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## Trustee panel warns of risks to DB pension schemes

The DWP Trustee Panel, meeting in London on 24 March, welcomed the pragmatic approach taken by the Pensions Regulator in its statement to employers about the impact of the current economic situation on deficit recovery plans. However, the panel (including TUC nominees Pete Davis, Tony Deeley and Fiona Draper) warned pensions ministers Rosie Winterton and Lord (Bill) McKenzie that schemes and their sponsors still face problems because of the impact of international accounting regulations.

These regulations require firms to show pension scheme deficits as liabilities on their balance sheets. The deficits fluctuate in line with corporate bond yields that have no impact on the underlying long-term solvency of the fund. Even so, they may currently be so large as to affect the firm's credit rating, perhaps forcing banks and other lenders to call in loans despite the firm's cash flow position being adequate. The Panel asked the ministers whether they could offer any comfort should

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## Welcome to the Spring 2009 edition

Since the New Year edition, there has been little respite in the gloomy financial news. Many DB trustees will be watching their deficit with growing horror and, while trustees can in general afford to take a long-term view, the short-term impact on company balance sheets may cause real problems for many employers. Trustees with DC members, meanwhile, will be concerned about the likely impact on their members when annual statements are issued, showing smaller funds this year than last year, despite their contributions. Both DB and DC concerns were recently raised with ministers by the Trustee Panel and you can read a report on these discussions in this newsletter.

June will be a busy month for keen conference goers, with two key TUC conferences. The TUC Trustee Network Conference takes place at Congress House on Tuesday 30 June, and the Northern Pensions Conference – aimed at negotiators and researchers as well as trustees – takes place in Newcastle the previous weekend. Fliers for both are included with this newsletter, or you can find more information on [www.tuc.org.uk](http://www.tuc.org.uk)



# DB risks

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this position arise, since it would impact negatively on the firm, its employees, the pension scheme and, *in extremis*, the Pension Protection Fund, with no obvious benefit to anyone.

The Panel was also concerned at the possible reaction of those in DC schemes when they receive the next statement of their fund. While saving into a DC scheme has clear advantages for higher rate tax-payers, in the current economic circumstances it is not as clear cut for basic rate tax-payers. The panel wondered whether it was possible to offer temporary enhanced relief on contributions as an incentive to basic rate tax-payers not to opt out of schemes.

The panel registered two further concerns. Firstly they noted that only three months notice had been given of the implementation date for the reduction in statutory revaluation of deferred pensions, giving schemes little time to

implement the necessary changes to administration systems and scheme rules. The panel suggested that in future regulations should give at least six months' notice.

Secondly, the panel would welcome official guidance as to what would happen to indexation if RPI were to become negative. Presumably it would not be negative in the year deflation occurred but would there be an off-set in subsequent years when inflation had returned? Guidance from the Regulator would mean schemes would be less likely to need to incur the expense of consulting their lawyers.

The TUC appointees on the panel would always be pleased to hear from TUC trustees who would like them to raise issues with the minister. You can contact Tony, Pete and Fiona via [trusteenetwork@tuc.org.uk](mailto:trusteenetwork@tuc.org.uk), or [tuctrusteenetwork@fionadraper.co.uk](http://tuctrusteenetwork@fionadraper.co.uk)



## Special events for trustees

**The Committee for Workers' Capital** is holding two events for trade union pension fund trustees – a workshop for trustees in Amsterdam on Monday 29 June and a two-day international meeting in Australia on 9–10 July. Please see the CWC website [www.workerscapital.org](http://www.workerscapital.org) You need to pay for your own travel and accommodation costs. Contact Janet Williamson for an informal chat: [jwilliamson@tuc.org.uk](mailto:jwilliamson@tuc.org.uk), tel 020 7467 1305.



## Default retirement age – not the end of the road...

In a long awaited ruling the European Court of Justice has effectively upheld the legality of the UK legislation that enables an employer to enforce retirement at age 65. The TUC greeted the ECJ judgment with disappointment. General Secretary Brendan Barber said: "Age discrimination is still an issue in many workplaces. The ECJ judgment will leave the door open for businesses to ditch staff as soon as they hit 65, regardless of whether or not they are doing a good job and whether or not they want to stop work. The Government must now act to ensure that UK legislation allows people to work past their retirement age."

However, the judgment included some serious caveats which are prompting some commentators to speculate that the ruling actually marked the beginning of the end for the current UK arrangements.

The Employment Equality (Age) Regulations 2006 introduced a right for employees to ask to remain in employment beyond age 65. But from age 65 employees can be dismissed without any right to redundancy pay and, provided the employer has followed the correct dismissal procedure, without recourse to a tribunal.

Age Concern, who raised the legal challenge, maintained that the UK arrangements were in breach of the EU's Equal Treatment at Work Directive. Although the ECJ ruling is clearly a blow for the 260 claimants with cases pending, the disappointment may be tempered by the fact that the ECJ said that in order to demonstrate the legitimacy of the age 65 default retirement age (DRA) the Government must justify before the High Court that the DRA was directed towards "fulfilling a legitimate aim in employment or social policy" and referred to a requirement for a "high standard of proof".

Opinion is divided as to how difficult it will be for the Government to convince the High Court and legal experts are already debating the meaning of a "high standard of proof"! But perhaps the more interesting issue is how the Government can reconcile retaining a DRA while, at the same time, increasing the state pension age and encouraging people to work longer.

None of these issues look set to be resolved quickly. The High Court is not expected to reach a decision on the issue until 2010 and the Government is in any event committed to reviewing the law in 2011.

## Pensions Protection Fund

The PPF has recently published *The Trustee Good Practice Guide*, for trustees of schemes going through the PPF assessment period. The PPF say that “by following this guidance, trustees will give their members confidence that their scheme will complete assessment in a timely way – and provide certainty over their future benefits. While the guidance is designed to support trustees through what is a complex and demanding time, it also makes clear to trustees what we expect of them at all stages of the process to ensure that schemes complete assessment within two years where practical.”

Copies of the *Trustee Good Practice Guide* are available on the PPF website at [www.pensionprotectionfund.org.uk](http://www.pensionprotectionfund.org.uk) under the Trustee Guidance section.

Recently the 100th scheme transferred to the PPF, meaning that 31,191 people are now directly protected. A further 290 schemes are currently being assessed for PPF entry.

From 1 April annual compensation under the PPF will be capped at £31,936.32 for people aged 65, a 3.5 per cent increase from 2008/09. The cap for members below retirement age, at 90 per cent of the full rate, is now £28,742.68. Most PPF pensioners receive much less: the average is £4,000 p.a.

# The Pensions Regulator: good data is crucial

**By Bob Jackson, Themes Manager, the Pensions Regulator**

The Regulator has published final guidance on the importance of keeping good records, using tools to help trustees assess the quality of their member data. Trustees have a legal obligation to administer their schemes properly, and the maintenance of accurate data is crucial.

Our industry-wide consultation found the main problem areas include poor data and limited appreciation of the importance of good record-keeping. Poor data can lead to significant additional costs in a number of areas, such as during a buy-out or wind-up, more expensive administration, claims from members, and inaccurate actuarial valuations. These costs are ultimately borne by members, the employer, or both.

We have suggested some specific tests which providers and trustees can use to measure data and which we believe to be good practice. These include:

- testing for the presence of common information about every member of work-based pension schemes;
- identifying and measuring conditional information required to administer their particular scheme; and
- if necessary, developing a plan with their administrator to obtain missing information.

## The Pensions Regulator

Common data is applicable to all schemes, including details such as name, address, date of birth, NI number, dates of start of pensionable service and expected retirement. Conditional data is required to administer a pension scheme effectively. Specific items will vary from scheme to scheme, dependent on scheme design and structure, but could include salary and details of investments.

*‘the main problem areas include poor data’*

Our intention is to focus on educating and enabling those responsible for member record-keeping and those who administer pension arrangements, with the objective of improving the standard of record-keeping across the industry.

During 2009, the Regulator will work with administrators and trustees to promote the good practice, assess results of testing, and consider whether further steps are needed in particular problem areas.

You can view the final record-keeping guidance at:

[www.thepensionsregulator.gov.uk/pdf/RecordKeepingPDF.pdf](http://www.thepensionsregulator.gov.uk/pdf/RecordKeepingPDF.pdf)



# Regulatory roundup

A number of pieces of new legislation with implications for pension schemes took effect from 6 April 2009:

- One of the changes proposed as part of the deregulatory review has now come into effect: under the Pensions Act 2008 (Commencement No 2) Order 2009, **statutory revaluation** to accrued benefits arising from pensionable service on or after 6 April 2009 changes to 2.5 per cent or RPI if less (currently 5 per cent or RPI if less). Scheme rules may require more generous terms so, depending on the scheme's amendment power, employers/trustees need to have decided whether to reflect the cap reduction in scheme rules.
- Under The Pensions Regulator (Miscellaneous Amendment) Regulations 2009, the **notifiable events** regulations have been modified. It will no longer be necessary for trustees to report to the Regulator if there are two or more changes in key scheme posts (auditor and actuary). The list of events that the employer must notify has also been reduced, with the removal of the duty to notify TPR if there are two or more changes in key employer posts, or a change in credit rating.
- Employers who fail to comply with the **statutory consultation requirements** can now be fined by TPR, under The Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009.
- Regulations that allow trustees to convert **Guaranteed Minimum Pensions (GMPs)** into actuarially equivalent ordinary scheme pension have come into force (The Pensions Act 2007 (Commencement No 3) Order 2009 and The Occupational Pension Schemes (Contracting-out) (Amendment) Regulations 2009). GMPs that accrued between 1978 and 1997, were, broadly, the element of pension in a contracted-out scheme which ensured members would not be worse off than if they had been in SERPS (the State Earnings Related Pension Scheme, precursor of the State Second Pension (S2P)). Specific rules apply to GMPs, for example in respect of pensions

increases and transfer values. Trust deeds and rules for contracted-out schemes will therefore generally include a GMP Model Rules Appendix, overriding scheme rules, to ensure compliance with rules governing GMPs. Allowing trustees to convert GMPs into ordinary scheme pension is, in theory, a simplification measure, but issues arising from conversion – including the need to explain the changes to members – may well put off trustees from going down this route.

- The long-mooted change to S2P to become a flat rate scheme has started, with the introduction of a new **Upper Accruals Point**, (the maximum salary for S2P accrual and for contracted-out rebates), separate from the Upper Earnings Limit. This may have an impact on contracted out schemes with integration ("clawback") provisions. Schemes which are contracted in to S2P may also want to consider drawing members' attention to the changes, which will in time mean lower S2P benefits for higher earners. Meanwhile the sharp increase in the Upper

*'It will no longer be necessary for trustees to report to the Regulator if there are two or more changes in key scheme posts (auditor and actuary)'*

Earnings Limit, now at the same level as the 40 per cent tax threshold, is likely to see an increase in the number of employers looking to reduce their National Insurance bill by implementing salary sacrifice arrangements for employee pension contributions.

- Finally, this year's **Budget** included fewer pensions-related measures than usual. However, trustees will need to be aware of the proposed reduction in tax relief on pensions contributions for very high earners, and the linked "anti-forestalling" measures. More on this in the next issue.

# Responsible investment: news in brief

- A group of United Nations Principles of Responsible Investment signatories are collaborating in support of the proposed Free Choice at Work Act, which would improve labour rights in the USA, including freedom of association, non-discrimination on the basis of union membership, and the right to collective bargaining. Background information can be found on [www.americanrightsatwork.org](http://www.americanrightsatwork.org) and PRI signatories can go to the signatory-only pages of the PRI site to find out more about the collaboration.

"...companies that treat their workers as assets to be developed do better over the long term than companies that treat their workers as costs to be cut. Consumers, investors, and CEOs should take note."

*Robert B Reich, former US Secretary of Labour, professor of social and economic policy, Brandeis University*

- UKSIF has launched its 2009 Sustainable Pensions Corporate Pension Fund Survey 2009. The biennial survey is designed to help trustees to learn more about best practice in responsible investing by providing information and useful feedback. It has been sent to senior pension managers of companies in the FTSE4Good and Carbon Disclosure Leadership indexes. Results will be published in late spring. More information on [www.uksif.org](http://www.uksif.org)
- The Marathon Club has issued a guidance note



called "Behavioural Aspects of Investment Management: Lessons from the Credit Crunch" highlighting certain aspects of investment management, which trustees may find it helpful to consider when reviewing the performance of their investment managers and advisers. For example, are investment professionals looking at a wide enough range of sources when researching a company? More from [www.marathonclub.co.uk](http://www.marathonclub.co.uk).

- Leading US investors have added nine companies to a Climate Watch List, citing concerns that the firms are potentially undermining their long-term competitiveness. Investors filed shareholder resolutions with eight of the nine companies, and 49 other businesses, aimed at improving their attention to the financial risks and opportunities from

climate change. The list of investors, including some of the largest US public pension funds, as well as union and other institutional shareholders, who collectively manage more than \$1.9 trillion in assets, can be found at [www.ceres.org/resolutions](http://www.ceres.org/resolutions). The resolutions are among a record number of global warming resolutions filed this year. "Despite the unrelenting poor economic news, we know that taking care of our environment is also taking care of the world's economy," said Jack Ehnes, Chief Executive Officer of the California State Teachers' Retirement System (CalSTRS), the second largest US public pension fund. "We can't be distracted by short-term concerns at the expense of meaningful action to mitigate the impacts of climate change."

*'Are investment professionals looking at a wide enough range of sources?'*

- The Institutional Investors Group on Climate Change has published *A Changing Climate for Property Investment: a Trustee's Guide*. The guide explores the contribution of property to climate change and highlights for pension fund trustees the risks to property values and investment performance. The guide can be downloaded from [www.iigcc.org](http://www.iigcc.org).

# Review of disclosure rules

The Department for Work and Pensions (DWP) has invited comments on its proposed approach to revising the disclosure of information requirements. While some disclosure requirements would remain mandatory, for example changes in benefit entitlements, it is intended to remove prescription on other issues, such as the annual trustees report. The aim of its 'principles based' approach is to ensure

*'While simplifying the disclosure regulations may seem attractive, it could lead to more uncertainty for trustees and employers in deciding what and how they need to communicate with members.'*

that scheme members receive the necessary information while minimising the burden on schemes. If the proposed principles-based approach is adopted, the legislation would be built around a single general principle, along the lines of: 'Members should be given sufficient information that allows them to understand the benefits to which they will be entitled and any other relevant information that will enable each member to make decisions in

his or her best interests'. The DWP intends to publish draft regulations for consultation by the end of this year and introduce the new legislation with effect from 6 April 2010.

While simplifying the disclosure regulations may seem attractive, it could lead to more uncertainty for trustees and employers in deciding what and how they need to communicate with members. In this context, a recent Ombudsman case is interesting (*Mr Parr, determination no 23730/1*). Mr Parr had his employment terminated in April 2003 following a prolonged absence due to illness. He subsequently applied, as a deferred pensioner, for early payment of his pension on grounds of ill-health; the rules allowed for this, at trustee consent, but with an actuarial reduction. If instead he had applied successfully for ill health early retirement before he left service, no actuarial reduction would have applied. Mr Parr complained to the Pensions Ombudsman that his employer should have told him of his right to apply for an unreduced early retirement pension before his employment was terminated due to ill health, as he did not know the difference that being a deferred rather than an active member would have on his benefits. The Ombudsman found that, although he considered the employer and trustees had provided Mr Parr with 'appropriate explanatory literature outlining the pension benefits available to him in any particular

## Investors lack strategies?

A recently published Fair Pensions report shows that major UK pension funds still lack key strategies to manage risks arising from "non-financial" issues. The research covers the UK's 30 largest pension funds, which together have 4.86 million members and funds of £350 billion.

All funds that submitted information now have statements recognising the potential impact of environmental, social or corporate governance (ESG) issues on financial performance, although a third apparently do not apply these to their selection or reporting requirements for fund managers. Thirty-five per cent of the funds surveyed use UN Principles for Responsible Investment signatory status and 25 per cent use climate change competence as a criterion in fund manager selection.

Public transparency is disappointing: almost half of the funds surveyed do not disclose their largest investments, and two thirds do not disclose their voting record.

Catherine Howarth, Chief Executive of Fair Pensions, said, "Pension funds are now recognising that 'non-financial' issues can become financial issues, but many still need to match words with deeds if they are to be ready for major challenges associated with issues like climate change."

The report is available from [www.fairpensions.org.uk](http://www.fairpensions.org.uk) together with a "self-assessment" survey which trustees could use on their own schemes.

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# Review of disclosure rules

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circumstances', the employer should have gone further and informed him that he could apply for ill-health early retirement while he was still an active member of the scheme, because of its knowledge of his medical condition. The Ombudsman directed that the employer should consider whether it would have given consent to an unreduced ill-health early retirement pension. The Ombudsman's decision in this case appears to go further than required by the current leading decision, (*Sally v Southern Health & Social Service Board & Others*).

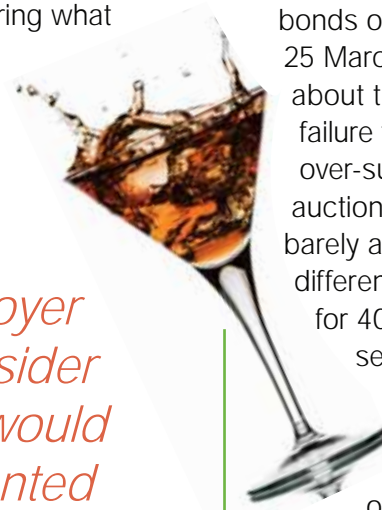
While the determination in the Parr case was against the employer,

trustees may well want to bear it in mind when considering what information should be provided to members in such circumstances.

*'...the employer should consider whether it would have consented to an unreduced ill-health early retirement pension'*

# Bond cocktail shaken?

The failure of the Government to secure sufficient bids for the bonds offered at an auction on 25 March prompted headlines about this being the first such failure for seven years. The over-subscription of the bond auction on 26 March received barely any comment. A key difference was that the first was for 40-year bonds and the second was for 13-year gilts. After the initial reports about the potential implications of the 'failed' auction, analysts are now referring to it as a blip prompted by particular circumstances. So perhaps the bond cocktail was stirred, not shaken.



**TUC**

# Weathering the economic storm:

safeguarding pensions and investments

TUC Member Trustee Network annual conference  
Tuesday 30 June 2009, Congress House, London WC1

To book places email [jmann@tuc.org.uk](mailto:jmann@tuc.org.uk) or go to the member trustees page at [www.tuc.org.uk](http://www.tuc.org.uk)



The **co-operative** asset management



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