STEPHENSON HARWOOD

PENSIONS QUARTERLY UPDATE

August 2025

IN BRIEF

This Pensions Quarterly Update covers the following topics:

- Renishaw: all is not lost if you notice a mistake in the drafting. It may be possible to correct the mistake by taking account of the context.
- For directors of corporate trustees: have you verified your identity with Companies House? Don't leave it to the last minute, do it now.
- Have you reviewed your fraud prevention procedures? From 1 September 2025, it will be an offence for large organisations to fail to prevent fraudulent practices.
- Unused pension funds and death benefits under registered pension schemes will come within scope of inheritance tax (IHT) from 6 April 2027. On 21 July, the Government published draft legislation and announced details of which payments will be caught, who will be liable to pay the tax and the mechanics of paying any IHT due.
- If you discover a breach that might need to be notified to the Pensions Regulator, seek immediate legal advice and don't delay in submitting the notification. NOW: Pensions Limited and NOW: Pensions Trustees Limited were each fined £50,000 for failing in their duty to notify.
- Challenge a Contribution Notice at your own risk. The case of Pelgrave v the Pensions Regulator confirmed that appealing to the Upper Tribunal carries the possibility that the amount of the CN will be increased. It also stressed that ignorance is not a defence.
- Are you already considering climate change and natural risks when making investment choices? The Pensions Regulator has raised its expectations for pension schemes, stressing that we all have a part to play in the plan to reach net-zero emissions by 2050.
- New Data Protection legislation has recently come into force. For more details see this helpful note produced by our Data Protection lawyers.

Invite: We are hosting a breakfast seminar on IHT changes on 25 September. Invites will follow shortly but please get in touch with your usual Stephenson Harwood contact if you don't receive one.

STEPHENSON HARWOOD REPRESENTED SUCCESSFUL CLAIMANT IN £1.6 BILLION PENSION FUND DISPUTE

Stephenson Harwood's pensions team successfully represented Renishaw plc, the Claimant, in a significant £1.6 billion pension fund dispute in the Chancery Division of the High Court.

The case centred on the way in which a 'Money Purchase Underpin' in the defined benefit pension fund's rules operated. There had been a historic drafting mistake which, if read literally, meant that each members' benefits would have to be increased, on average, by eleven times. This would escalate an approximately £140 million liability in the fund to roughly £1.6 billion.

HHJ Hodge KC was asked to use corrective construction to interpret the rules in such a way that missing words could be read into the document. He agreed with the Claimant's submission that there had been a drafting mistake, and that it was sufficiently clear how to correct this by taking account of the context. The Court also confirmed that the pension fund had been managed correctly in line with this interpretation.

Pensions Disputes Partner Chris Edwards-Earl led the Stephenson Harwood team acting for Renishaw Plc, supported by Associates Henry Bugg and Emily Elmitt, instructing Michael Tennet KC and Seb Allen of Wilberforce Chambers. Gowling WLG represented the Representative Beneficiary instructing Andrew Mold KC also of Wilberforce Chambers. Saul Margo of Outer Temple Chambers represented the Trustee in the proceedings.

A link to the case is here.

NEW IDENTIFICATION VERIFICATION REQUIREMENTS FOR CORPORATE DIRECTORS:

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) introduced a new identity verification regime that will affect corporate trustees.

Currently, directors can voluntarily verify their identity via the Companies House website.

From 18 November 2025, new directors of UK companies must verify their identity via the Companies House website. Existing corporate directors will be required to verify as part of the company's next confirmation statement after 18 November 2025.

Whilst a failure to verify will not render any actions taken by a director invalid, the ECCTA introduced a new criminal offence of 'acting as a director' without verifying their identity, punishable by a fine.

The law prohibits individuals from acting as a director, and companies from allowing the individual to act as a director, before their ID has been verified. Therefore, we recommend that all directors of corporate trustees complete Companies House' online ID verification process before it becomes mandatory to avoid being in breach of this new requirement.

A link to the Companies House guidance on the verification process.

FRAUD PREVENTION MEASURES FOR 'LARGE ORGANISATIONS':

The ECCTA also introduces from 1 September 2025 a new failure to prevent fraud offence, which will apply to "large organisations" defined to include organisations that meets at least two of the following criteria in the financial year preceding the offence:

+ Turnover greater than £36 million.
+ More than £18 million in total assets.
+ More than 250 employees.

A large organisation may be liable for the offence where an employee, agent, subsidiary or other "associated person" commits a specified fraud offence for the benefit of the organisation, and the organisation does not have reasonable fraud prevention procedures in place.

Whilst most corporate trustees will not be 'large organisations', they may also fall within the remit of the organisation if they are part of their sponsor's corporate group and the sponsor is a '"large organisation".

Corporate trustees caught by the legislation should review their fraud prevention measures to ensure compliance with the reasonable fraud prevention procedures outlined in Chapter 3 of the Home Office's guidance on the failure to prevent fraud offence which accompanies the ECCTA, as well as the internal controls requirements set out in the Pensions Regulator's General Code.

BAN ON CORPORATE DIRECTORS:

The government has also indicated that it will bring s87 of the Small Business, Enterprise and Employment Act 2015 (SBEEA) into force in parallel with the implementation of the ECCTA. This legislation introduces a general ban on corporate directors of companies, which may affect trustee companies where a professional corporate trustee is appointed as a director alongside a board of member and employer nominated trustee directors.

In response to concerns raised by the industry, the government has indicated that it will introduce an exception for corporate directors of pension scheme trustees via regulations. These regulations have not yet been published, but the Government indicated in its response that it was in favour of allowing a corporate trustee to appoint a corporate director only where the board of that corporate director is composed of only natural persons.

S87 SBEEA will include a 12-month transition period in respect of existing corporate directors running from the date on which the section is brought into force.

INHERITANCE TAX ON PENSION DEATH BENEFITS: FURTHER DETAILS ANNOUNCED

Unused pension funds and death benefits under registered pension schemes will come within the scope of inheritance tax (IHT) from 6 April 2027.

The Government has published (on 21 July) draft legislation and announced further details on what payments will be caught, who will be liable to pay the tax and the mechanics of paying any IHT due.

The good news is that the Government confirmed that death in service benefits under registered pension schemes will not be caught by the changes and this will be the case regardless of whether the benefit is paid on a discretionary or non-discretionary basis. Benefits under certain public sector schemes, such as the NHS Pension Scheme, will therefore be out of scope of IHT from 6 April 2027. Other lump sum death benefits remain in scope of IHT.

The Government also announced that, where the IHT changes do apply, it has changed tack on requiring scheme administrators to calculate and pay the IHT due on death benefit payments. It now proposes that the deceased's personal representatives (PRs), who are responsible for dealing with IHT on the remainder of the deceased's estate, will take on this role. Beneficiaries of death benefit payments will be jointly liable with the PRs for any IHT due and can also ask the scheme to deduct and pay the tax due before paying out the benefit (a new form of 'scheme pays').

There will also be new reporting and information sharing requirements on scheme administrators to assist the PRs in calculating the IHT due and to know who is liable for the tax.

Schemes will need to be ready to implement these processes from 6 April 2027, including updating member communications, webpages and member booklets ahead of April 2027. A key concern for members will be to understand when IHT does not arise (i.e., for a spouse or civil partner as exempt beneficiaries) and where a death benefit may be subject to IHT and income tax on the remainder, such as for benefits payable on death after age 75.

SOME HELPFUL CLARIFICATIONS

Alongside the new draft legislation, the Government published a response to its technical consultation held over several months following the announcements in the 2024 Autumn Budget.

The consultation response provided helpful clarification on various points, including that:

+ any person exempt from IHT under normal rules (i.e. spouses and civil partners) will be exempt in relation to pension benefits also, whereas non-exempt persons will be jointly and severally liable with the PRs for any IHT due on pension benefits if they are the recipient of those benefits.
+ there will be no change to the current rules that IHT must be paid within 6 months of the date of death and that interest on late payment will accrue from 6 months, and
+ even where IHT is payable on a death benefit payment, income tax may also be payable (e.g. on benefits payable on a death after age 75).

Finally, to address concerns expressed in the consultation around liquidity (in the sense of having sufficient funds in the estate to pay the IHT due on pension death benefits before those benefits are distributed), HMRC proposes three options: (i) PRs pay the IHT due from other funds in the deceased's free estate, (ii) the death benefit beneficiary asks the scheme to deduct the IHT due before paying out the benefit, under a new form of scheme pays, or (iii) the death benefit beneficiary pays the IHT due on the benefit from their own funds.

INHERITANCE TAX ON PENSION DEATH BENEFITS: FURTHER DETAILS ANNOUNCED

HOW WILL IHT ON PENSIONS OPERATE IN PRACTICE?

The consultation response also included a helpful summary of how information will be shared to ensure the IHT due on the pensions component of a member's estate is calculated and accounted for correctly. Briefly, the process is expected to be as follows:

Stage 1: Information exchange to establish pension value

Once PRs have notified the scheme of the member's death, the scheme administrators will have 4 weeks to provide details of the value of the member's unused pension funds and death benefits at the date of death. They must also, once the scheme administrator has identified the recipients of the benefit, notify the PRs of the split between beneficiaries who are exempt from IHT and those who are not.

Stage 2: PRs value the estate (including the pensions component)

The PRs will collate all information relating to the estate including from all relevant pension arrangements. If an IHT account is due, the PRs will provide the IHT reference number to the scheme administrators and request details of the individual beneficiaries.

Stage 3: PRs to file IHT return and pay IHT (if needed)

If no IHT account is due (or if an account must be made but no IHT is payable), each beneficiary and scheme administrator will be informed, and the administrators can pay the death benefits due.

If an account is due and IHT payable, then the PRs will calculate the tax due from each beneficiary and submit that information on the account to HMRC. The IHT due in respect of the pension benefits can then be paid in one of the ways referred to above.

Stage 4: Distribution of pension death benefits

It will be the scheme administrator who will communicate with beneficiaries about this process and the options for paying any IHT due, including the new scheme pays option. They will also need to confirm to the PRs when the benefits are paid out, and their value so that the PRs can calculate if the member's lump sum allowances have been exceeded.

OUR VIEW

Regardless of your opinion on whether pension death benefits should be subject to IHT, we think that the Government's response is overall to be welcomed: it is positive that responsibility for accounting for, and paying, the IHT will fall on PRs and that death in service benefits will be carved out. It is, however, disappointing that in most cases (because death generally happens after age 75) pension death benefits will be subject to IHT and income tax, giving an effective rate of tax of up to 67%.

From a scheme trustee and administrator perspective, there will be work to do to prepare for the April 2027 changes. HMRC will be publishing further guidance and tools in due course, and we will also be providing regular updates.

NOW: PENSIONS DETERMINATION NOTICE - KEY LESSONS FOR PENSION PROVIDERS

The recent Determination Notice issued to NOW: Pensions by The Pensions Regulator serves as a warning to all pension providers regarding the duty to report significant events and the consequences of systemic compliance failures.

NOW: Pensions, as the trustee of a large master trust, failed to report multiple significant breaches to the Regulator over several years, including failures to issue statutory automatic enrolment communications.

The breaches - which NOW: Pensions admitted - affected thousands of members and persisted over an extended period.

DUTY TO REPORT - WHEN IS IT TRIGGERED?

The Determination Notice makes clear that the duty to report to the Regulator does not first require a full investigation to factually confirm the details of the breach. Instead, the obligation is triggered as soon as there is reasonable cause to believe a significant event has occurred. In such a case, providers must notify the Regulator within one working day of discovering the event.

Delaying notification in order to investigate further is not compliant with the law or the Regulator guidance.

APPROACH TO FINES:

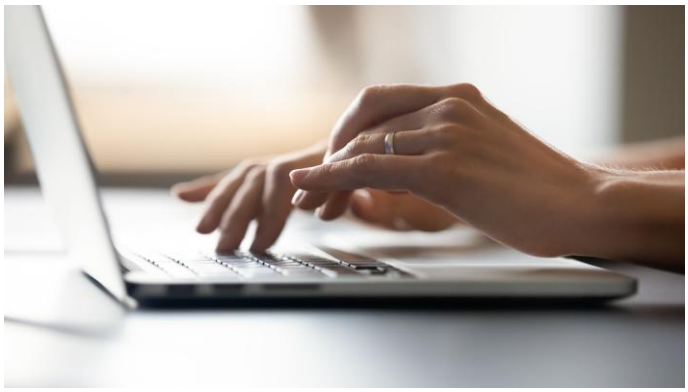
The Regulator's penalty regime is banded according to seriousness. In this case, the fine was set at the top of Band 3 (the most serious) at £50,000, reflecting:

+ NOW: Pensions had poorly documented processes for identifying and reporting breaches, with insufficient oversight and unclear lines of responsibility. The lack of robust governance and escalation procedures was a key aggravating factor in the case.
+ The number and duration of failures.
+ The critical importance of the statutory notices that were not issued.
+ The large number of members affected.
+ The significant resources of NOW: Pensions.

KEY CONCLUSIONS AND WARNINGS:

The Regulator will impose the highest fines where there are repeated, serious, and widespread failures, especially where large numbers of members are affected and the provider has substantial resources.

Providers must have effective, well-documented processes and clear oversight for identifying and reporting significant events. Notification to the Regulator must be prompt—within one working day of discovery, not after a full investigation.



PELGRAVE V THE PENSIONS REGULATOR

The target of a recent contribution notice ("CN") appealed to the Upper Tribunal (the "Tribunal"), but the outcome wasn't what she was hoping for! Not only did the Tribunal uphold the determination to issue a CN to Ann Pelgrave (AP) but also recommended that the amount be increased.

Without getting into the detailed facts, the case involved a family-owned group – Discovery Flexibles - increasing its debt to be able to buyback shares from AP and two of the four shareholders.

Taking on debt, without an obvious way to repay it, could have a materially detrimental effect on the ability of the company to contribute to the pension scheme, which justified the issuing of various CNs worth more than £2,500,000, to be paid into the Danapak Flexibles Retirement Benefits Scheme.

IGNORANCE IS NO DEFENCE

AP was a director in the company that drew down the finance but described herself as an 'on-paper' director only; she largely left the decision-making to her brother, she did not seek any legal advice, instead relying solely on tax advice. But that held little weight with the Pensions Regulator.

The Tribunal rejected AP's argument that "a person should only be regarded as a party to a transaction if they procured or were a decision-maker in relation to it". Instead, the Tribunal relied on the wider, ordinary meaning in the Oxford English Dictionary as "a person who is concerned in an action or affair; a participant; an accessory".

The Tribunal's reasoning serves as a reminder that ignorance is not a defence for directors of companies that are connected to defined benefit pension schemes. AP was criticised by the Tribunal, not only for failing in her duties as a director, but also for failing to take any legal advice when she acted as director and when she sold her shares.

This is a reminder to companies with pension schemes, that prior to any restructuring or transactions, they should take pensions legal advice to consider the implications on the scheme.

THE RISKS OF A REFERRAL TO THE TRIBUNAL:

Making a reference to the Tribunal is not without risk. The Tribunal's role is to consider all relevant evidence, even where it was not originally available to the Determinations Panel of the Pensions Regulator (the Panel). That said, the Tribunal confirmed that it will be slow to re-open the Panel's findings of fact but can do so if necessary.

Although the Regulator cannot appeal to the Tribunal, once the target of a CN has appealed, the Regulator can add additional evidence or arguments.

In this case, AP's gamble did not pay off. Her original CN was for £180,218.50 but on considering the evidence, the Tribunal recommended that the amount be increased to £245,749 (with specific calculations for adjusting the amount to account for time that has passed).

A REASONABLE AMOUNT:

When AP sold her shares in the company, she received £360,437, part of which her parents asked her to – and she dutifully did - pass onto her children. She also incurred a tax charge and paid a portion to HMRC.

The Tribunal was clear that "targets should not be able to escape from the full rigours of a CN by dissipating proceeds or contriving schemes to distance themselves from such amounts, and nothing we say here should be taken as suggesting anything different". However, in this case, the Tribunal took into consideration AP's moral obligation to pass the money onto her children. In AP's case, the recommended amount of her CN was the amount she received less the amount she paid onto her children and HMRC.

The case also includes an interesting and detailed analysis of the legal principles that are relevant to CNs, however, we have not set them out here as they largely do not deviate from established practice. Please let us know if you would like further information about CNs to protect against the threat of receiving one in the future.

Here is a link to the case.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (INVESTMENT): NOT JUST COMPLIANCE, IT'S ABOUT LEADERSHIP

Keir Starmer is on a mission. He wants to make Britain a "clean energy superpower...harnessing its potential not just to increase our energy security, but also to create jobs, boost exports and drive economic growth".

And the Pensions Regulator is onboard.

In a blog post published at the end of July, the Regulator announced that it is raising its expectations in relation to pension scheme investment governance.

SO WHAT?

Ask yourself these questions:

+ Are you already considering the impact of natural events on your investment choices?
+ Are you familiar with the Taskforce on Nature-related Financial Disclosures?

The Pensions Regulator has reiterated that trustees and employers should be considering how natural disasters affect their investments or business and what impact their decisions make on biodiversity and climate change.

If you are not already familiar, trustees and employers should take time to understand how nature-related risks impact investment decisions, to speak to their investment managers about those risks and ask what transition into safer and more appropriate investments would look like.

It's no longer about short-term returns; the Regulator has stressed that Trustees should be considering long-term risks in investments decisions.

BUT DO WE HAVE TO DO ANYTHING?

The only schemes that are currently required to consider climate-related issues are larger schemes (with more than £1bn of assts), authorised master trusts or collective money purchase schemes.

However, the Department for Work and Pensions will review the scope of the current requirements later this year, following input from a working group at the Pensions Regulator. The working group is tasked with considering the practicalities of transition plans on pension schemes.

FURTHER READING:

+ UK consultation on transition planning.
+ Taskforce on Nature-related Financial Disclosures info & guidance.
+ Info for Board Directors on financial and operational risks from nature report.
+ Why biodiversity matters to pension schemes.

BUT WHAT ARE TRANSITION PLANS?

In 2019, the UK committed to net zero greenhouse emissions by 2050. In 2021, the Government introduced more ambitious plans to cut emissions by 78% by 2035 (compared to 1990 levels). In order to achieve this, investment needed to shift into sustainable projects and green technology. Transition plans set out how each organisation would help to achieve that target.

A government consultation, open until September 17, seeks views on what these transition plans should look like, and the Pensions Regulator is encouraging schemes to respond.

It is worth remembering that schemes required to prepare a statement of investment principles (SIP) must still include details of any environmental, social and governance policies and considerations (including but not limited to climate change) that the trustees consider to be financially material.

However, there aren't currently any legal obligations for individual companies, pension funds, or financial institutions in the UK to align their activities with net-zero by 2050; but some companies have publicly stated that their plans are aligned.

Whilst change is coming and obligations pushing organisations to align their activities is coming, future requirements are likely to be proportionate and will not affect small to medium-sized companies.

But as the Pensions Regulator says, "this is not just about compliance, it's about leadership".

LOOKING TO THE FUTURE...

SEPTEMBER

+ Pension Schemes Bill's passage through parliament continues with oral evidence given to a legislative scrutiny inquiry on 2 September and debates will resume on the 4th September. The Bill is planned to complete the parliamentary process by Q2 2026.
+ We are hosting a breakfast seminar on IHT changes on 25 September. Invites will follow shortly but please get in touch with your usual Stephenson Harwood contact if you don't receive one.

OCTOBER

+ Rumour has it that the Verity Trustees v Wood decision will be handed down in October. Running at over six weeks, it's one of the longest case hearings in pensions history and so is likely to be significant. We will publish an update as soon as we have seen a copy.
+ The Government plans to introduce legislation to deal with the legal complications that arose from the Virgin Media case . However, as the Verity Trustees case includes section 37 issues, it is likely that any changes will follow that judgment.

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