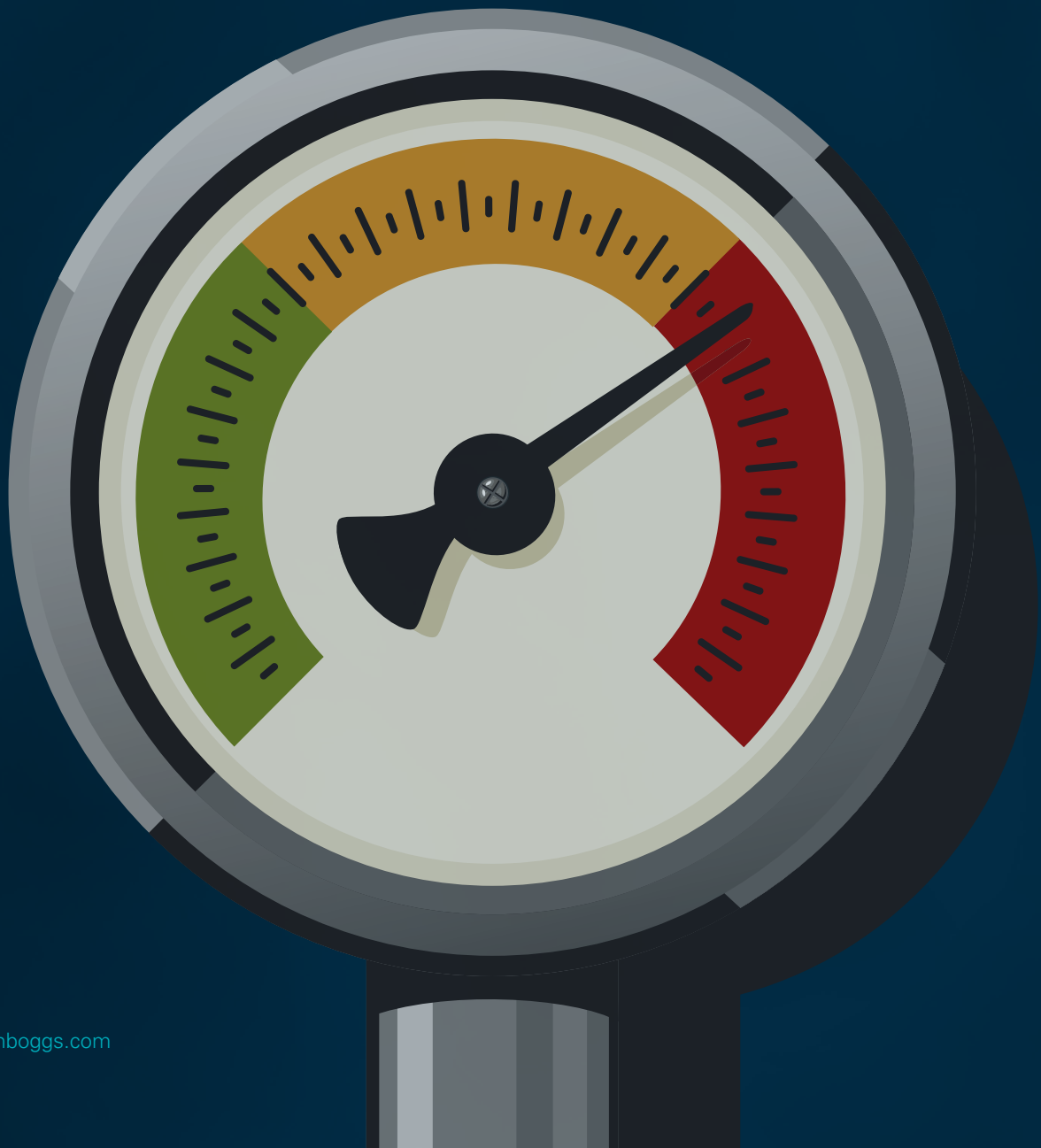


#PensionsTensions: New Dimensions

Campaign Progress Report

Exploring the Emerging Challenges Faced by
Trustees and Sponsoring Employers of
Occupational Pension Schemes

#How2DoPensions



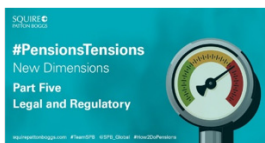
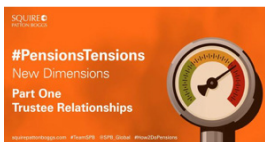
Contents

Introduction.....	3
Reflections and Risks.....	4
Forecast and Mitigation.....	6
About Us.....	8
Our Thought Leadership Collection.....	9



Introduction

In May 2021, we launched our second phase of #PensionsTensions – looking at the emerging risk management pressures faced by UK pension schemes as we move beyond the social and economic challenges of the COVID-19 pandemic and into the uncharted waters of the Pension Schemes Act 2021, a new single Code of Practice and various other regulatory pressures. We assess how the latest developments impact the governance and risk management frameworks of pension schemes.



#PensionsTensions: New Dimensions features five publications that address [trustee relationships](#), [funding and investments](#), [pensions systems and administration](#), [governance and trusteeship](#) and [legal and regulatory](#). In each publication, we provide commentary on the tension and give a #PressureMeasure rating. We supplement this with practical support around red risk flags, mitigation tips and time-saving tips.

Hot Off the Press

Pensions developments are moving at a rapid pace. Since our factsheets were issued, new or increased sources of tensions have emerged, including:

- The launch of an accreditation programme for lay trustees, adopting some of the elements of professional trustee standards. Is there any appetite for this among trustees?
- The government's stated intention to accelerate the pace of consolidation for smaller defined contribution (DC) schemes (with "small" referring to schemes with assets under £5 billion). Is there any future for a company's own DC scheme?
- Confirmation of increased governance requirements and disclosures for DC schemes with assets under £100 million. A scheme that cannot satisfy the value for money standards will be expected to wind-up. Another nail in the coffin?
- Further progress on climate risk, with the government's response to consultation confirming the requirements for schemes with more than £5 billion of assets and for those with more than £1 billion of assets. There are now almost daily developments around ESG!
- The government's assertion that any radical changes to pensions tax relief will only progress after "careful consideration". This was quickly followed by press comments that certain changes may be under consideration after all. Will we ever reach a settled position, or is the subject of pensions tax relief destined to be a source of permanent tension for the pensions industry?

In this report, we:

- Pause for reflection on the campaign to date, review and summarise the five areas we covered ([trustee relationships](#), [funding and investments](#), [pensions systems and administration](#), [governance and trusteeship](#) and [legal and regulatory](#)) and highlight the areas of #PensionsTensions that we think have a more pressing need for action or reform
- Provide our forecast on the areas of #PensionsTensions where we envisage higher or lower pressure over the coming months
- Present our mitigation tips for the #PensionsTensions on the horizon as the industry continues to evolve and faces further pressures



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Reflections and Risks

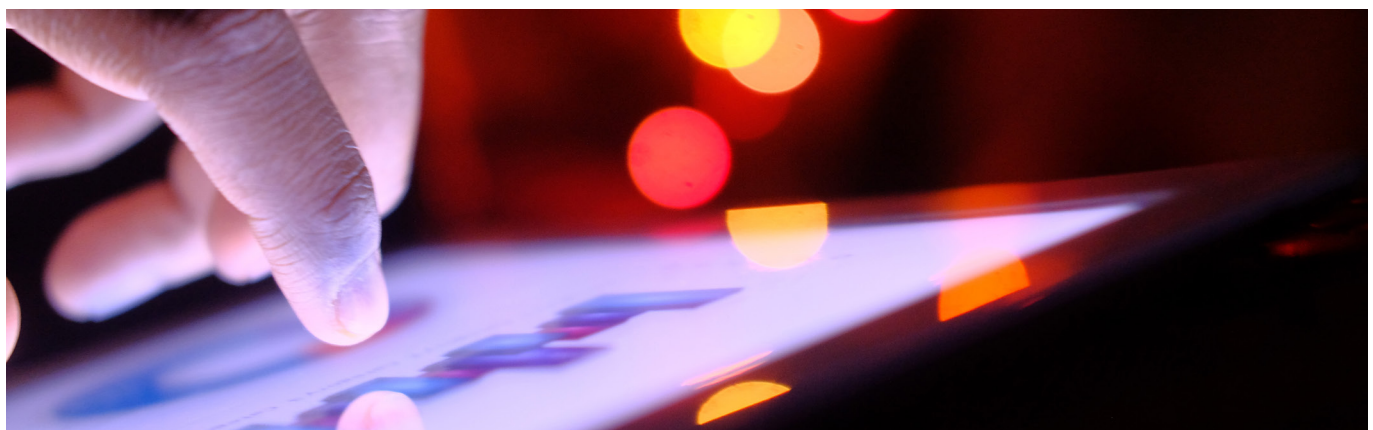
Why Now?

We emerge from the immediate challenges of COVID-19 to face a new world in which increased regulatory powers under the Pension Schemes Act 2021 offer extra security for members but may cast a shadow of uncertainty over business activity in the short term. Trustees of defined benefit schemes are busy implementing GMP equalisation solutions; the drive towards consolidation in the defined benefit and DC space continues to gain pace; investment issues, including ESG, are dominating agendas; and administration systems need to be both cyber-proof and dashboard ready.

New pension scheme governance requirements have been sitting dormant since regulations came into force in 2019 as part of the transcription of the IORP II Directive into UK law. These regulations built on the previous requirements for trustees to maintain adequate internal controls, and require trustees to have an effective system of governance that is proportionate to the size, nature, scale and complexity of their scheme. The draft single code of practice recently issued by The Pensions Regulator (TPR) incorporates the new governance regulations and additionally sets out new expectations on how risk should be managed. Well-run pension schemes will already be part way to meeting TPR's expectations, but we anticipate that all schemes will need to take additional steps and will be grappling with how to adopt a "reasonable and proportionate" approach to ensuring that their pension scheme's risk management system matches up to the new code of practice.








Trustee Relationships	Funding and Investments	Pensions Systems and Administration	Governance and Trusteeship	Legal and Regulatory
Red Risk Flags				
<ul style="list-style-type: none"> • Are there known issues with historical member communications that could lead to future member complaints? • How well are members' expectations being managed, in relation to both their actual benefit entitlement and administrative processes? Are your systems keeping up with best practice? • Are adequate information-sharing and data-sharing processes in place between the trustees and the employer? • Are trustees seeing an increase in "pension scam" complaints (particularly from claims handling firms)? 	<ul style="list-style-type: none"> • Have recent actuarial valuation discussions been completed close to (or after) the statutory deadline? • Would the trustees currently have access to any security or assets on the insolvency of the scheme sponsor? • Do the approaches of the trustee and sponsor align in relation to ESG issues and is there an open dialogue on the risks faced by the scheme sponsor? • Are the trustees carrying out proper due diligence checks on their investment managers, even when performance is good? 	<ul style="list-style-type: none"> • Do trustees receive reports from administrators showing how well agreed service levels have been met (and, if so, have they been met since March 2020)? • Are trustees aware of a high number of data breaches or cybersecurity breaches? • Do administrators have processes in place for "spot-checking" for calculation or payment errors? Does the scheme's audit include such checks? • Are adviser quotes for dealing with GMP equalisation eye-watering? 	<ul style="list-style-type: none"> • Are any of the trustees' policies and procedures gathering dust having not been reviewed for a long time? • Can trustees point to an insurance policy that will help protect them if there are ever any proceedings or claims against them? • Are there vacancies on the trustee board? • Is the makeup of the trustee board inconsistent with the diversity among the scheme's membership? 	<ul style="list-style-type: none"> • Is it clear who is responsible for carrying out any notification requirements, particularly in relation to employer notifiable events? • Are pension scheme impacts embedded into the sponsoring employer's decision-making processes, and are its pension objectives clear? • Can the trustees substantiate their reliance on a guarantee or other security? • Are there multiple deeds of amendment that have not been consolidated?
What the Regulator Says				
<p>"A data sharing agreement helps all the parties be clear about their roles; sets out the purpose of the data sharing; covers what happens to the data at each stage; and sets standards. It should help you to justify your data sharing and demonstrate that you have been mindful of, and have documented, the relevant compliance issues." (ICO's Data Sharing Code of Practice)</p>	<p>"It is important for trustees and employers to work together to manage the immediate impact of COVID-19, but they should also make sure they retain a focus on the long term – most specifically around planning and risk management." (TPR annual funding statement, April 2020)</p>	<p>"Any scheme depends on the timely and accurate processing of multiple transactions. These range from investing contributions in the scheme, to paying benefits when a member begins to access their retirement funds. A breakdown in any transaction can lead to member losses, and costs to the scheme and employer to put any errors right." (TPR, draft single code of practice)</p>	<p>"Under new regulations, trustees must have an effective system of governance proportionate to the size, nature, scale and complexity of their scheme. Private sector schemes with 100 or more members will now need to carry out an own risk assessment. TPR expects governing bodies to use this to assess how well their policies and procedures address various risks, financial and operational, that their scheme faces." (TPR, draft single code of practice)</p>	<p>Extracts from a speech by David Fairs, at the Outer Temple webinar on 30 March 2021 (the entire speech can be found on TPR's website), include:</p> <p>"It's important to appreciate that the new powers we have been afforded are part of a strong package of measures to strengthen our regulatory grip and the options available to us, but they are not going to turn us into a belligerent law enforcement agency or the 'Pensions Police'."</p> <p>"In short, if you are doing the right thing you have little to worry about."</p>



Forecast and Mitigation

Our forecast focuses on how #PensionsTensions will evolve over the coming year. Our analysis will assist you with putting in place early intervention and mitigation measures, and our tips will save you time across the five key areas.

Trustee Relationships	Funding and Investments	Pensions Systems and Administration	Governance and Trusteeship	Legal and Regulatory
#PressureMeasure				
 <p>"We anticipate that trustee relationships with both members and employers will come under greater strain in the year ahead."</p>	 <p>"Funding and investment will remain under the spotlight in the year ahead, but may be overshadowed by other emerging issues."</p>	 <p>"Administration processes and operational systems seem to have weathered the storm, but there are still strong headwinds. Prepare for turbulence."</p>	 <p>"If implemented as drafted, the new single Code of Practice will dramatically increase the governance burden on pension trustees."</p>	 <p>"With the impact of new legislation, evolving regulatory policies and Brexit, pressure remains high."</p>
Mitigation Tips				
<ul style="list-style-type: none"> Observe any patterns in member complaints for scams, administration errors or communication problems. Imaginative presentation style and formatting can give member communications on complex subjects a new dimension by making them more engaging and easier to understand. Review and, as necessary, revise any existing information-sharing and data-sharing protocols in readiness to comply with the requirements of the Pension Schemes Act 2021 and the ICO's expectations. An open dialogue is key to ensuring both trustees and employers can manage each other's expectations and promote the success of the sponsor's business, as well as the long-term security of the scheme. 	<ul style="list-style-type: none"> Early engagement between trustees and sponsors on journey planning for the scheme will help create a more closely aligned approach to funding discussions. Contingent assets, escrow or other funding arrangements that are backed by legally enforceable terms will increase security for the scheme in the event of sponsor insolvency. Consider whether ESG obligations could be tackled by a sub-committee in order to manage resources, and identify what advice or other support is needed to ensure trustees can comply. Review investment documentation to ensure trustees are suitably protected. 	<ul style="list-style-type: none"> Review administrator service levels and, if service levels are not being met, request additional administrator resources. Ensure trustees and employers maintain data maps so potential breaches risks can be identified and addressed. Test cybersecurity breach response plans to help identify potential issues and to ensure that any breaches are addressed swiftly. Discuss GMP equalisation project plans with advisers to avoid duplication and ensure the project is run as efficiently and proportionately as possible. 	<ul style="list-style-type: none"> Start by refreshing and updating current policies, as this will minimise the work needed to comply with the new code. Take a high-level look at the new policies and procedures that will be needed and assess how they can be incorporated into any current activity. Consider having trustee "reserves" who can step in as and when a vacancy arises. Look at how the sponsoring employer is promoting diversity and inclusion, and consider whether the same strategies can be applied to the trustee board. 	<ul style="list-style-type: none"> Undertake training on the increased powers of TPR and include representatives of the sponsoring employer with responsibility for the pension scheme. Seek advice on any Brexit impact on guarantees and PPF eligibility. Review member communications and tools to ensure they provide information, not advice. Consider consolidation of trust deeds and rules, and preparation of a complete scheme bible.

Trustee Relationships	Funding and Investments	Pensions Systems and Administration	Governance and Trusteeship	Legal and Regulatory
Time-saving Tips				
<p>Agreeing an information-sharing protocol before one is needed can save time and stress in the long run. If a new or revised data-sharing agreement is also required in order to meet the ICO's expectations, consider documenting both arrangements together, as this would ensure consistency – and potentially save on legal fees.</p>	<p>Establishing a forum for ongoing discussion between trustees and the scheme's sponsoring employer in relation to long-term strategy can reduce tensions around the actuarial valuation deadline. Avoiding a last-minute panic is not only likely to reduce stress levels and costs, but also result in a better outcome for the scheme.</p>	<p>A stitch in time saves nine. The time, effort and cost of dealing with something that goes wrong can vastly outweigh the time and effort of putting efficient processes in place. Regular testing of processes and systems should identify potential problems, meaning that trustees spend less time and money fighting fires and more time meeting their strategic objectives.</p>	<p>Checking indemnity insurance coverage carefully now can save time and money in the long run, because there may be coverage for the costs of dealing with member complaints and investigations by TPR.</p>	<p>Build a legal and regulatory review into your business plan to ensure you are ready for anything that could delay or even derail your pension strategy.</p>



About Us

We pride ourselves on providing informative and engaging client materials, using infographics and imagination to make them an “easy read” for clients. We were proud to be awarded Educational Initiative of the Year at the *FT and Pensions Expert’s* Pension and Investment Provider Awards 2020 and 2019. We have so far been shortlisted for three key pensions industry awards in 2021 for our client communications and thought-leadership work.

Our Pensions Team	Our Firm
<ul style="list-style-type: none"> • Acting for many pension schemes for more than 30 years • More than 40 UK pension specialists • 18 pensions awards over the last 18 years • More than 400 trustee, corporate and public body clients • 500 years of combined pensions law experience • Acting for clients with scheme assets between £15 million and £300 billion • Run our own professional trustee company, with around 30 scheme appointments • Three dedicated professional support lawyers • Produce weekly and quarterly client updates and regular blogs • Recognised by the Pensions Management Institute for providing training around the Award in Pension Trusteeship exam 	<ul style="list-style-type: none"> • A global team of more than 2,600 employees • More than 500 partners/1,500 lawyers across 45 offices in 20 countries • A seamlessly connected service that operates on any scale – locally or globally • We advise a diverse mix of clients, from long-established FTSE 250 corporations to emerging businesses, start-ups, charities and sovereign nations, and we place our clients at the centre of everything we do • Our firm is recognised in <i>Law360’s</i> annual Global 20 list, identifying the 20 global law firms involved in the biggest, most complex and most diverse array of matters • We are the largest law firm in the UK to achieve the Lexcel quality management standard that demonstrates we put in place systems and procedures to manage matters effectively, and we also hold the Investors in People quality accreditation

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Our Thought Leadership Collection

Here is a compilation of our award-winning publications, including materials from recent UK pensions campaigns and other regular briefings notes.

Our latest campaign explores the current challenges being faced by UK pension schemes and the socioeconomic impact of COVID-19.

[#PensionsTensions Briefings](#)

Access to more than 20 quick guides providing an overview and tips on key recurring issues that trustees and sponsors of occupational pension schemes are likely to encounter.

[#How2DoPensions Quick Guides](#)

Our 10 factsheets are designed to help pension schemes "Protect Against Unmitigated Liabilities" (PAUL), by considering pensions risks that fall outside The Pensions Regulator's Integrated Risk Management Framework.

[#meetPAUL Risk Management Factsheets](#)

Pensions Lessons is our annual back-to-school themed publication setting out the pensions curriculum for the year ahead and setting out the actions to be taken.

[Pensions Lessons for Trustees](#)

Our quarterly publication summarises the top 10 current pensions issues for trustees and sponsoring employers in just two pages.

[Hot Topics in Pensions](#)

Brief weekly summaries of key legal and regulatory developments relevant to occupational pension schemes with links for further information.

[Weekly Updates](#)

Blog

Follow our [Pensions and Benefits Insights](#) blog for updates and commentary from our legal experts on emerging and topical pensions issues.

Social Media

We are one of the most active pensions law firms on social media. Follow our firm's accounts below for instant reactions to industry developments and talking points.

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