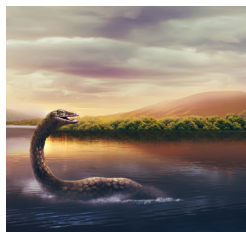


In our Autumn HotTopics, we invite trustees and sponsoring employers of pension schemes to join us on our alternative tour of the UK. We take in the history, myths and legends associated with some of our fair isles, as well as highlighting current pensions issues for your agenda.



### 1. Sherwood Forest – Robin Hood to the Rescue on Pension Scams

In a [determination](#) shot with his bow and arrow, The Pensions Ombudsman (TPO) highlighted the importance of following good practice and observing The Pensions Regulator's (TPR's) expectations when carrying out transfer requests. TPO determined that a member should be reinstated into the scheme from which he had transferred, due to insufficient checks on the receiving scheme and the failure to issue pension scam warning material. In TPO's opinion, the transferring scheme had not complied with the requirements of the Pension Schemes Act 1993 and, therefore, was not discharged from its obligation to provide benefits to the member.



### 2. Loch Ness – Avoid the Master Trust Monster

Trustees and employers should make sure that proposed amendments to benefits provided by a pension scheme, or changes to employers participating in a scheme, do not result in the scheme becoming a defined contribution (DC) master trust scheme inadvertently. DC master trust schemes are subject to TPR's rigorous authorisation and supervision regime. Without authorisation, a scheme (or DC section of a scheme) may be forced into immediate wind-up. Steer clear of murky waters and seek legal advice immediately if there are concerns about any amendments or restructures in progress.



### 3. Tower of London – Closing the Gate on Investments

As highlighted in our 2016 [blog](#), trustees should pay careful attention to the gating provisions in fund documents. Recent events in relation to the GAM Absolute Return Bond Fund are a stark reminder that not all funds will be appropriate pension scheme investments. An investment can be "locked in the tower" if the fund manager has the power to suspend dealings, thus preventing trustees from redeeming their investment. This may impact on the trustees' ability to pay benefits when they fall due. Trustees should always take legal advice on the terms of any investment.



### 4. The Giant's Causeway – TPR Paves the Way for a Tougher Approach

TPR has recently fined trustees for governance failings, including not obtaining audited accounts on time, not updating TPR with registrable information and not completing actuarial valuations on time (see our [blog](#) for more details). TPR [warns](#) that it will take giant steps to stamp out late valuations: "We are coming down harder on those trustees who put their members' benefits at risk by failing to agree an appropriate valuation within the statutory deadline... if you're having trouble agreeing a valuation with your sponsoring employer, get in touch with us as early as possible."



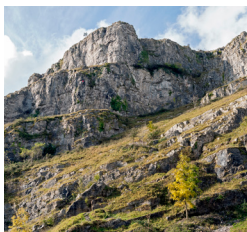
### 5. The Streets of Coventry – Don't Bare All Like Lady Godiva

Trustees and employers should be clear on how legal privilege prevents certain documents from being disclosable and how privilege is lost. This is not a new issue, but it has become particularly pertinent in light of the increased number of subject access requests under the General Data Protection Regulation (GDPR) and greater use of investigative powers by TPR. We recommend that a privilege protocol is adopted and agreed with key advisers. After all, it is best to be suitably attired when facing public scrutiny!



## 6. Lindisfarne – Social Impact Investment Cut off From the Mainland?

Those crusading the benefits of social impact investing by pension funds were hopeful that the government's [recent consultation](#) would herald a turning point. However, the government has [confirmed](#) that it will not require pension scheme trustees to state a policy in relation to social impact investment. Instead, the government has focussed on clarifying trustees' duties in relation to ESG and stewardship. Additionally, trustees of schemes with 100 members or more, which provide DC benefits (other than purely via additional voluntary contribution arrangements), will have to publish their statement of investment principles. The tide will turn from 1 October 2019.



## 7. Cheddar Gorge – Examining the Depths and Caverns of Disclosure

TPO recently [determined](#) that the trustees of a scheme had not complied fully with disclosure of information regulations when communicating with a member who was known to be terminally ill. The scheme administrator had answered the member's questions about his early retirement options, but did not highlight that a lower amount would be payable if the member did not exercise these options during his lifetime. TPO also considered that the trustees should have taken action to ensure that the member understood his options. Trustees may wish to check their procedures for dealing with the terminally ill.



## 8. Wimbledon Common – Burrowing Into GDPR With the Wombles

Standard forms and procedures used to gather personal data should be updated if necessary to comply with new data protection requirements. For example, many trustees are considering their GDPR obligations relating to personal data collected on expression of wish forms and ill health early retirement applications. Particular care is needed if a member is asked to consent to the processing of personal data (which is often the case when health data is collected) – the rules on obtaining valid consent have changed and the relevant documentation is likely to require amendment. Further Womble-like foraging into GDPR may be necessary.



## 9. White Cliffs of Dover – TPR Chalks up Progress on 21st Century Trusteeship

Like a bluebird, TPR is flying high over the White Cliffs of Dover with its [21st Century Trusteeship](#) campaign. It has now issued all 10 guidance notes, covering topics such as good governance and appointing advisers and service providers. The latest guides relate to managing conflicts of interest, meetings/decision making and value for members. The guides are concise and provide examples of good trustee behaviours, along with examples of working practices that might need improvement. TPR's high profile determination to drive up standards will soon be visible from France!



## 10. Llanfairpwllgwyngyllgogerychwyrndrobwllllantysiliogogoch – Need We Say More?

Just like the longest place name in the UK, pensions developments go on and on. This autumn, we will look out for the response to consultation on new and increased powers for TPR, consultation on defined benefit commercial consolidators, TPR's authorisation of the first DC master trusts and the judgment on equalising for Guaranteed Minimum Pensions in the Lloyds Banking Group case. We are also monitoring, with interest, developments on the pensions dashboard – the industry has the technology ("pentech") but the dashboard may have limited success if the government does not make participation compulsory.

**STOP PRESS:** Our #How2DoPensions education campaign is back – bigger and better than ever. We are releasing one quick guide per week throughout autumn and winter 2018/2019, covering a wide range of UK pensions topics. These will be shared on LinkedIn/Twitter and are also available on the Insights page of our website.

### Contacts

#### Kirsty Bartlett

Partner, London  
T +44 20 7655 0298  
E [kirsty.bartlett@squirepb.com](mailto:kirsty.bartlett@squirepb.com)

#### David Griffiths

Partner, Manchester  
T +44 161 830 5359  
E [david.griffiths@squirepb.com](mailto:david.griffiths@squirepb.com)

#### Catherine McKenna

Partner, Leeds  
T +44 113 284 7045  
E [catherine.mckenna@squirepb.com](mailto:catherine.mckenna@squirepb.com)

#### Clifford Sims

Partner, London  
T +44 20 7655 1193  
E [clifford.sims@squirepb.com](mailto:clifford.sims@squirepb.com)

#### Matthew Giles

Partner, Birmingham  
T +44 121 222 3296  
E [matthew.giles@squirepb.com](mailto:matthew.giles@squirepb.com)

#### Wendy Hunter

Partner, London  
T +44 20 7655 1119  
E [wendy.hunter@squirepb.com](mailto:wendy.hunter@squirepb.com)

#### Helen Miles

Partner, Birmingham  
T +44 121 222 3138  
E [helen.miles@squirepb.com](mailto:helen.miles@squirepb.com)

#### Philip Sutton

Partner, Birmingham  
T +44 121 222 3541  
E [philip.sutton@squirepb.com](mailto:philip.sutton@squirepb.com)

#### Elizabeth Graham

Partner, Leeds  
T +44 113 284 7494  
E [elizabeth.graham@squirepb.com](mailto:elizabeth.graham@squirepb.com)

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