

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.

Covid-19: updated TPR guidance on AE duties | Latest RPI/CPI court ruling

Covid-19: updated TPR guidance on AE duties

The Pensions Regulator (TPR) has updated its Covid-19 guidance for employers on [automatic enrolment and DC pension contributions](#) to include new content on auto-enrolment duties in respect of furloughed staff. The guidance confirms that the duties apply as normal, and employers are to assess furloughed staff based on the amount of money they are paid (if pay has been reduced, workers are assessed on the reduced amount). Whether or not they are furloughed, if an employee meets the criteria (for example, by reaching their 22nd birthday) they must be assessed for auto-enrolment purposes (or the employer can, in some circumstances, choose to use postponement). Re-enrolment processes also operate as normal, and furloughed workers retain the right to opt in to pension scheme membership.

You can read more about auto-enrolment and re-enrolment duties in our guide '[Auto-enrolment and re-enrolment deconstructed](#)'.

Latest RPI/CPI court ruling

The High Court has handed down its latest decision on the interpretation of indexation provisions: [Ove Arup & Partners International Ltd v Trustees of the Arup UK Pension Scheme](#).

In this case, the relevant scheme rule stated: 'If the composition of the Index changes or the Index is replaced by another similar index, the Trustees, after obtaining the Actuary's advice, may make such adjustments to any calculations using the Index (or any replacement index) as they consider to be fair and reasonable'. If the indexation measure was changed from RPI for future pension increases, it could significantly reduce the scheme's deficit.

The judge concluded that, under the rule, RPI was 'replaced' only if it was discontinued and another similar index was introduced or declared by the responsible body to be in its place, and that the rule did not contemplate replacement of RPI that was merely 'functional' (for example, because another measure became regarded as the main reference index, without RPI being discontinued).

The trustees could in principle act upon a change in composition of the Index occurring after 12 April 2013 (when the current Deed and Rules were adopted), and could make consequential adjustments

to calculations (in their discretion) as considered to be fair and reasonable for the purpose of counteracting, mitigating or allowing for the effect of that change on calculations. A change of composition occurred in 2017 (in relation to housing cost data), which gave the trustees power, in principle, to make adjustments, but the judge held that this could not be a proper justification for switching from RPI to another index.

In this case, the employer sought declarations from the court using the Part 8 procedure (you can read more about this process on our [Pensions in Dispute website](#)).

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