

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.

DB/hybrid return checklist published | Purple Book 2019 | GMP indexation: BT appeal dismissed | Increases: High Court rejects employer claim | PLSA AGM review | New Bill to restrict distributions by public companies

DB/hybrid return checklist published

The Pensions Regulator (TPR) has published its [scheme return checklist](#) for DB/hybrid schemes. As previously reported, there are no substantive changes to the scheme return this year. However, the checklist does contain some clarifications for schemes completing the contingent asset and deficit reduction contribution certificate sections of the return (due to issues identified with Exchange).

Purple Book 2019

The PPF has published the 2019 edition of the [Purple Book](#), which contains its assessment of the risk profile of UK defined benefit schemes. The data shows an improvement in the net funding position and aggregate funding ratios of schemes; it also notes a continued trend for de-risking assets, as schemes continue to move investment allocations away from equities to bonds. Schemes with 10,000+ members are the most likely to have a section 179 funding ratio of over 100%.

GMP indexation: BT appeal dismissed

The Court of Appeal has dismissed an appeal by BT plc in relation to a judicial review of the government's decision to extend full indexation of GMPs payable to certain members of public service pension schemes: [R \(on the application of BT plc\) v HMT](#).

Following the abolition of DB contracting-out and the introduction of the new state pension, the government decided to provide an additional element of indexation of GMPs for public sector workers to cover a gap that was created by changes to calculation methods when the single-tier state pension was introduced. Essentially, BT complained that the way in which this decision had been implemented would lead to significantly increased costs for BT (because it was obliged to 'mirror' this decision for certain members); it challenged the government's failure to adopt its suggested alternative mechanism. In 2018, the High Court dismissed BT's application for judicial review (you can read more about the background of the case in [WNTW](#), 3 December 2018).

BT appealed to the Court of Appeal on the grounds that there had been errors of both fact and law in the 2018 decision – the Court of Appeal considered that the court had been entitled to make those findings of fact (and therefore did not go on to consider the other grounds of appeal). The decision is

likely to be of limited relevance to other private sector occupational schemes, unless they are similarly affected by a mirroring obligation. However, other schemes may see some queries about GMP indexation following the decision. We acted for the trustee in this case.

Increases: High Court rejects employer claim

The High Court has rejected a claim by an employer that it had the power to reduce increases for pensions in payment below the default rate in the rules, and to set a different rate for the revaluation of deferred pensions: *Britvic plc v Britvic Pensions Ltd*.

The case centred on whether, under the scheme rules, the employer could unilaterally reduce the rate of increases for pensions in payment, and whether deferred pensions could be revalued at a different rate. The judge concluded, as a matter of interpretation, that the employer had the power to award increases above the default rate in the rules (but did not have the power to reduce increases below this rate), and that the revaluation rule was the same as the increases rule for this purpose.

PLSA AGM review

The Pensions and Lifetime Savings Association has published its [2019 AGM Review](#), highlighting continued high levels of shareholder dissent on executive remuneration, and increasing interest in ESG issues. The PLSA's voting guidelines for the 2020 AGM season will be published shortly.

New Bill to restrict distributions by public companies

A [Bill](#) has been introduced in Parliament to require public companies to receive prior written approval from both the Pensions Regulator and the trustees of any pension scheme for current or former employees before paying distributions. It also seeks to remove the PPF compensation cap. The Bill is a Private Member's Bill introduced in the House of Lords and is unlikely to become law (particularly in its current form); we will provide an update in due course if the Bill makes any significant progress.

Contact information

Helen Powell	020 3088 4827
PSL Counsel, London	helen.powell@allenovery.com
Ruth Emsden	020 3088 4507
PSL (Australian lawyer), London	ruth.emsden@allenovery.com

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