheme savers are inclusive.

The Regulator has also published new [research findings](#) which indicate that too few trustees are prioritising diversity. Just 10% of DB schemes and 14% of DC schemes were collecting trustee diversity data but of those who were, two fifths of DB schemes and nearly half of DC schemes said that they had no plans to use the information.

The action plan also sets out how the Regulator will:

- develop a mechanism for how it will collect and use diversity data in the longer term to measure success;
- set clear ED&I expectations in the upcoming single code of practice;
- publish guidance in partnership with the IWG to help trustees understand and meet expectations. The guidance, which will be regularly updated, will be published at the end of this year or in early 2023;
- continue to work with industry stakeholders to focus on how the roles of employers, chairs, and professional trustees can be influential in diverse recruitment and developing a culture of inclusion; and
- engage directly with trustees through supervision to identify barriers to diversity and highlight best practice.

Investment consultancy and fiduciary management

The CMA has given the required [confirmation](#) that the requirements in its 2019 Order on trustees as regards setting strategic objectives for investment consultants and tendering for fiduciary management services have ceased to be in force from 1 October 2022. This is on the basis that equivalent provisions have been brought into force, from that date, by Government regulations (see [WHiP Issue 96](#)). Reporting is now to be done to the Pensions Regulator, with annual reports to be included in scheme returns.

The CMA Order remains in force as regards the obligations it places on the providers of the services.

SDR and investment labels

The FCA [has launched](#) its expected [consultation](#) on sustainability disclosure requirements (SDR) and consumer-friendly sustainability labels. Its intentions include a product labelling regime and clamping down on 'greenwashing'.

The SDR is being seen as the UK's answer to the EU Sustainable Finance Disclosure Regulation (EU SFDR) but the proposed UK regime goes further than the EU SFDR in terms of having formal product labels and is bolstered by the existing rules that require many firms to report climate-related risks and opportunities in accordance with the TCFD guidelines.

The FCA proposes that, at the outset, the new rules on labelling and classification, disclosure, naming and marketing and distribution are directed at investment funds and the UK-regulated asset managers that manage or distribute those, subject to phased implementation. It will consult at a later date on extending the application of the proposals to pension products and overseas funds.

The consultation closes on 25 January 2023 and a policy statement, with final rules, is expected by June 2023.

A new "anti-greenwashing" rule – applicable to all regulated firms – would come into force immediately – currently expected to be on 30 June 2023 – but the detailed new rules on investment labelling and sustainability disclosure would be subject to implementation periods with elements first coming into effect for in-scope firms on 30 June 2024 at the earliest.

For details of the FCA's proposals and how they will interact with other non-UK initiatives please see our Financial Services and Markets colleagues' [briefing](#).

PPF compensation – age discrimination

The Government has to all intents and purposes succeeded in overturning an Employment Tribunal decision which had held that the UK age discrimination legislation applies (at least to PPF compensation reductions) in respect of periods of accrual before as well as after it was in force, and so in respect of all the claimants' periods of pensionable service, not just periods since December 2006.

In *Beattie and others v 20-20 Trustee Services Limited and another*, members of the T&N Retirement Benefits Pension Scheme brought an age discrimination claim in the Employment Tribunal (ET) against the trustee regarding the application of PPF compensation reductions to benefits accrued before the age discrimination legislation was in force. The T&N scheme has been in PPF assessment since 2006 and has been the subject of high-profile litigation regarding the minimum level of pension protection required by EU law and the validity of the compensation cap in light of age discrimination laws: the *Hampshire* case (see WHiP Issue 72) and the *Hughes* case (see WHiP Issue 90).

At the ET, the trustee argued that the claimants' service all pre-dated the introduction of the age discrimination legislation on 1 December 2006 and so the legislation did not apply – there is an express exception in respect of benefits deriving from pensionable service before that date. The ET held, however, that that aspect of the UK legislation was not compatible with EU anti-discrimination general principles, which formed part of 'retained EU law', and must therefore be disapplied. It agreed with the claimants that their claim was analogous with Mr Walker's against Innospec in respect of a same sex survivor's pension and applied the Supreme Court's "future effects" principle from that case (see our briefing note '[Supreme Court rules in favour of full equality for same sex spouses and civil partners](#)'). In other words, although the benefits accrued before the legislation was in force, the discrimination (in *Walker*, the commencement of the survivor's pension; here the application of the PPF compensation reduction) was occurring after it was in force because the entitlements had not become fixed before then.

The Government did not agree with that decision and intervened in the case to bring an appeal.

The Employment Appeal Tribunal (EAT) has now [ruled](#). It held that the ET was correct to conclude as it did as regards the principle on which the *Walker* decision was based. But a provision of the European Union (Withdrawal) Act 2018 which bars claims of this type from being brought after the end of the Brexit transition period (31 December 2020) had been overlooked. The type of claim in question is one based on general principles of EU law (as compared, for example, with a claim based on a Treaty provision or EU Regulation). That defeated the claims of 15 of the 17 claimants. Two of the claimants, including Mr Hampshire, had brought their claims before that date and so they can continue. The DWP will be pleased, however - barring any successful appeal - that its legislation stands except in respect of two people and no further claims can now be brought.

TPR on M&A activity

The Pensions Regulator has published a new [blog post](#) by Mike Birch, Director of Supervision: "*Mergers and acquisitions: company directors must help pension trustees protect savers*".

The Regulator expects DB scheme trustees to be robust when defending the interests of scheme members and company boards and bidders to treat the scheme fairly and equitably: "Treating schemes fairly means employers and bidders should communicate with schemes as a primary creditor when structuring any acquisition or financing package — and not treat them as a second-class citizen or an 'after thought' on which to impose a sub-standard arrangement as a fait accompli which does not protect members. ... Trustees should be provided with direct access to the bidder and their advisers at the earliest opportunity in the transaction process."

Mr Birch adds: "We expect trustees to engage with the scheme's employers, and any prospective purchasers, to understand the status of a proposed transaction, its expected timescales, and its potential impact on the scheme covenant. This is often complex so trustees should consider using independent advisors to assist with their assessment."

As regards ongoing funding, the Regulator expects tangible protections for the scheme where a transaction or proposed business plan impact the employer covenant. It expects a legally binding commitment to be reached with the trustees ahead of completion and strong governance protections to be put in place which ensure the independence of the trustee board, including adequate removal or mitigation of conflicts of interest.

Pensions Regulator enforcement and prosecution policies

The Pensions Regulator [has published](#) its enforcement strategy, a consolidated scheme management enforcement policy and an updated prosecution policy.

The enforcement strategy is new and sets out very briefly the aims of the Regulator's enforcement work (not including automatic enrolment). The Regulator says: "This provides an insight into the overarching framework we apply when selecting cases for enforcement actions and our aim of achieving one or more of the following outcomes from our work: Prevention, Remedy, Restoration and Deterrence."

The scheme management enforcement policy combines and simplifies existing enforcement policies in relation to DB funding, DC compliance and public service pension scheme compliance. It does not cover automatic enrolment and master trust authorisation, to which separate policies apply.

The updated prosecution policy outlines the Regulator's general approach to the prosecution of criminal offences and provides more detail compared with the existing policy. Note that there is a separate prosecution policy already in place for the criminal offences introduced by the Pension Schemes Act 2021 (see [WHiP Issue 92](#)).

This follows a consultation earlier this year (see [WHiP Issue 95](#)), to which the Regulator has published a [response](#) setting out a small number of changes and noting where it has declined to make some requested changes. A [blog post](#) also provides further explanation.

The Regulator has also updated its [case team procedure](#) and [determinations panel procedure](#).

RPI reform challenge

The High Court judicial review claim brought by several schemes against the UK Statistics Authority (UKSA) and the Chancellor of the Exchequer over RPI reform [has failed](#). The claim concerned the UKSA's planned alignment of RPI with CPIH, due to take effect in 2030, and the Chancellor's decision not to pay compensation to index-linked gilt holders.

Schemes for workers of BT, Marks and Spencer and Ford were challenging the UKSA's decision to change the basis of RPI so that it is aligned with CPIH. The UKSA intends to do this in February 2030, when it can do so under legislation without the need for the consent of the Chancellor of the Exchequer. (That consent requirement applies until then because there will still be index-linked gilts under the terms of which such a change would entitle holders to redeem them early. The last of them mature in February 2030.) The schemes also challenged the decision of the Chancellor to pay no compensation to holders of index-linked gilts in respect of losses caused by the change.

DB scheme members whose pension increases are linked to RPI will lose out from 2030 from the reform of RPI, with lifetime benefit reductions estimated as being between 4% and 9%. Their schemes will see their liabilities reduce but any scheme that has hedged with gilts (which are RPI-linked; CPI linked gilts have never been made available) will see its asset values reduce. Schemes with CPI increase rules that are heavily hedged with gilts will be the worst affected. The PPF's liabilities are expected to increase by around £1 billion. The total reduction in future payments from index-linked gilts is estimated at between £90 billion to £100 billion.

The challenge was brought on the following grounds:

- The UKSA's decision was outside the scope of its statutory powers.
- The UKSA failed to take account of the impact of its decision on the holders of RPI-linked gilts and bonds and on persons entitled to RPI-linked pensions. Alternatively, it wrongly decided that it was not entitled to take that impact into account. Consequently, the UKSA failed to comply with the public sector equality duty (PSED) (i.e. because women's pensions are typically paid for longer than men's and so women will suffer a greater adverse effect). And the Chancellor also failed to have regard to the interests of those entitled to RPI-linked pensions and to comply with the PSED.
- The UKSA failed to consult the public about the impact on them and take into account their views before making its decision. And the Chancellor failed to consult those entitled to RPI-linked pensions on the issue of compensation before deciding not to pay any.

- The schemes also argued that the effect of the planned change is that RPI will cease to be published and so a clause in index-linked gilts issued from 2005 onwards will be triggered, to the effect that the Chancellor must select a replacement index.

The High Court ruled against the schemes on all counts. After giving a detailed summary of the background to RPI, the differences between RPI and CPI/CPIH, and how we got to this point, Mr Justice Holgate held as follows:

- The UKSA does have power to make the proposed change. Its statutory powers include power to make "fundamental changes" to the coverage or basic calculation of RPI. The power is to be understood in the context of the UKSA's statutory objective of promoting and safeguarding the quality of, and good practice in relation to, official statistics. Parliament has not laid down any express constraints on the exercise of that power or categorised any aspects of RPI as immutable.
- There will be winners and losers in many parts of society and the economy whether RPI is reformulated or not. The UKSA's statutory functions are, however, concerned with promoting and safeguarding the quality of official statistics. Decisions on whether to use an index such as RPI in a commercial or social context are for the Government and others.
- The Chancellor received ample briefing from his officials on the effects of the RPI decision on persons entitled to RPI-linked pensions and the PSED. That was taken into account in his decision that compensation should not be provided out of the public purse.
- The schemes' complaint about the UKSA's failure to consult on the impact of its decision fails because of the limited scope of its statutory functions (see above). It also fails on the grounds of delay in bringing this part of the claim, since the UKSA's decision was taken in substance well before the schemes alleged.
- There was no legal basis demonstrated for asserting that the Chancellor was required to consult over his decision not to pay compensation. In any event, respondents to the consultation had commented extensively on compensation and the comments were fully taken into account by the Chancellor.
- RPI will not cease to be published when the UKSA's decision is implemented. Accordingly, a declaration will be made that that decision will not cause the cessation clause in index-linked gilts issued from 2005 to be triggered.

TPR climate reporting guidance

The Pensions Regulator has updated its [guidance](#) on governance and reporting of climate-related risks and opportunities to reflect the requirement from 1 October 2022 for in-scope schemes to calculate and report on a portfolio alignment metric indicating the alignment of the scheme's assets with the Paris Agreement goal of limiting global warming to 1.5°C above pre-industrial levels.

Retained EU Law (Revocation and Reform) Bill

The Government [has introduced](#) a Bill with the potential to result in the repeal of swathes of EU-derived legislation by virtue of a 'sunset clause' which provides for certain retained EU law to fall away automatically on 31 December 2023 unless it is specifically saved by regulations (or the time is extended until 2026). The Government's intention is that "the majority" of retained EU law will be repealed in this way. There is clearly some scope here for unexpected or accidental repeals.

A [retained EU law dashboard](#) can be used to view a list of the legislation that is under consideration, which of course includes a very large amount of pensions legislation and case law. The content is most usefully filtered for pensions purposes by reference to department (Department for Work and Pensions), though some relevant legislation will fall under other categories. Note that Acts of Parliament are not at risk of repeal by the Bill but the position regarding regulations made under them is unclear.

The Bill will also give domestic courts greater discretion to depart from retained case law. It will also provide new court procedures for the Government to refer or intervene in cases regarding retained case law.

See our [briefing](#) for Travers Smith's initial observations on the Bill generally. Reports since Rishi Sunak became Prime Minister suggest that the project may be delayed in order to allow civil servants to focus on other important work. We will be monitoring developments closely.

FOR FURTHER INFORMATION, PLEASE CONTACT



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