

# Snapshot

April 2022

## Overview

- [Extension of notifiable events framework delayed](#)

The proposed extension of the notifiable events framework was expected to come into force on 6 April 2022, but this has not happened. This has been delayed, with some expecting the extension now to come into force in October 2022.

- [GMP equalisation updates](#)

HMRC have provided some clarification about the tax treatment and impact of GMP equalisation in respect of:

- Top up payments for past transfers-out;
- GMP conversion; and
- Interest payments on arrears for past underpayments.

The Pensions Administration Standards Association (**PASA**) has also issued some answers to FAQs on GMP equalisation.

- [A new era of Pension Regulator \(TPR\) powers?](#)

TPR recently issued a contribution notice (**CN**) in the Meghraj case for just over £3 million. This suggests an increased willingness on TPR's part to protect UK pension schemes regardless of their size.

- [Consultation on investment in illiquid assets](#)

The government has published a combined consultation on facilitating investment in illiquid assets by defined contribution pension schemes. The consultation pulls together a number of issues, some new and others arising from previous consultations.

## More information

### [Extension of notifiable events framework delayed](#)

In our [briefing on the Pension Schemes Act 2021](#), we discussed the proposals to extend the notifiable events framework in terms of:

- Corporate events that will need to be notified to TPR;
- The timings within which notification needs to be made; and
- The amount of information that will need to be provided. This will include communication with the trustees about the proposals and an explanation of steps taken to mitigate any adverse effects the proposals will have on the pension scheme.

It was expected that these changes would come into force on 6 April 2022. However, neither the consultation response nor the final regulations have been published. It therefore seems that this proposal has been delayed with some expecting that the extension to the framework will now not come in until October 2022. We will keep you updated with developments in this area.

### GMP equalisation updates

#### *HMRC provides some guidance on tax implications of past transfer-out top ups and conversion*

HMRC has published a [newsletter](#) relating to tax issues that arise as a result of correcting past transfer out payments for GMP equalisation and also for GMP conversion.

HMRC has confirmed that a transfer top-up payment is capable of meeting the conditions of a "recognised transfer" and therefore of being an authorised payment. Any top-up payment in respect of past transfers that is made as a lump sum rather than as a top-up transfer payment will need to satisfy the conditions for an authorised lump sum payment at the time payment is made (for example, a small lump sum payment). Where any lump sum is paid directly to a member to extinguish the right to a top-up transfer payment, tax will be due on 75% of the lump sum. If the lump sum is paid to someone following the member's death, the lump sum will be wholly taxable.

HMRC also mentions GMP conversion in its newsletter, although it acknowledges that work on the tax implications of GMP conversion is continuing and more is to follow. The newsletter does appear to confirm that conversion for deferred members is likely to impact their annual allowance on and from the tax year of conversion and may also result in the loss of fixed protection. There may also be lifetime allowance issues for pensioner members who are subject to conversion.

#### *Tax treatment of interest payments on arrears*

Pensioners who have been underpaid their benefits due to unequal GMPs may be receiving arrears of pensions due, with interest for late payment, as part of the equalisation exercise. There has been some confusion over the tax treatment of these interest payments (as distinct from the arrears payments themselves).

HMRC has now clarified the issue, as follows:

- The interest payment should be treated as an interest payment made in respect of a late payment of pension instalments; and
- The interest is likely to be "yearly interest" for tax purposes and therefore schemes should not be deducting tax at source.

Members should be advised when receiving interest payments that they need to account to HMRC for any tax due on these payments.

#### *PASA publishes FAQs in relation to GMP Equalisation*

On 28 March 2022, the Guaranteed Minimum Pension Equalisation Working Group (**GMPEWG**), which is operated by PASA, published a list of [frequently asked questions \(FAQs\)](#) in relation to the GMP Equalisation process.

The answers provided in the list of FAQs represent the collective view of the GMPEWG's GMP Equalisation Administration sub-group, which comprises representatives from a number of third-party administration providers, along with some in-house schemes and other advisers. The answers are designed to provide pragmatic guidance to assist administrators in implementing GMP equalisation solutions for their clients' pension schemes. Topics currently covered include (i) the PAYE tax considerations for the payment of arrears and interest, and (ii) practicalities which should be considered when equalising death benefits in relation to deceased members.

The list of FAQs will be updated and added to over time as GMP equalisation projects progress and different approaches and solutions emerge.

### [A new era of TPR powers?](#)

The Pensions Act 2021 widened the circumstances in which TPR can use its moral hazard powers (principally CNs and financial support directions) and granted TPR stronger powers to investigate and sanction wrongdoing. The potency of the new powers and the high-level guidance released led to uncertainty over how TPR would wield these new powers. TPR has always preferred to guide by example, however, and over time we are likely to see case reports published by TPR providing insight into what the new era will look like. One of these such cases is Meghraj Financial Services Limited (**MFSL**).

MFSL was sponsoring employer of a UK pension scheme - Meghraj Group Pension Scheme. MFSL was the sole legal owner of Meghraj Properties Limited (**MPL**) which owned shares in a joint venture company in India (**Indian JV**). MFSL entered liquidation in 2014, when the scheme's debt was estimated at £5.85 million.

In 2014, sale proceeds from Indian JV were paid directly into a nominee company, Paramount Properties Limited (**PPL**). This deviated from the previous course of business, whereby MPL received the monies and paid most of it to MFSL. However, an agreement was made in 2012 outlining that the Indian JV sale proceeds would go to PPL and that MFSL had no entitlement to the proceeds. TPR argued that this effectively deprived MFSL of the sale proceeds and put them out of reach of the pension scheme. It therefore met the "material detriment" test under TPR's moral hazard powers.

The Panel determined that the 2012 Agreement should not be regarded as legally-binding and a CN was issued for over £3 million (the sale proceeds from the Indian JV paid into PPL).

The case potentially evidences TPR's willingness to protect UK pension schemes regardless of their size. Although these are not high-profile prosecutions or penalties, the case does suggest that TPR is becoming more confident to pursue smaller matters. It will therefore be important for schemes of all sizes to take note of TPR's new powers and implement effective internal governance to avoid the scrutiny and sanctions of TPR. TPR has had a history of getting bogged down in large-scale cases prone to 'scorched earth' litigation - so targeting smaller schemes where behaviour has been inappropriate, securing a settlement and moving on, could be the new approach. The case also exemplifies TPR's growing willingness to move against corporate groups with overseas interests. The fact that TPR pursued the Indian JV shows how foreign protagonists are not an obstacle for TPR (consider also the Silentnight case). This trend seems likely to continue.

## Consultation on investment in illiquid assets

The government has published a combined consultation on facilitating investment in illiquid assets by defined contribution (**DC**) pension schemes. The consultation pulls together a number of issues, some new and others arising from previous consultations:

- In response to the November 2021 consultation on removing performance fees from the scope of the charge cap applying to default arrangements, the government intends to "take time to fully understand all the concerns raised, engage further, and to explore how these concerns might be addressed in the design of the policy". So no decisions have been made as yet.
- The government is consulting on proposals to amend the Statement of Investment Principles requirements to ensure that relevant DC schemes "disclose and explain" their policies on illiquid investment. In addition, DC schemes with over £100 million in total assets would be required to publicly "disclose and explain" the default asset class allocation in the annual Chair's Statement.
- An update is proposed in relation to stopping certain employer-related investment (**ERI**) restrictions applying to authorised Master Trusts with more than 500 participating employers. ERI restrictions were implemented before Master Trusts were widely used and the government considers that the current ERI regulations present certain barriers to Master Trusts expanding.
- A response to the DWP's call for evidence in July 2021 on the case for greater consolidation of the DC market. The government has concluded that no new regulatory requirements will be introduced with the sole purpose of consolidating the market in 2022. However, it will work closely with TPR to monitor the impact of the value for members assessment, which some schemes will need to start producing this year.

The consultation runs until 11 May 2022.

## Contacts



STEPHEN RICHARDS  
PARTNER, Pensions  
T: +44 20 7809 2350  
E: [Stephen.Richards@shlegal.com](mailto:Stephen.Richards@shlegal.com)



CHRIS EDWARDS-EARL  
SENIOR ASSOCIATE, Contentious Trusts & Pensions  
T: +44 20 7809 2113  
E: [Chris.Edwards-Earl@shlegal.com](mailto:Chris.Edwards-Earl@shlegal.com)

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