

## Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

GMP equalisation guidance published | PPF guide: contingency planning for employer insolvency | TPO: new overpayments factsheet | FCA consults on IGCs, ESG and value for money | Consultation on anti-money laundering changes | FCA: pensions priorities for 2019/2020 | Pensions Academy: 16 May 2019

### GMP equalisation guidance published

The government has published [guidance](#) on the use of GMP conversion as a possible way to achieve equalisation (noting that other methods of equalisation are available and that trustees have to decide on the most appropriate methodology for their scheme, getting sponsor consent where relevant).

The guidance builds on equalisation and conversion methodology proposed in 2016 and includes commentary on practical issues in the conversion process, such as dealing with active and pensioner members and the complexities of dealing with arrears payments. It leaves a number of questions open – for example, on transferred-in benefits and dealing with members who have transferred out or died; and how to deal with DC benefits with a GMP underpin.

Further guidance in relation to taxation issues is expected from HMRC (see [WNTW](#), 8 April 2019). The guidance confirms that the following areas are under consideration: annual and lifetime allowance; lifetime allowance protections; lump sum payments; and transfers. In addition, a further industry working group led by PASA intends to develop and promote best practice on issues arising in relation to GMP equalisation.

### PPF guide: contingency planning for employer insolvency

The PPF has published a [guide](#) for trustees on contingency planning for employer insolvency, designed to help trustees prepare for the potential risk that the scheme could enter a PPF assessment period. With an emphasis on planning when times are good in order to be prepared when difficult situations arise, the guide may be a useful basis for trustee discussion or training.

It cites practical examples of ways to mitigate preventable difficulties, and discusses contingency planning steps related to the strength of the employer covenant; some of the mitigations suggested are also worth considering in terms of wider scenario planning.

## TPO: new overpayments factsheet

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Trustees commonly recover overpaid pensions by making deductions from future pension payments – this is known as recoupment. Legislation provides that, where a member disputes the amount, trustees cannot recoup the overpaid pension unless they have an order from a ‘competent court’. Last year, a High Court judge made non-binding comments in *Burgess v Bic* that a determination by the Pensions Ombudsman (TPO) is not an order by a competent court for these purposes (see [WNTW](#), 23 April 2018).

Following subsequent determinations in which TPO has indicated that he does consider his determinations to be orders by a competent court, TPO has now published a [factsheet](#) explaining his reasoning. We are currently awaiting a judgment from the Court of Appeal in the appeal in *Burgess v Bic*. The Court of Appeal may well express a view on this issue.

## FCA consults on IGCs, ESG and value for money

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The Financial Conduct Authority (FCA) is [consulting](#) on changes to the remit of Independent Governance Committees (IGCs) and Governance Advisory Arrangements (GAAs), including in relation to consideration of environmental, social and governance (ESG) factors. The proposals have parallels with new requirements for trustees of occupational pension schemes (see our briefing ‘[Pension scheme investing: keeping members informed](#)’).

The proposals include requirements for IGCs and GAAs to report on their firms’ policies on stewardship and on taking into account financially material issues (including ESG factors) and non-financial matters in investment strategies and decision-making, plus the implementation of these. The FCA is proposing related guidance on ESG risks and member concerns in investment decision-making, which would apply to providers of pension products and investment-based life insurance products, for investment decisions made on behalf of consumers.

The consultation also includes proposals on extending the oversight of IGCs and GAAs to investment pathways (in relation to drawdown), and the publication of annual reports. In addition, the FCA is seeking views in relation to its work with the Pensions Regulator (TPR) on value for money. The FCA is developing ‘a shared view of what good looks like’ in workplace pension schemes and the assessment of value for money, which may lead to more prescriptive rules and guidance.

The consultation closes on 15 July 2019; the policy statement and rules are expected in Q4 2019.

## Consultation on anti-money laundering changes

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The government is [consulting](#) on transposing the Fifth Money Laundering Directive (5MLD) – the deadline for transposition is 10 January 2020. In doing so, it is catering for an implementation period being in place after the UK leaves the EU. The consultation closes on 10 June 2019.

The government ‘does not envisage changing any of the existing registration requirements on trusts which incur UK tax consequences’; and is considering whether other existing registration services could fulfil the requirements of 5MLD, to avoid duplicate registration. When changes to money laundering duties were introduced in 2018, HMRC initially indicated that trust-based schemes would be required to register on the Trusts Registration Service (TRS) before changing its position so that schemes registered via Pension Schemes Online or the Manage and Register Pension Schemes services would not be required to register separately on TRS (see [WNTW](#), 8 May 2018).

# FCA: pensions priorities for 2019/2020

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The FCA's [2019/2020 business plan](#) lists several pensions priorities including: further work on tackling scams including understanding types of fraud affecting pensions; continuing to work on improving DB transfers; working on the pensions dashboard; and focussing on joint priority work with TPR. For more information about the FCA and TPR's joint strategy, see [WNTW](#), 22 October 2018.

## Pensions Academy: 16 May 2019

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Please join us on Thursday 16 May 2019 for our Pensions Academy – a free update on issues for pension schemes and the people that run them. The session will run from 9am – 12.30pm, with breakfast and registration available from 8.30am. Topics covered will include:

- A general legal update
- GMPs – light at the end of the tunnel?
- TPR processes/changes and the impacts on schemes
- Master trusts, CDC, superfunds – the future UK pensions landscape
- ESG – what are the new requirements and how will they work in practice?

To reserve your place, please email [pensions.team@allenovery.com](mailto:pensions.team@allenovery.com).

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