

Pensions and Employment: Pensions Bulletin

18 September 2017 / Issue 15

Legal and regulatory developments in pensions

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For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or [Bridget Murphy](#)

New Partner

We are delighted to welcome [Dan Schaffer](#) to the partnership of Slaughter and May on 18th September, 2017. Dan is a highly regarded pensions lawyer of many years standing. He was recently brought in by IBM to help mastermind the grounds for the successful appeal in the highly significant Court of Appeal decision of *IBM v Dalgleish*. For more about the latest position regarding those proceedings, please see item V below.

Forthcoming events

Our next Pensions Update Seminar will take place on Wednesday, 29th November, 2017, between 9.30am and 1.00pm.

We will be covering a broad range of topics, including:

- an update on recent tax developments,
- what schemes must do to prepare for the General Data Protection Regulation,
- the impact of the *Walker* decision on same sex spouses/civil partners, and
- recent case law (including the *IBM* ruling) on exercising employer and trustee discretions relating to pensions

Please save the date.

SLAUGHTER AND MAY

Further details and how to book will be circulated separately and shortly.

Watch List

The Watch List is a summary of some potentially important issues for pension schemes which we have identified and where time is running out (or has recently run out), with links to more detailed information. New or changed items are in **bold**.

No.	Topic	Deadline	Further information/action
1.	Severance payments and tapered annual allowance pitfall	From 6 th April, 2016	<p>Pensions Bulletin 16/06</p> <p>1.1 Since 6th April, 2016, the £40,000 annual allowance for high income individuals is reduced by way of a taper to a minimum of £10,000 for those with income of £210,000 or more.</p> <p>1.2 For the taper to apply, the individual must have UK taxable income in 2016/17 of:</p> <ul style="list-style-type: none"> ◆ £110,000 “threshold” income, and ◆ £150,000 “adjusted” income. <p>1.3 Any taxable element of a termination package counts towards both threshold and adjusted income. A taxable termination payment could therefore catapult an</p>

No.	Topic	Deadline	Further information/action
			<p>individual over the £150,000 limit, resulting in a tax charge for the member on pension provision already made.</p> <p>1.4 There may be scope for timing taxable termination payments to straddle tax years but care would be needed in view of anti-avoidance provisions. Termination procedures should be reviewed to build in a process to identify and manage this point.</p>
2.	Members who intend to apply for Fixed Protection 2016 (“FP 2016”) must have stopped accruing benefits (note that fixed protection may be lost on joining a registered life cover arrangement)	6 th April, 2016	Pensions Bulletin 15/16
3.	Abolition of DB contracting-out: Rule amendments needed	6 th April, 2016	<p>If your scheme was contracted-out on 6th April, 2016 and currently has active members accruing benefits (and who continued to accrue benefits after 5th April, 2016 in the scheme), then your scheme will, more likely than not, require a rule</p> <p>Note: Statutory power to</p>

No.	Topic	Deadline	Further information/action
	amend, retrospective to 6 th April, 2016, expired on 5 th April, 2017		amendment effective from 6 th April, 2016 to prevent the inadvertent addition of an additional underpin to the accrued GMPs of those active members. See further Pensions Bulletin 16/03 .
4.	Put in place register of persons with significant control (“PSC”) for trustee company where trustee is a corporate	6 th April, 2016 and ongoing requirement	Pensions Bulletin 16/03
5.	Ban on member-borne commissions in DC schemes used for auto-enrolment	5 th July, 2016 at the latest and ongoing requirement	Trustees must notify “service providers” if the scheme is being used as a “qualifying scheme” for auto-enrolment purposes and some or all of the benefits are money purchase. Pensions Bulletin 16/04 .
6.	Cyclical re-enrolment	Within 6 month window by reference to third anniversary of employer’s staging date	For example employers with a 2014 staging date must complete cyclical re-enrolment process between December 2016 and June 2017. Publication available to clients on request from usual pensions contact.
7.	Chair’s annual governance statement	Within 7 months of end of scheme year	For example, schemes with a 31 st March year end must submit statement by 31 st October, 2017. Client note dated June, 2015 available from Dawn Holmes .
8.	DC Code of Practice 13 on governance and administration takes effect	28 th July, 2016	Schemes offering money purchase benefits (including money purchase AVCs, insofar as the legislation applies) must familiarise themselves with the revised Code .

No.	Topic	Deadline	Further information/action
9.	Money purchase annual allowance, which applies to individuals who have flexibly accessed their money purchase pot on or after 6 th April, 2015, is expected to drop from £10,000 to £4,000 under forthcoming Finance Bill 2017	Retroactive effect from 6 th April, 2017	Member communications should include a warning note about this, highlighting the retroactive effect.
10.	GMP equalisation		
10.1	Part 8 action brought by female staff, trustee and Lloyds Trade Union	15 th May, 2017	We will continue to monitor developments in this litigation, which has implications for all schemes with GMPs accrued in the period 17 th May, 1990 to 5 th April, 1997. Trial window Between 1 st June, 2018 and 31 st October, 2018
10.2	DWP publishes consultation proposing methodology for equalising GMPs Government response published	28 th November, 2016 13 th March, 2017	Pensions Bulletin 16/19 Pensions Bulletin 17/7
11.	Civil partner/same sex spouse pensions: retroactivity pre-5 th		

No.	Topic	Deadline	Further information/action
		December, 2005	
11.1	CJEU decision in <i>Parris v. Trinity College, Dublin</i>	Decided on 24 th November, 2016	A ‘death bed marriage’ scheme rule did not indirectly discriminate on sexual orientation grounds. Pensions Bulletin 16/18
11.2	Supreme Court hearing dates in appeal in <i>Walker v. Innospec</i>	8 th and 9 th March, 2017 12 th July, 2017	To establish whether survivor benefits for civil partners will be retroactive to a date before the Civil Partnership Act 2004 came into force. Judgments issued (Pensions Bulletin 17/12) If necessary, affected schemes should correct the position for pensions already in payment, update the trust deed and rules and update member booklets and other member communications as necessary.
12.	EMIR - Derivatives: New requirements to exchange variation margin	1 st March, 2017	If investment manager uses over-the-counter derivatives, check investment manager has arranged for trustee to comply. Pensions Bulletin 17/01 Pensions Bulletin 17/05 Trustees entering into OTC derivatives must perform an independent legal review of the enforceability of their netting and collateral arrangements. Briefing note ; FCA statement on timing
13.	New 25% tax charge on certain transfers to QROPS	9 th March, 2017	Transfers to QROPS in execution of requests made before 9 th March, 2017 are not subject to the new tax charge. QROPS managers must give HMRC undertaking by 13 th

No.	Topic	Deadline	Further information/action
			April, 2017 to preserve QROPS status. Pensions Bulletin 17/05
14.	Pensions Advice Allowance introduction date	6 th April, 2017 3 rd January, 2018	Pensions Bulletin 17/04 New financial advice definition. Pensions Bulletin 17/06
15.	Gender pay gap information regulations in force	6 th April, 2017 4 th April, 2018	Assess impact of pension provision on requirement to publish information designed to highlight any gender pay gaps. See Pensions Bulletin 17/03 and Employment Bulletin 17/03 . Deadline for reporting above information.
16.	Pension Schemes Act 2017 receives Royal Assent ¹	27 th April, 2017	Existing master trusts have notification duty for triggering events on or after 20 th October 2016 Pensions Bulletin 17/09
17.	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force	26 th June, 2017	Pensions Bulletin 17/11 Further guidance awaited from HMRC.
18.	HMRC's existing practice on VAT and pension schemes ends (please see our item on this in	31 st December, 2017 (but may be extended - tbc)	Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover. Possible further extension may be granted by HMRC to

¹ Much of the Act is not in force yet, such as the prohibition on operating a master trust scheme unless authorised and,

No.	Topic	Deadline	Further information/action
	Pensions Bulletin 16/13)		the existing practice (Pensions Bulletin 17/13).
19.	Data protection: New Regulation: EU General Data Protection Regulation comes into force	25 th May, 2018	Pensions Bulletin 16/05 Employment Bulletin 16/15 As data controllers, trustees will need to ensure that compliance with the EU General Data Protection Regulation is achieved by this date.
20.	Further EMIR exemption extension for pension scheme arrangements Additional 3 year clearing extension proposed	16 th August, 2018	Pensions Bulletin 17/01 Pensions Bulletin 17/10
21.	IORP II ² transposition deadline	12 th January, 2019	Pensions Bulletin 16/11
22.	Brexit	By 29 th March, 2019, unless extended	UK leaves EU from effective date of withdrawal agreement or, failing that, 2 years after giving Article 50 notice unless: (a) European Council and UK unanimously decide to extend period, or (b) UK withdraws, if able to do so, its Article 50 notice before 29 th March, 2019.

consequently, provisions on the authorisation criteria and ongoing supervision.

New law

I. Gender pay gap and pensions

1. Our [Pensions Bulletin 17/03](#) included an item on the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.
2. The regulations require employers to publish annually information designed to highlight any gender pay gaps in relation to bonuses and ordinary pay.
3. As previously explained, it would appear that the term 'ordinary pay' in the legislation is not broad enough to include pension scheme employer contributions.
4. However, it could be argued that cash paid to an individual in lieu of a pension contribution (for example, where the individual needs to avoid pension accrual to preserve his lifetime allowance protection) may fall within 'ordinary pay'. In that event, the payment would need to be included in the calculations for establishing rates of pay.
5. By way of reminder, the deadline for reporting gender pay gap information is 4th April, 2018.

² Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision

II. PPF bridging pension recognition - DWP consultation

1. The DWP has, on 31st August, 2017, issued a [consultation](#) on draft PPF regulations to take account of bridging pensions, by smoothing the amount of PPF compensation over the individual's lifetime.
2. Recognition of a member's bridging pension would only apply to members whose scheme entered a PPF assessment period on or after the regulations come into force. The draft regulations anticipate a 'coming into force' date of 15th January, 2018.
3. The closing date for responses is 1st October, 2017.
4. The draft regulations would deal with the anomaly of pensioners receiving a bridging pension receiving PPF compensation at that, higher, rate for life. This anomaly arises because PPF compensation payments do not take account of any scheduled changes to the member's pension entitlement after the date that the pension scheme enters a PPF assessment period.
5. In that event, the member could, potentially, receive more in PPF compensation than they would have under the scheme rules.
6. The proposal put forward as the Government's preferred option would be

to smooth the amount of PPF compensation over the member's lifetime.

7. During the assessment period, trustees would be required, using actuarial factors provided by the PPF, to smooth bridging pensions over the affected members' assumed lifetime. Any compensation payable to survivors would be based on the smoothed compensation the late member was receiving.
8. Alternatively, the bridging pension's existence could be recognised by reflecting the position that would have applied under the scheme rules.
9. The DWP notes, however, that such an approach would be more complex to implement than smoothing. The consultation paper also acknowledges that PPF IT systems are not currently programmed to calculate changes in compensation rates.
10. The change could apply to deferred members but only in the rare instance where the default option under their scheme is for a bridging pension to be paid.
11. The consultation paper also seeks views on whether PPF compensation should take account of GMP step-up increases. Such increases are applied to the member's scheme pension when the GMP comes into payment if the pension would

not otherwise meet the requirements set out in legislation governing GMPs.

12. The Government does not plan to introduce any changes regarding GMP step-ups at this stage, however, "given the complexity involved" and uncertainty about the number of individuals who may be affected.

III. Corporate governance - Government response

1. The Government has [announced](#), on 29th August, 2017, the publication of its [response](#) to the Green Paper consultation on corporate governance.
2. The Government notes that concerns have been raised about how well UK companies are taking account of the views of key stakeholders, including employees, workers and pension beneficiaries.
3. A number of measures are to be introduced, including:
 - 3.1 secondary legislation requiring listed companies to report annually on how the CEO's remuneration compares with their company's average UK employee pay;
 - 3.2 an invitation to the Investment Association to implement its proposal for a public register of listed companies encountering

- shareholder opposition to pay awards, expressed through a shareholder vote of 20% or more;
- 3.3 an invitation to the FRC to consult on a Governance Code provision requiring ‘premium listed companies’ to adopt certain employee engagement mechanisms on a comply or explain basis;
- 3.4 secondary legislation requiring all companies ‘of a significant size’ (private as well as public, with over 2,000 employees) to explain how their directors comply with Section 172 of the Companies Act 2006;
- Note:** Section 172 requires a director to have regard, “amongst other matters”, to the interests of the company’s employees when acting in a way which he considers would be most likely to promote the success of the company for the benefit of its members as a whole.
- 3.5 an invitation to the GC100 group of the largest listed companies to publish new advice and guidance on the practical interpretation of the director duties contained in Section 172 of the Companies Act 2006;

- 3.6 an invitation to the FRC to work with various industry bodies to develop a set of voluntary corporate governance principles for large private companies; and
- 3.7 secondary legislation requiring companies of a significant size to disclose their corporate governance arrangements in their Directors’ Report and on their website.
4. The reforms are currently intended to come into effect by June 2018, for company reporting years starting on or after that date.
5. The Government intends to lay draft secondary legislation before Parliament before March 2018, with a consultation, ‘where necessary’ on the detail of the secondary legislation.
6. The FRC intends to consult on amendments to the Corporate Governance Code ‘in the late Autumn’.
7. Work on voluntary corporate governance principles for large private companies is to start ‘in the Autumn’.

IV. Pension scams consultation response

1. The DWP and HM Treasury pension scams consultation [response](#) was published on 21st August, 2017.

2. To read about the consultation, please see [Pensions Bulletin 16/19](#).

A. Statutory transfer restriction

1. The Government plans to go ahead with its proposal to restrict the statutory right to transfer to situations where:
- 1.1 the receiving scheme is a personal pension scheme operated by an FCA authorised firm or entity; or
- 1.2 a genuine employment link to the receiving occupational pension scheme can be demonstrated, with evidence from the member of regular earnings from that employment; or
- 1.3 the receiving occupational pension scheme is an authorised master trust.
2. Given the reference above to authorised master trusts, statutory transfers will not be restricted until the authorisation regime for master trusts is rolled out, which is expected to take place fully ‘in 2019’.

3. The Government plans to engage with industry and other stakeholders on how it should:

- 3.1 implement the employment link requirement; and
- 3.2 add legitimate transfers to QROPS to the criteria for a statutory right to transfer.

4. As regards non-statutory transfers, the Government still expects trustees to make all reasonable efforts to agree a transfer request if the receiving scheme does not appear to be part of a scam.
5. The Government notes that not all scheme rules provide for non-statutory transfers and it intends to consider whether there is a need to provide trustees with a power to amend their rules to allow such transfers.
6. It will also consider whether legislation should underline the need for trustees to undertake due diligence before making a non-statutory transfer.

Comment (1): Please see also item VIII below regarding the Pensions Ombudsman’s finding of maladministration where a

member was not provided with a pension liberation warning.

Comment (2): If a receiving scheme is unable to provide the transferring scheme with a good discharge, the member’s rights will remain under the transferring scheme and it should be assumed that the employer will remain liable to meet the cost of providing those benefits again.

7. The response document concludes that the Government will not pursue its suggestion in the consultation paper that, as an alternative to blocking a transfer, schemes could obtain a discharge letter, accompanied by a 14-day cooling off period, limiting the member’s recourse to the ceding scheme in the event of a scam.

B. Scheme registration by active companies

1. The Government intends to implement its proposal that only active companies should be able to apply for a pension scheme to be registered with HMRC.
2. The response document refers to registering schemes with a dormant sponsoring employer and states that HMRC will be given discretion to

allow the registration. This discretion is to apply to HMRC’s ability to de-register schemes that are already registered, as well as to applications to register new schemes.

Comment: As outlined in [Pensions Bulletin 16/19](#), the proposed change shows a lack of understanding of the registration process, which involves the ‘scheme administrator’, usually a trustee company which is dormant for Companies Act 2006 purposes, making the registration application.

3. The response document also contemplates HMRC carrying out an additional check as part of the registration application process to establish whether the sponsoring employer consents to its role, “and a declaration by the person setting up the pension scheme that this consent has been received”.
4. In the absence of such consent the registration application could be rejected or HMRC could de-register “an existing pension scheme if they find that it has been registered without the consent of the sponsoring employer”.
5. The Government plans to legislate for this in the next 2017 Finance Bill.

C. Cold calling ban

1. The Government will proceed with its proposal to legislate for a ban on pensions cold calling “when Parliamentary time allows”.
2. The ban will cover all electronic communications about pensions, not just phone interactions.
3. The ban will not apply to situations where the consumer has expressly requested information from a firm or where an existing client relationship exists.
4. The Information Commissioner’s Office will enforce the ban. Its enforcement powers currently include the power to issue monetary penalties of up to £500,000.

Cases

V. IBM v Dalgleish - latest position

1. Our [Pensions Bulletin 17/13](#) included coverage of the Court of Appeal ruling on

3rd August, 2017 in the case of *IBM v Dalgleish*.

2. The court ruled that changes introduced by the employer in respect of its pension provision did not amount to breaches of:
 - 2.1 the contractual duty of mutual trust and confidence implied under an employment contract; or
 - 2.2 the duty of good faith formulated in the Imperial Tobacco case.
3. The changes involved excluding employees from DB future service accrual, ending the long-standing policy of allowing early retirement on favourable terms and making future pay rises non-pensionable.
4. Please click [here](#) to see our briefing note on this case.
5. We understand that the members of the IBM plans did not seek permission from the Court of Appeal within the time period do so - to appeal the decision to the Supreme Court.
6. Although the changes made by IBM to its UK pension plans will stand, IBM may face a damages claim, brought by

individuals or possibly through a class action, for not complying with the Pension Consultation Regulations³ in connection with those changes. It is not yet clear how this will develop.

7. This is because the court held that IBM’s failure to comply with the statutory requirements for consultations led to a breach of the mutual trust and confidence duty by the employer.

VI. Warning notice determines Upper Tribunal’s jurisdiction; fixed penalty only a starting point

1. The Upper Tribunal (Tax and Chancery Chamber) has decided, on 1st August, 2017, to impose a £300 flat rate penalty for the trustee’s failure to notify the Pensions Regulator of the scheme’s wind-up. The Upper Tribunal’s jurisdiction linked back to the regulatory action specified in the warning notice.
2. Although the determination notice referred to a failure to submit a scheme return, the warning notice identified several alternative breaches. One of those alternative breaches was failure to notify the Regulator that the scheme had wound up.

³ The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349)

A. Facts

1. The All Metal Services Ltd pension scheme wound up in June, 2015.
2. Trustees of registrable schemes are required, under Section 62 of the Pensions Act 2004, to notify the Regulator as soon as reasonably practicable of, amongst other things, the winding up of the scheme.
3. Failure to do so could result in a penalty under Section 10 of the Pensions Act 1995, the maximum amount under which is £5,000 in the case of an individual and £50,000 in any other case.
4. A warning notice was issued to the trustee in January, 2017. The warning notice listed a number of alternative grounds upon which a determination notice might be issued, none of which referred to failure to submit a scheme return.
5. One of the alternative grounds in the warning notice was that the Regulator had not been notified that the scheme had been wound up.
6. No representations were received on the warning notice and a determination notice was issued in February, 2017. The determination notice stated that a civil penalty notice for £300 would be issued for failure to submit a scheme return.

7. The trustee argued that it was unaware of the need to file a scheme return until it received the determination notice, asserting that it had not received any previous communications regarding the matter. The Regulator asserted that it had sent a scheme return notice in October, 2016, a subsequent reminder and a notification of failure to file the return.
8. The trustee applied for the matter to be referred to the Upper Tribunal.

B. Decision

1. The fact that the scheme wound up in June, 2015 meant that no scheme return was due and the scheme return notice of October, 2016 was not valid.
2. The trustee had not notified the Regulator about the scheme wind up as soon as reasonably practicable afterwards.
3. The Upper Tribunal's jurisdiction linked back to the regulatory action specified in the warning notice (following *Michel Van De Wiele NV* and *Trustees of the Lehman Brothers Pension Scheme*).
4. The Upper Tribunal concluded that it was appropriate to impose a penalty. It then considered what the

appropriate amount of the penalty should be.

5. It was not an unreasonable starting position for the Regulator to impose a flat rate penalty of £300 in its warning notices concerning defaults under Sections 62 and 64 of the Pensions Act 2004 (the latter provision requires trustees of registrable schemes to submit a scheme return).
6. The Determinations Panel could then consider whether the circumstances justify a different level of penalty, having received representations.
7. The trustee did not make any representations about the amount of the penalty. The Upper Tribunal therefore saw no reason to depart from the Regulator's £300 penalty starting point.

Comment (1): This is the first occasion on which a reference of this nature has been made to the Upper Tribunal.

Comment (2): The Upper Tribunal noted that pensions legislation does not provide the Regulator with power to impose fixed penalties. The Upper Tribunal's approach that a £300 penalty could be viewed as the starting position, to be assessed in the circumstances of the case, may have an impact upon the Regulator's approach to setting penalties.

Comment (3): This is a further sign of the Pensions Regulator taking a more vigorous approach when exercising its powers, following criticism directed at the Regulator by the Work and Pensions Select Committee in its report on defined benefit schemes issued in December, 2016 (please see [Pensions Bulletin 17/01](#)).

All Metal Services Limited v The Pensions Regulator

VII. LTA enhanced protection application unreasonably delayed

The First Tier Tribunal (Tax Chamber) has ruled, on 31st July, 2017, that a taxpayer had a reasonable excuse for not submitting his notification for enhanced protection to HMRC by the 5th April, 2009 statutory deadline. However, he did not give the notification without unreasonable delay after the reasonable excuse ceased.

A. Facts

1. To reduce the impact that the lifetime allowance charge would have on some members, the Finance Act 2004 introduced a range of protections that the individual could seek to make use of.
2. Regulations⁴ concerning enhanced protection required individuals to

cease accrual before 6th April, 2006 and notify HMRC of their intention to obtain that protection by 5th April, 2009.

3. Those regulations also allowed late notification if:
 - 3.1 the individual had a reasonable excuse for not notifying HMRC by the deadline; and
 - 3.2 he gave the notification without unreasonable delay after the reasonable excuse ceased.
4. Mr Twaite took ill health early retirement in 2001 as a result of heart failure.
5. His pension advisers did not value his pension correctly in 2006 and consequently wrongly advised him that he was not eligible for lifetime allowance protection.
6. Mr Twaite pointed out that the calculation was wrong and was told by his pension adviser that the figures would be revised and that he would be contacted if the advice

about lifetime allowance protection changed.

7. Mr Twaite was not contacted about the point until March 2014, when he was told that he did need to obtain enhanced protection. The compliance officer at the pension advisory company emailed Mr Twaite seeking further information in June 2014, to which a response was sent 2 days later.
8. Following several chasing calls by Mr Twaite, a letter was sent to him by the compliance officer on 15th December, 2014 confirming the correct value of his benefits but not suggesting any follow-up action.
9. This resulted in further chasing by Mr Twaite until the enhanced protection notification was submitted by him to HMRC on 24th February, 2015.

B. Decision

1. The fact that a reasonable taxpayer might have acted in a different way does not itself mean that it was unreasonable to adopt a different course.
2. A 3rd party's defaults can constitute a reasonable excuse if the reliance

⁴ Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006

placed upon that 3rd party was reasonable.

3. Mr Twaite did have a reasonable excuse for failing to apply for enhanced protection by 5th April, 2009. It was reasonable to rely on specialist advice and to think that, in highlighting the inaccurate figures, he had done all he needed to do. He had confidence in his adviser and his health meant it was reasonable for him to concentrate on matters other than his pension.
4. However, there was an unreasonable delay after the reasonable excuse ceased, which the Tribunal found to be in March, 2014.
5. An adviser's delay could be attributable to the taxpayer when examining the length of any delay.
6. The emails of June, 2014 marked a turning point. Mr Twaite had the same capacity and reason to insist upon a late notification to HMRC being made soon after June, 2014 as he did in December, 2014. In that event, assuming a 2-month timeframe, the notification would have been made 5 months earlier than it was actually made.

Twaite v The Commissioners for HMRC

VIII. Pensions liberation - failure to warn was maladministration - PO

The Pensions Ombudsman has ruled that there was maladministration on the part of the London Pension Fund Authority and Newham Council (acting jointly and referred to below as "LPFA") in not providing the complainant with a pension liberation warning. They were not responsible for later losses experienced by the him, however.

A. Facts

1. Mr R was a member of the Local Government Pension Scheme. He sought early payment of his pension on ill-health and compassionate grounds in 2010. This was declined in 2011 because he was under 55 years of age and did not meet the criteria for payment under that age. A further request was made by Mr R in 2013 and this request was declined once more
2. On 14th February, 2013 the Pensions Regulator issued a press release highlighting the dangers of transferring to a pension liberation scheme. Some transferring members were provided with pension liberation warnings by the LPFA but the formal warnings process was not in place until after Mr R's transfer and he was not identified as being at risk of pension liberation.

3. On 26th February, 2013, Mr R requested a transfer value quote which was provided that day. He signed a transfer request on 28th February, 2013 and the transfer was made in April, 2013.
4. The ruling notes that it appears that Mr R has lost all of his pension as a result of the transfer to the Gresham Pension Scheme.
5. The LPFA acknowledged that failure to flag Mr R's transfer as possible pension liberation was maladministration but it argued that Mr R would not have done anything differently if more had been done by the LPFA.

B. Decision

1. Mr R was acting hurriedly and exhibiting high risk behaviour by seeking to transfer guaranteed pension benefits in exchange for an uncertain investment based pension alternative. It was more likely than not that Mr R would have gone ahead with the transfer had a pension liberation warning been provided to him.
2. The warnings sent out by the LPFA to other members were not so strongly worded to be considered alarming. The Ombudsman noted that pension liberation warnings have not put a

stop to people transferring their benefits.

3. The Ombudsman considered that LPFA's offer of £1,000 for its maladministration in not providing Mr R with a pension liberation warning was appropriate.
4. The LPFA was not responsible for Mr R's later losses, however.

Comment: The DWP and HM Treasury pension scams consultation [response](#), published on 21st August, 2017, announces that the Government plans to proceed with its proposal to restrict the statutory right to transfer to a limited range of situations, in a bid to reduce the risk of pension liberation fraud. This change is not expected to take place until 2019, however. Please see the internal weekly pensions update of 25th August, 2017.

[PO-10365](#)

Points in practice

IX. Box Clever FSDs - litigation latest position

1. The Pensions Regulator issued a [press release](#), on 18th August, 2017, announcing that a hearing in connection with the Box Clever dispute will take place in the Upper Tribunal in January, 2018.
2. The press release states that the Court of Appeal has, 'at the end of July', refused

permission for ITV to appeal against a 2016 Upper Tribunal ruling made in the Pensions Regulator's favour.

3. That Upper Tribunal ruling allowed the Regulator and the scheme trustee to advance new arguments without formal permission, in connection with Financial Support Directions issued in respect of the Box Clever Pension Scheme to several companies, including Granada and ITV.
4. To read about the background to the Box Clever litigation and the Upper Tribunal decision published on 8th November, 2016, please see [Pensions Bulletin 16/18](#).

X. BHS - Regulator to pursue Dominic Chappell

1. The Pensions Regulator has issued a [press release](#), dated 22nd August, 2017, announcing that Dominic Chappell is to be prosecuted by the Regulator for failing to reveal information regarding the sale of BHS.
2. Mr Chappell is described in the press release as the director and majority shareholder of Retail Acquisitions Ltd at the time that that company purchased BHS.
3. He is being prosecuted for failure to comply with three notices requiring information. The notices were issued under Section 72 of the Pensions Act 2004 on 26th April, 2016, 13th May, 2016 and 20th February, 2017.

4. Mr Chappell has been summonsed to appear at Brighton Magistrates' Court on 20th September, 2017 to face 3 charges of neglecting or refusing to provide information and documents, without a reasonable excuse, when required to do so under section 72 of the Pensions Act 2004, contrary to section 77(1) of that Act.

Comment: To read about the Regulator's BHS regulatory intervention report, published on 27th June, 2017, please see [Pensions Bulletin 17/12](#).

If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact [Jonathan Fenn](#) or your usual Slaughter and May adviser.

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