



“Oh, I do like to be beside the seaside.” Our summer Hot Topics has a nostalgic seaside theme as we paddle through the latest pensions issues and dip our toes into the implications. Hold on to your Frisbee; here’s our top 10 for your agenda!



1. Scared of the Ghost Train – Cybersecurity Guidance

The threat of cyberattack is very real and combatting it can be ghoulishly difficult (see our [blog](#)). The Pensions Regulator (TPR) has published guidance for pensions trustees setting out good practice in addressing cyber risk and building cyber resilience. Trustees should understand and manage the risk, develop an awareness of the scheme’s “cyber footprint” (i.e. the digital presence of all parties involved in the plan) and maintain an incident response plan. Cyber risk is an internal control and should appear on the pension plan’s risk register. Trustees may be better placed to deal with this on the back of recent GDPR compliance activity.



2. Plain Sailing or Choppy Waters – The White Paper

The White Paper promises increased powers for TPR, including criminal sanctions for “pirate” directors. Consultation is planned during 2018 and into 2019 on strengthening the clearance regime and tightening up aspects of scheme funding. Could this make the scheme-specific funding regime less scheme specific? Towards the end of 2018, TPR will consult on proposals for a legislative and authorisation framework for defined benefit commercial consolidators under which employers may be able to sever links (for a price). Will it be plain sailing or choppy waters? Our (R)evolution [newsletter](#) contains more comment.



3. Like Climbing Blackpool Tower – Consolidators

In the private sector, trustees of defined contribution master trusts have six months from 1 October 2018 to submit their application to TPR and should not underestimate the scale of work. TPR’s illuminating draft code of practice addresses what evidence it is likely to find satisfactory when assessing a master trust for authorisation. In the public sector, Local Government Pension Scheme funds in England and Wales are moving to the implementation phase of their £200 billion+ asset pooling programme. Such significant asset transfers will require specialist transition management, as well as appropriate governance and reporting.



4. A Round of Crazy Golf – GDPR

Employers and trustees will be relieved that “GDPR Day” (25 May 2018) has passed. Trustees are encouraged not to see compliance as a one-off exercise, but to view it as part of their risk management process, ensuring that GDPR requirements are considered in particular when communicating with members and entering into contracts with service providers. Where trustees are not yet fully compliant with the GDPR, they should continue to prioritise their remaining steps towards compliance having regard to the Information Commissioner’s Office’s stated initial focus on valid justifications for processing and transparency.



5. As Messy as Candyfloss – Pension Overpayments

The *Burgess v. BIC* judgment is essential summer holiday reading for trustees who are seeking to recover pension overpayments. The judge considered equitable recoupment (i.e. a reduction in future payments to reflect past overpayments) which is not subject to a six year limitation period. However, if the member disputes the amount, the set-off cannot be exercised without a court order; a determination by The Pensions Ombudsman is not sufficient. Trustees considering this course of action should consider costs, the possibility that individual members may put forward a defence, and seek legal advice.



6. A Bit of Sea Air Respite – Anti-money Laundering

Pension trustees might be forgiven for relaxing in their deck chairs after HMRC's recent announcement that it no longer expects trustees of registered pension plans to register with its Trust Registration Service. Those that have already registered need take no further action, although it will be possible to de-register once that functionality becomes available. However, the fresh sea air might provide brief respite for pension trustees, as the EU's fifth money laundering directive could introduce potentially more reporting requirements if/when it is transposed into UK laws. See our [blog](#) for more detail.



7. A Stick of Brighton Rock – TPR's Annual Funding Statement

TPR's annual funding [statement](#) for 2018 is aimed at defined benefit plans with effective valuation dates between 22 September 2017 and 21 September 2018 and those pension plans undergoing changes that require a review of funding and risk strategies. The statement highlights areas of risk, including increased transfer activity and Brexit concerns. TPR "a-piers" appears particularly concerned about "the growing disparity between dividend growth and stable deficit reduction payment" and expects trustees to "negotiate robustly with the employer to secure a fair deal for the pension scheme".



8. Surfing the Crest of the Wave – Professional Trustee Standards

We are awaiting the outcome of consultation on proposed standards for professional trustees. The draft standards focus on trustee duties generally rather than diving into a higher standard for professional trustees. This could be because trustee duties are already demanding, regardless of the capacity in which a trustee is acting. The finalised standards will sit alongside TPR's definition of "professional trustee" and its policy of imposing higher fines for professional trustees. Those trustees who are unexpectedly caught by the definition of "professional trustee" will not be able to take cover under the sunshade.



9. Building a Big Sandcastle – The Pensions Ombudsman

The dispute resolution function of The Pensions Advisory Service has packed up its bucket and spade and has moved to The Pensions Ombudsman ahead of the planned introduction of the Single Financial Guidance Body. This is intended to simplify the position for complainants. The disclosure of information regulations have not yet been updated to reflect the current position, but trustees should consider updating member booklets/websites and Internal Dispute Resolution Procedures, to reflect reality. The Pensions Ombudsman's office has now moved to Canary Wharf.



10. Bobbing on the Horizon – Upcoming Developments

There are several developments bobbing up and down on the horizon. Regulations are due imminently to clamp down on pensions cold calling. Meanwhile, indexation and revaluation cases continue to test the fortune tellers. Decisions are expected shortly in the British Airways case, which was heard in the Court of Appeal in May, and in the Barnardos case, due to be heard in the Supreme Court mid-June. Finally, the Lloyds GMP equalisation challenge is scheduled to be heard in the High Court this summer.

Contacts

Kirsty Bartlett

Partner, London
T +44 20 7655 0298
E kirsty.bartlett@squirepb.com

Judith Donnelly

Partner, London
T +44 20 7655 1115
E judith.donnelly@squirepb.com

Matthew Giles

Partner, Birmingham
T +44 121 222 3296
E matthew.giles@squirepb.com

Elizabeth Graham

Partner, Leeds
T +44 113 284 7494
E elizabeth.graham@squirepb.com

David Griffiths

Partner, Manchester
T +44 161 830 5359
E david.griffiths@squirepb.com

Wendy Hunter

Partner, London
T +44 20 7655 1119
E wendy.hunter@squirepb.com

Catherine McKenna

Partner, Leeds
T +44 113 284 7045
E catherine.mckenna@squirepb.com

Helen Miles

Partner, Birmingham
T +44 121 222 3138
E helen.miles@squirepb.com

Clifford Sims

Partner, London
T +44 20 7655 1193
E clifford.sims@squirepb.com

Philip Sutton

Partner, Birmingham
T +44 121 222 3541
E philip.sutton@squirepb.com

Follow us on Twitter: @SPB_Global