

# A sizzling summer UK Pensions Agenda

July 2018

**1 Pensions Regulator** — The Government is **consulting** on extending the powers of the Regulator to allow it to impose fines of up to £1,000,000. They will also extend the moral hazard framework and require more notification of corporate activity. Meanwhile, the Regulator has continued to use its existing powers, fining trustees for failing to **report** late payment of contributions and for **not ensuring** registrable information was up to date.

**Action** — This is the first of the anticipated consultations following the White Paper earlier this year. Although not mentioned in the consultation paper, be aware that the Government suggested that it would consider making some aspects of the new penalty regime retrospective.

**2 Data protection** — The Information Commissioner has issued **guidance** saying that where controllers hold data about an individual who might not know this, they may need to do an assessment of the risks to that person. In addition, the new **Data Protection Act** which sets out how sensitive data can be processed without consent has been enacted. The Pensions Regulator has also issued **guidance** on cyber security.

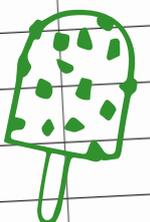
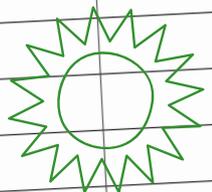
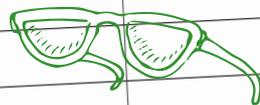
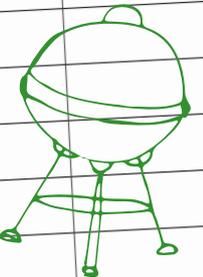
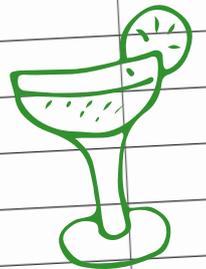
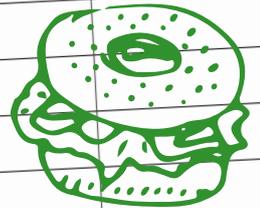
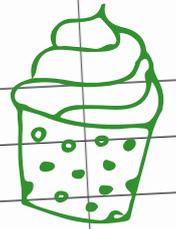
**Action** — Consider whether an assessment needs to be carried out in relation to anyone (such as death benefit nominees). Review whether changes need to be made to existing documents in light of the Act and processes in light of the Regulator's guidance.

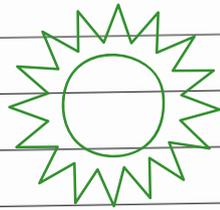
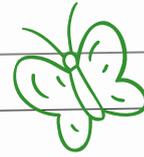
**3 Investment** — The Government has issued draft regulations which will require trustees to give more consideration to long-term environmental, social and governance type issues. They will also need to give more thought to stewardship and what members' views are on investment issues. DC trustees will need to make more information available to members.

**Action** — The **proposals** are due to come into force from October 2019 and changes will be required to existing statements of investment principles. Review existing practices once legislation is finalised. There is more information in our **Speedbrief**.

**4 PPF** — The Advocate General has given a preliminary opinion in **Hampshire v PPF** which considers whether the benefits provided by the PPF comply with European law. She concluded that where individual members receive less than 50% of the value of their original benefits (including increases), that is a breach of European law.

**Action** — The opinion is not binding and the European Court is due to hear the case soon. If it reaches the same decision, thought will need to be given to the potential impact on the PPF levy and on schemes that are or have wound up with benefits in excess of PPF levels.





**5 Time limits** — In the case of **Burgess v BIC** the court considered whether overpayments could be offset against future pension payments and how far back you could go in recovering overpayments in this way. The court decided that the usual six year time limits did not apply to recovering monies through future instalments of pension.

**Action** — This is helpful when looking at historic overpayments as it may be possible to offset all of a past overpayment against pensions in payment. For more information, read our **Speedbrief** on the case.

**6 GMP equalisation** — The Lloyds Bank trustees have asked the High Court to determine whether the scheme has an obligation to pay benefits which are equalised to deal with the discriminatory effect of GMPs and, if so, what the best way to do that would be.

**Action** — Once the judgment is published (which is likely to be autumn at the earliest), schemes with GMPs will need to consider whether any action needs to be taken and the Government may finalise its **proposed equalisation method**.

**7 Collective DC schemes** — Unlike traditional DB or DC schemes, these schemes provide an income in retirement which can fall if the value of the fund falls. Royal Mail has announced its decision to introduce a CDC scheme in the future and the Work and Pensions Select Committee has **called on** the Government to move quickly to enable this.

**Action** — CDC might prove popular for sponsors looking for a middle ground between DB and individual DC.

**8 Guidance on DC transfers** — The DWP has issued **guidance** looking at what trustees need to do to satisfy the new requirements on making DC bulk transfers without member consent. The guidance also has suggestions as to what should be included in any transfer agreement.

**Action** — If considering a DC bulk transfer without consent, review the guidance and consider what steps should be taken to comply with it.

**9 Pensionable service** — A recent case, G4S PLC v G4S Trustees Ltd, has decided that a continuing salary link does not constitute pensionable service for the purposes of legislation (such as the Employer Debt Regulations).

**Action** — Consider whether this might be relevant. If so, think about whether any action needs to be taken.

**10 Proper purpose** — Trustees must exercise their powers for the purpose for which they were granted. The Court of Appeal has considered what this might mean in a pensions context in the **BA case** and concluded on a narrow majority that, in this case, the purpose of the trustees' powers was to manage and administer the scheme and not to change the benefit design. The trustees have been given leave to appeal on this point.

**Action** — Always start by considering what the trust deed and rules have to say about the purpose of powers then look at what the background to a particular power is.

---

For more details on these or any other issues, speak to your usual Eversheds Sutherland adviser or email

**Francois Barker, Head of Pensions**

[francoisbarker@eversheds-sutherland.com](mailto:francoisbarker@eversheds-sutherland.com)

**eversheds-sutherland.com**

©Eversheds Sutherland 2018. All rights reserved.  
Eversheds Sutherland (International) LLP and Eversheds Sutherland (US) LLP are part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit [www.eversheds-sutherland.com](http://www.eversheds-sutherland.com).  
DTUK001759\_07/18