

21 January 2019

## Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Pension increases: *Coats UK v Styles* | 2019/20 Lifetime Allowance set | Auto-enrolment: qualifying earnings | BA case: capped indemnity for appeal costs | HMRC guidance on reduced AA | New consultation: bridging pensions | TPR blog: ban on cold-calling

### Pension increases: *Coats UK v Styles*

The High Court has overturned determinations of the Deputy Pension Ombudsman (DPO) that three scheme members were entitled to 5% pension increases: *Coats UK Pension Scheme Trustees Limited v Styles*.

The members were pensioners who had retired in the 1990s, and who had been receiving 5% increases on their pension. The rate of increase was subsequently reduced and the members complained to the Pensions Ombudsman's office. The scheme rules had been amended multiple times and members' benefits were also affected by a 1998 transfer agreement containing member protections, which followed a scheme merger. The DPO had concluded that there was an entitlement to 5% increases under the 1996 rules and the transfer agreement. The trustee appealed.

Mr Justice Morgan agreed with the DPO that there was an entitlement under the 1996 rules to 5% increases, subject to any later changes, and that the members were protected under the transfer agreement. However, in contrast to the DPO, he concluded that a later 2008 deed restricted the level of increases to the higher of 3% or RPI and this was effective under section 68 of the Pensions Act 1995, even though there was no specific evidence that the trustee had intended to exercise that statutory power when it executed the deed. Therefore, the members were not entitled to 5% increases.

### 2019/20 Lifetime Allowance set

The standard lifetime allowance is now inflation-linked: new [regulations](#) set the rate for tax year 2019/20 at GBP1,055,000, as announced in last October's Budget (see [WNTW](#), 5 November 2018).

## **Auto-enrolment: qualifying earnings**

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The government has laid a draft [order](#) before Parliament to amend the qualifying earnings band for auto-enrolment. Under the Pensions Act 2008, the order must be approved by Parliament – if approved, it would come into force on 6 April 2019.

This follows a government announcement in December 2018 that the earnings trigger for auto-enrolment would remain unchanged at GBP10,000 for 2019/20, and the lower and upper limits of the qualifying earnings band would be set at GBP6,136 (increased from GBP6,032) and GBP50,000 (increased from GBP46,350) (see [WNTW](#), 10 December 2018). The draft Order also sets out rounded figures for pay reference periods of less than a year.

## **BA case: capped indemnity for appeal costs**

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The High Court has ruled that the Trustee of the Airways Pension Scheme is entitled to a capped indemnity from the scheme in relation to the costs of its appeal to the Supreme Court: [Airways Pension Scheme Trustee Limited v Fielder](#). The ruling provides insight into considerations around the costs of litigation, particularly where this is undertaken by trustees.

The ruling concerns long-running litigation between the Trustee and British Airways (BA) regarding pension increases. In 2017, the High Court found in favour of the Trustee (see [WNTW](#), 30 May 2017). In 2018, the Court of Appeal overturned this decision (see [WNTW](#), 9 July 2018). The Court of Appeal granted the Trustee leave to appeal to the Supreme Court; BA may seek permission to cross-appeal. In this case, the Trustee sought an indemnity from the scheme for its costs of the appeal and any adverse costs order. BA opposed the application.

Mr Justice Arnold concluded that a trustee is entitled to be indemnified from the trust assets if, in the particular circumstances, the trustee would be acting in the interests of the trust as a whole by appealing. He considered a number of factors and concluded that the test was met in this case, but he was not prepared to grant the Trustee an unrestricted indemnity in relation to costs – he considered the Trustee's costs estimate for the Supreme Court appeal to be 'deeply alarming' and restricted it to the lower amount of GBP1,034,000 (BA's estimate of their costs).

The judgment also notes that BA has made a without prejudice settlement proposal to the Trustee in relation to the proceedings; it is possible that the matter will be settled before the appeal.

## **HMRC guidance on reduced AA**

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HMRC has published new [guidance](#) for members who have flexibly accessed their pension. The guidance contains information on how to identify if the reduced money purchase annual allowance of GBP4,000 has been exceeded, how to calculate the alternative annual allowance, and how to calculate any chargeable amount (including an online calculator).

HMRC has also published its latest [newsletter](#) for pension schemes operating relief at source, which includes information on Scottish and Welsh income tax rates.

## **New consultation: bridging pensions**

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The government is running a short [consultation](#) on amending the Equality Act (Age Exceptions for Pension Schemes) Order 2010 to reflect the increase in state pension age above age 65.

The Order exempts specified rules, practices, actions or decisions from being a breach of the non-discrimination rule in the Equality Act 2010. The government is proposing to amend the current exemption relating to bridging pensions, which refers to the reduction in pension occurring between the ages of 60 and 65. The proposals are to replace the reference to age 65 with a reference to the increasing state pension age specified in the Pensions Act 1995, and to update the outdated definition of 'relevant state retirement pension rate'.

The consultation closes on 30 January 2019. The government intends to make the changes as soon as possible, subject to Parliamentary approval, but has asked for feedback on the effects of a delay in implementing the changes.

## TPR blog: ban on cold-calling

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The Pensions Regulator has published a new [blog post](#) in support of the ban on pensions cold calls. It also encourages trustees and administrators to help members spot pension scams and access further information.

## Contact information

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