

# Client briefing

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## Pensions: Investment consultation

### Consultation

#### Investment consultation

The DWP has launched a consultation on clarifying and strengthening trustees' investment duties.

The proposed changes are intended to confirm that trustees should take into account environmental, social and governance factors (including climate change), that amount to financially material risks, when making investment decisions.

The consultation ends on 16 July 2018. The Government intends to lay regulations as soon as possible, which would come into force in October 2019 or April 2020 (depending on how soon the regulations can be laid). The delay in coming into force is designed to allow trustees time to prepare for the changes.

### The Pensions Regulator

#### Cyber security

TPR has published guidance on protecting members and scheme assets from cyber risk, which it broadly defines as "the risk of loss, disruption or damage to a scheme or its members as a result of the failure of its information technology systems and processes". The timely guidance should be taken into account when trustees are reviewing and updating their procedures and policies to comply with the GDPR.

The guidance outlines three key areas that trustees should address: governance, controls and incident reporting. TPR encourages trustees to build cyber resilience into their systems, procedures and business plans.

#### Convictions for opting workers out of auto enrolment scheme

TPR has successfully prosecuted two directors and five employees of Derby-based firm Workchain, for offences connected with opting temporary workers out of their auto enrolment scheme.

The two directors encouraged five senior employees to get the temporary workers out of the scheme, in order that the company could save on the contributions that it would otherwise be required to make. The employees effected the opt-outs by logging on to NEST's online portal.

NEST reported concerns about Workchain to tPR in May 2014, which led to a police investigation. The directors and employees were prosecuted under the Computer Misuse Act 1990. Sentencing has not yet taken place, but could include imprisonment for up to six months and/or an unlimited fine.

## **ITV PLC v The Pensions Regulator and Box Clever Trustees Limited**

The Upper Tribunal (which rules on decisions made by tPR's determinations panel) has upheld tPR's decision to impose financial support directions on ITV to provide support for the Box Clever pension scheme.

Box Clever was a joint venture entered into by Granada (now ITV) and appliances company Thorn (now Carmelite). Box Clever went into administration in 2003, leaving an underfunded pension scheme. That these events took place before the FSD regime was established was a key point of challenge made by ITV. However, it was held that tPR must be able to take account of events prior to the coming into force of the relevant legislation (for example the establishment of company and scheme structures), as tPR could otherwise not meet its objectives.

This case has taken a long time to reach this point (a determination notice was first issued in 2011), with ITV raising multiple challenges. Although ITV has announced its intention to appeal, the case is a timely reminder that tPR is willing to use its powers to pursue employers where it believes it has a strong case.

It is also a reminder to trustees to ensure that their actions can be justified. Although they were not the subject of tPR's actions, the trustees of the Box Clever scheme have come under considerable scrutiny during the process, in part because it was claimed that their actions had increased the deficit which ITV may now have to fund.

## **HMRC**

### **New digital platform**

On 4 June HMRC launched its new online platform for registered pension schemes, the "Manage and Register Schemes" service. When it is fully operational, it will provide a single forum for scheme administrators to deal with all HMRC related matters, including amending scheme and administrator details, and scheme reporting. HMRC will also use the platform to issue penalties, assessments, notifications, notices and letters to pension schemes.

The service is being rolled out in phases and it is currently expected to be completed in 2020.

## **Pensions Protection Fund**

### **Grenville Hampshire v The Board of the PPF**

A case being heard by the Court of Justice of the European Union has raised the prospect of increased compensation being payable from the PPF.

Following the insolvency of his employer, Mr Hampshire became entitled to future compensation from the PPF, but at a reduction of around 67% from the pension that he would have been entitled to from the original pension scheme. Mr Hampshire challenged this reduction on the basis that the UK had not correctly implemented the requirements of the EU Directive in relation to the level of compensation that should be paid in these circumstances.

When the case reached the Court of Appeal, the court referred several questions to the CJEU. In May 2018, the Advocate General issued her opinion to the CJEU, concluding that the EU Directive requires a minimum compensation level of at least 50% of benefits. Whilst the opinion is not binding, it should be considered by the CJEU. Once the CJEU has issued its judgement (anticipated to be within the next three months), the case will return to the UK Court of Appeal.

In the long term, this case could result in a higher PPF levy becoming payable, if it is held that the PPF must provide increased levels of compensation. In the meantime, if an employer becomes insolvent but its pension scheme is funded above the current level of PPF benefits, its trustees will be in the difficult position of not knowing what level of benefits to target when considering a “PPF plus” buy out.

## Looking ahead

### White paper

The White Paper “Protecting defined benefit pension schemes”, published in March 2018, confirmed that there would be a series of consultations during 2018 and 2019. The first of these is already underway in the form of an inquiry by the Work and Pensions Select Committee, the stated aims of which are to inform and influence the planned consultation on the White Paper’s various proposals. We can expect further consultations to follow.

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