
# A busy time for Defined Benefit pension schemes (and the employers too)

**By Dónall Breen & Sarah Miller** - 30 November 2018

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The last few weeks have seen a flurry of activity in the Defined Benefit (DB) pension scheme sphere. We take a look at what this means for DB schemes and the employers who are tied up with them.

Previously, we looked at how employers using master trusts were bracing for turbulent times ahead. However, in the DB world there has been much needed (albiet not particularly welcome) clarity thanks to a ground-breaking ruling in the High Court in which beneficiaries won the entitlement to sex equalised guaranteed minimum pensions (GMPs). However, clarity doesn't come cheap. The ruling has confirmed that millions of pounds in backdated pensions will need to be paid to members of defined benefit schemes who contracted out of the additional state pension on a final salary basis between 1990 and 1997. Providing these additional benefits will come at a large administration cost. However the employer won the right to insist on the lowest cost solution, with in many cases a 6 year limit on arrears, and a low rate of interest.

For employers, they should be well aware of this GMP liability, as pension trustees have known about these issues for years. Whilst some have contingency planning in place, many schemes have not made an explicit funding allowance because of the uncertainty about what was needed. However, this ruling has confirmed that planning and saving is no longer a tenable course of action. If it is confirmed that there will be no appeal, DB schemes will need to undertake considerable amounts of work to start making their way through what liabilities are owed to whom. The true cost of GMP equalisation is yet to be known.

Another case that caused ripples in the DB world involved the interpretation of Barnardo's scheme rules. An issue common to many schemes (including the ongoing case of the British Airways pension scheme) is whether benefit increases should be in line with the commonly used Consumer Prices Index (CPI) or the more generous Retail Prices Index (RPI). Many scheme rules were drafted when RPI was the only show in town, and as a result this continues to dictate how benefits are calculated today where trustees are unwilling or unable to amend the rules of their scheme to adopt CPI. This case confirmed that, for the Barnardo's scheme, as drafted, the trustees did not have the discretion under the rules to change from RPI to CPI. The principal employer had proposed that the trustees substitute CPI as the relevant index. Whether the trustees could do so depended on the interpretation of the rules which broadly required a replacement of RPI to be adopted by the trustees. The Supreme Court decided that this required a two-stage process where RPI is replaced by an official body responsible for its publication and only then could the trustees adopt this replacement. Many employers will be disappointed with this judgement which will see scheme liabilities continue to grow when most are already in significant deficit. Although this case very much turns on its own facts, and in particular each scheme has its own specific drafting, it reinforces the point that trustees do not have a broader discretion to change from RPI to CPI and the scheme rules remain the core interpretive mechanism.

To top off this busy period, The Pension Regulator (TPR) has unveiled a new strategy (and logo to boot) that promises a tougher approach to pension regulation which will involve cracking down on sponsoring employers who it perceives to not be taking their duties toward their pension schemes seriously. Although DB schemes will be familiar TPR's eagerness to make its presence felt, TPR's commitment to this approach in its corporate plan for 2018 - 2021 shows that this is unlikely to change any time soon. Employers can expect that their compliance with automatic enrolment requirements, involvement with valuations and contributions and any suspected avoidance will continue to be scrutinised by TPR with further guidance and regulation to increasingly formalise the process.



 