

# THE PENSIONS BRIEF

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### Issues affecting all schemes

#### ▲ LIFE ASSURANCE ARRANGEMENTS AND QROPS

Changes to the tax treatment of employer contributions to life assurance arrangements and QROPS

#### ▲ OVERSEAS TRANSFER CHARGE

Consultation on draft legislation on claims for repayment of the overseas transfer charge

#### RECOVERY OF OVERPAYMENTS

Pensions Ombudsman determination on time limits when recovering overpayments

#### TRANSFERS-OUT

Pensions Ombudsman determination on due diligence when processing transfers-out

### Issues affecting DB schemes

#### ▲ GMP RECONCILIATION

Confirmation of the deadline for submission of GMP reconciliation queries to HMRC

#### ▲ REVALUATION OF DEFERRED PENSIONS

Order setting out the percentages to be used for revaluation using the final salary method

#### CHANGING INDEXATION MEASURES

High Court decision on the meaning of “replacement” in a definition of “Index” in a scheme’s rules

#### INDEXATION OF GMPS

High Court decision on the provision of full GMP indexation for some members of public service schemes and its implications for private sector schemes that “mirror” public service schemes

### Issues affecting DC schemes

#### ▲ COLLECTIVE DC SCHEMES

Consultation on a proposed legal and regulatory framework for collective DC schemes

#### TRANSFERS-IN

Pensions Ombudsman decision on requiring independent financial advice to be taken for DB transfers-in

▲ Action required

▲ Follow development and keep under review

# Issues affecting all schemes

## Life assurance arrangements and QROPS – employer premiums/contributions

Legislation has been laid before Parliament that changes the tax treatment of premiums paid by employers to life assurance arrangements and employer contributions to qualifying recognised overseas pension schemes (QROPS) so that premiums/contributions will be tax-exempt if the beneficiary is an individual or a registered charity. This change will take effect from 6 April 2019.

### Action

Employers who offer a life assurance arrangement and/or pay contributions to QROPS should consider whether the tax treatment of the premiums/contributions will be affected.

## Overseas transfer charge – repayment

HMRC has published draft legislation for consultation that:

- sets out the conditions and process for claiming a repayment of the overseas transfer charge where the charge was either paid in error or a change in the individual's circumstances now means that the original transfer was exempt from the charge; and
- imposes new provision of information requirements associated with claims for repayment.

The consultation closes on 7 December 2018.

### Action

Trustees should keep the progress of the consultation under review.

## Recovery of overpayments – time limits

The Pensions Ombudsman has decided that, where a scheme seeks to recover an overpayment by making deductions from future pension payments (as opposed to requiring the member to repay the overpayment), the statutory six year limitation period does not apply. The Ombudsman's decision follows that of the High Court in the recent case of *BIC v Burgess*.

*Dr E (PO-16856)*

### Action

Trustees should consider whether they wish to change their policy on recovery of overpayments in light of this decision.

## Transfers – due diligence

The Deputy Pensions Ombudsman has decided that a “disproportionate” level of due diligence on the receiving scheme which caused delays in processing a member's transfer amounted to maladministration. The Deputy Ombudsman decided that, as the receiving scheme was a well-known and well-established scheme, the transferring scheme should have taken a more proportionate approach to its due diligence. The Deputy Ombudsman directed the transferring scheme to reimburse the member for the investment loss caused by the unnecessary delays.

*Mr S (PO-19393)*

### Action

Trustees should ensure that their due diligence processes are proportionate and do not cause unnecessary delays.

# Issues affecting DB schemes

## GMP reconciliation – submission of queries to HMRC

HMRC has confirmed that the cut-off date for the submission of scheme cessation queries remains 31 December 2018. HMRC has also confirmed that it will aim to respond to all queries submitted on or before that date by 31 March 2019.

### Action

Trustees should ensure that all queries relating to GMP reconciliation are submitted to HMRC by the 31 December deadline.

## Deferred pensions – revaluation

The order specifying the percentages to be used when revaluing deferred pensions using the final salary method has been laid before Parliament and will come into force on 1 January 2019.

### Action

Schemes using the final salary revaluation method should ensure that the percentages specified in the order are applied.

## Changing indexation measures – meaning of “replacement”

The Supreme Court has held that “RPI or any replacement adopted by the Trustees without prejudicing Approval” in the definition of “Index” in the rules of a scheme means that RPI must have ceased to be an officially published index before an alternative index can be selected. The Court chose not to address the question of whether the statutory restrictions on changes to accrued benefits would prevent a change of indexation measure.

*Barnardo’s v Buckinghamshire and others* [2018] UKSC 55

### Action

Trustees of schemes whose rules refer to a “replacement” for RPI and who wish to change indexation measures should take advice on this case’s implications before doing so.

## GMP indexation – schemes “mirroring” public service schemes

The High Court has held that the government was entitled to:

- decide to provide full GMP indexation for members of public service pension schemes reaching state pension age between December 2018 and April 2021; and
- refuse a request from a private sector employer to amend the terms of the Principal Civil Service Pension Scheme (PCSPS) so that the full indexation requirement would not apply to private sector schemes whose rules mirror those of the PCSPS.

*R (on the application of British Telecommunications plc) v HM Treasury and another* [2018] EWHC 3251 (Admin)

### Action

No action required.



# Issues affecting DC schemes

## Collective DC schemes – consultation

The government has published a [consultation](#) on a proposed legislative and regulatory framework for collective DC (CDC) schemes. The particular scheme design that is the focus of the consultation has been developed in discussions between the Royal Mail and the Communication Workers Union, but the framework, if adopted, would enable the same scheme design to be used by other employers. Under the proposed framework, CDC schemes would be treated in many respects as money purchase schemes. The consultation closes on 16 January 2019.

### Action

Employers with an interest in CDC schemes as a form of pension provision should keep the progress of the consultation under review.

## Transfers-in of DB benefits – financial advice

The Pensions Ombudsman has [decided](#) that a DC receiving scheme was entitled to refuse to accept a transfer-in of DB benefits unless the member had obtained independent financial advice, even though the transfer value was less than £30,000. Although the member had a statutory transfer right, the receiving scheme was under no legal obligation to accept the transfer. Its commercial decision to refuse to do so unless the member obtained independent financial advice did not breach any legislative requirements, nor did it amount to maladministration.

*Mr R (PO-23928)*

### Action

No action required.



# Mayer Brown news

## New Mayer Brown partner



Giles Bywater has been promoted to partner in the Pensions Group with effect from 1 January 2019. Giles advises trustees and employers on both contentious and non-contentious matters – including scheme documentation and funding

issues, liability management exercises, and scheme mergers and wind-ups. He is experienced in pensions litigation, having acted in the landmark *Merchant Navy Ratings Pension Fund* case, for which the Mayer Brown team was recognised by leading publications.

## Upcoming events

If you are interested in attending any of our events, please contact Katherine Carter ([kcarter@mayerbrown.com](mailto:kcarter@mayerbrown.com)) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

### Trustee Foundation Course

11 December 2018  
26 February 2019  
14 May 2019  
17 September 2019  
10 December 2019

### Trustee Building Blocks Classes

18 June 2019  
12 November 2019

### Annual Pensions Conference

2 October 2019

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

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# Dates to note over the next 12 months



**Key:**



Important dates to note



For information



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