

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.

High Court rules on TPO jurisdiction: *Sheffield v Kier* | Restructurings: new TPR action plan | TPR: new regulatory intervention report on data quality | Child support: provision of information | Latest HMRC newsletter | FCA discussion paper on intergenerational differences

High Court rules on TPO jurisdiction: *Sheffield v Kier*

A High Court judge has ruled that, where a member has made a complaint, the Pensions Ombudsman (TPO) only has jurisdiction to determine the matters referred in the complaint, and does not have a broader jurisdiction to investigate and determine other questions: [Sheffield v Kier Group plc and others](#).

Mr S was a member of the Local Government Pension Scheme who had continued working as a coroner until age 84 (and his benefits were not paid until after this time). There was a disagreement with the administrator about the payment of interest on arrears of pension, and he complained to TPO. TPO found that interest was payable on the arrears but also determined that under the rules Mr S's pension was first payable from his 75th birthday, and directed that it be recalculated. After re-calculating Mr S's benefits, the administrator considered that he had received an overpayment of more than GBP40,000 due to the change of date.

Mr S appealed to the High Court on a number of grounds, including that TPO did not have jurisdiction to determine the date his pension was first payable, or the date of his retirement, since neither formed part of the complaint that he had referred to TPO. The judge agreed that TPO did not have jurisdiction to determine these issues (and had misdirected himself that he did). On a fair reading of the complaint, Mr S was only referring to TPO a question of principle regarding whether interest was payable on arrears of late pension (whatever the amount of those arrears). According to the legislation, TPO only has jurisdiction to investigate and determine the complaint referred.

Other cases (and past practice) suggest that TPO has some flexibility to interpret complaints and/or to invite parties to add to their complaints – this case is unusual in that it was the member who had resisted TPO considering broader issues (and had responded to TPO that the sole issue before TPO was whether interest was payable on arrears). This ruling may cause TPO to engage further with the parties where the scope of the complaint has been disputed or is unclear.

Restructurings: new TPR action plan

The Pensions Regulator (TPR) has [published](#) details of actions that it is taking or considering in response to the independent review of the communications and support provided to members of the British Steel Pension Scheme. To read more about the review, see [WNTW](#), 28 January 2019.

The list of action points includes the following:

- New online materials for trustees are due for publication from September 2019 onwards, including a planning guide for schemes facing a restructuring scenario, a good communications guide, and guidance on supporting members considering a DB transfer. TPR is collating case studies and examples of best practice.
- TPR is considering whether the duties of DB scheme trustees should more explicitly cover a duty to communicate effectively with members, as part of updates to its DB funding code.

TPR: new regulatory intervention report on data quality

TPR has published a new [regulatory intervention report](#) in relation to the failure by a public service pension scheme to supply annual benefit statements to its members. TPR received a breach report in 2015 – the scheme manager attributed the issues to poor quality data due to numerous employers failing to provide accurate data and employment histories. The scheme manager created a robust and measurable data improvement plan, but TPR issued a Warning Notice in May 2018, and an Improvement Notice in August 2018 due to concern about the speed of improvement and recurring failures to send benefit information to members.

The report states that ‘where a scheme manager does not hold accurate and complete member data we expect them to create a measurable and timely data improvement plan. The plan should enable the scheme manager to improve the quality of the member data they currently hold and to maintain this quality in future.’

Child support: provision of information

Trustees, managers and administrators of occupational pension schemes will be included in a list of organisations required to supply information to the Child Maintenance Service (CMS), according to [draft regulations](#).

Currently, the CMS generally obtains pension income data from HMRC, but it may seek information from a pension scheme or provider where, for example, it suspects that funds have been diverted into a pension. If that information is not provided then an inspector will visit the pension scheme premises using formal powers of entry. The draft regulations would amend the list of persons and organisations who ‘must furnish such information or evidence as is required’. The [Explanatory Memorandum](#) states that the amendment would simplify the existing process for trustees, managers and administrators, who would be able to respond to information requests by secure electronic means rather than having an inspector visit their premises.

Latest HMRC newsletter

HMRC’s latest [Pension Schemes newsletter](#) (no. 109) includes information on using the Managing Pension Schemes service, guidance on operating relief at source in respect of Scottish taxpayers, and a reminder that scheme administrators only need to submit a Pension Scheme Return if HMRC has issued a notice for this to be filed. Statistics on the number of new pension schemes being

registered with HMRC indicate that there has been reduction of 23% in the number of applications compared to 2017/2018, and that registration has been refused in approximately 11% of cases (a decision has not yet been made in 8% of cases).

The newsletter also contains a reminder about recent changes in relation to the overseas transfer charge (see [WNTW](#), 8 April 2019), and an update on master trusts.

FCA discussion paper on intergenerational differences

The Financial Conduct Authority has published a [discussion paper](#) on intergenerational differences, looking at the different, and changing, financial needs of Baby Boomers, Generation X and Millennials – pensions is one of the areas covered.

Regarding pensions, the paper considers both the accumulation and decumulation phases (including the introduction of auto-enrolment and the pensions freedoms), and potential barriers to innovation. The FCA is seeking feedback on any implications for pensions that it should consider, and the extent to which providers are currently meeting changing consumer needs from different age groups.

Comments are due by 1 August 2019. The FCA is also holding a [free conference](#) on 2 July 2019 to discuss the issues in the paper (and responses received).

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