INSIGHT

DEVELOPMENTS IN OCCUPATIONAL PENSIONS

APRIL 2022

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CONTENT

THE REGULATOR'S QUICK GUIDE TO THE CHAIR'S STATEMENT- UPDATE

As described in our earlier article "Good 'Value for Members' or wind-up", money purchase and hybrid schemes of less than £10 million in total assets must now carry out a more detailed value for members (**VFM**) assessment, which forms a crucial part of the annual Chair's Statement (unless you have already notified the Pensions Regulator (the **Regulator**) that you are in the process of winding up your scheme).

The VFM assessment now also involves self-assessing the quality of the administration and governance with reference to prescribed key metrics and comparing your scheme's costs and charges and net returns against three other schemes.

To assist schemes, the Regulator has now updated their quick guide to the Chair's Statement for the following sections:

- Demonstrating how you [the Trustees] have met the requirement to state the return on investments (for scheme year ends that fall after 1 October 2021)
- Demonstrating how you [the Trustees] have met the requirements for calculating member borne charges and transaction costs in respect of all funds and explaining how they represent value for members.

We have set out below two checklists for these new sections to help you complete your Chair's Statement.

Demonstrating how you have met the default arrangement investment strategy requirements (for scheme year ends that fall after 1 October 2021):

- Have you attached a copy of the latest Statement of Investment Principles (**SIP**) for the default arrangement(s)?
- Have you provided details about any review of the default strategy and performance of the default arrangement carried out during the scheme year?
- Have you provided a full explanation regarding any changes made as a result of the review?
- If no review was carried out during the scheme year, have you confirmed this fact and provided the date of the last review?
- Do you have processes in place to publish relevant parts of this section on a website and have you complied with the requirements to notify members about this in the Annual Benefit Statement?

Demonstrating how you have met the requirements for calculating member borne charges and transaction costs in respect of all funds and explaining how they represent value for members:

- Have you clearly shown the level(s) of charges and transaction costs borne by members during the scheme year in respect of each of the default arrangements?
- Have you clearly shown the levels of charges and transaction costs borne by members during the scheme year in respect of each of the non-default arrangements in which members were invested?
- Have you indicated what (if any) transaction cost information you were unable to obtain and explained what steps are in place to obtain the remainder?
- Have you provided illustrative examples of the cumulative effect over time of the relevant costs and charges on the value of a member’s benefits for every default arrangement?

- Have you provided illustrative examples (at scheme level) of the cumulative effect over time of the relevant costs and charges on the value of a member's benefits for the highest and lowest charging non-default fund in which members are invested?

- Have you had regard to the statutory guidance in preparing these examples?

- If your scheme has £100 million of assets or over, have you provided a full explanation and set out the results of your most recent assessment of the extent to which member borne costs and charges represent good value for members?

- For scheme year ends falling after 31 December 2021, if your scheme has under £100 million of assets and has been operating for three or more years meaning that you are required to carry out a more detailed value for members assessment, have you fully explained whether the scheme is offering value for members in all three required areas (charges/transaction costs, investment returns and administration/governance)?

- Do you have processes in place to publish relevant parts of this section on a website and have you complied with the requirements to notify members about this in the Annual Benefit Statement?

The Regulator's quick guide now also states that it is "acceptable to attach to the statement any information or documents that are required to be 'stated' or 'included' as part of it", whereas, before March 2022, the quick guide suggested that the default SIP and the illustrative examples were the only documents to be attached to the Chair's Statement.

It is worth remembering that the Regulator's quick guide is essentially just that, and the DWP's statutory guidance (available here) provides more detailed help on how to carry out the comparison against three other schemes.

THE EFFECTIVE SYSTEM OF GOVERNANCE - ESOG

How effective is your system of governance (**SOG**), how do you make an assessment to identify the effectiveness of your SOG and what do you need to do if your assessment shows that the SOG you have in place is not effective?

Back in 2019, the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018, which came into force in 2019 (the **2019 Governance Regulations**), required that pensions schemes have to have in place the ESOG and, if they have 100 or more members, they had to also produce an Own Risk Assessment (the **ORA**).

These new two requirements are now also contained in the Single Code of practice introduced by the Regulator which demands, among other requirements, to comply with the 2019 Governance Regulations.

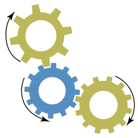
In other words, if yours is a private sector scheme with 100 or more members, you, as a governing body, have the new requirement to carry out and document an ORA and demonstrate you have an ESOG. In our article TPR - the new single code of practice you can read where you can find out the areas covered by the ORA and a roadmap which will help you navigate this new requirement.

However, even if yours is a private sector scheme with fewer than 100 members, although you won't need to comply with the new ORA requirement, you still need to demonstrate you have an ESOG.

It is important to bear in mind that the 2019 Governance Regulations' expectation is that trustees have an ESOG which must be proportionate to the size, nature, scale and complexity of the activities of the scheme.

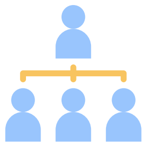
We have set out below the twenty-five modules grouped into six different categories that must be included in the ESOG and a table with suggestions on what to do and what not to do.

We are happy to support you to carry out an initial gap analysis to identify the policies, processes and procedures you have in place and the ones you need to implement along with the timescale for the implementation.



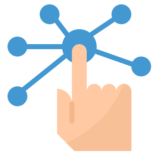
The management of activities

- Role of the governing body
- Meetings and decision-making
- Remuneration policy
- Working knowledge of pensions
- Governance of knowledge and understanding
- Building and maintaining knowledge
- Dispute resolution procedures
- Continuity planning



The organisational structure

- Role of the chair
- Conflicts of interest
- Managing advisers and service providers

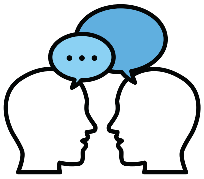


Administration and management

- Financial transactions
- Scheme records
- Data monitoring
- Receiving contributions
- Monitoring contributions
- Maintenance of IT systems

The investment matters

- Investment governance
- Investment decision-making
- Investment monitoring
- Stewardship
- Climate change



The communications and disclosure

- General principles for member communications

Internal controls

- Identifying and assessing risks
- Managing risk using internal controls

Do	Don't
Consider whether to set up a sub-committee to manage the different categories.	Don't simply assume that your current policies, processes and procedures comply with the new code of practice's requirements.
Carry out a gap analysis to identify the policies, processes and procedures you have in place and the ones you need to implement with the timescale for the implementation.	Don't forget to document and keep in your records your assessment to all the categories listed in the new code of practice.
Each element of the ESOG must be reviewed at least every three years. It is not necessary for all elements of an ESOG to be reviewed at the same time.	Don't fail to review your ESOG at least every three years and document your review.

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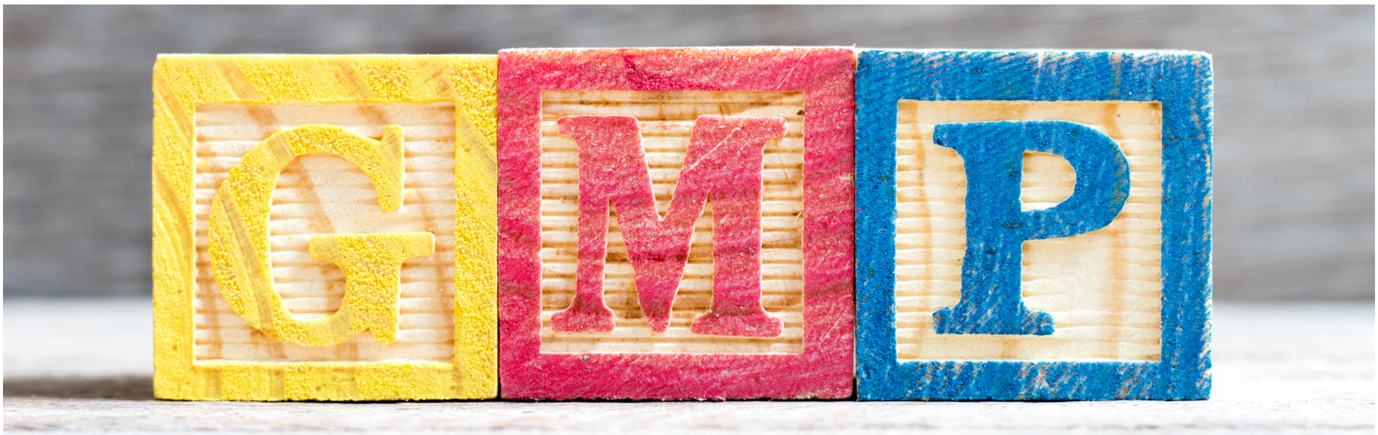
GMP EQUALISATION - NEWS



In the last few months more support was received on how to equalise GMP and address some of the questions that often arise when dealing with GMP equalisation (**GMPE**).
The support came from:

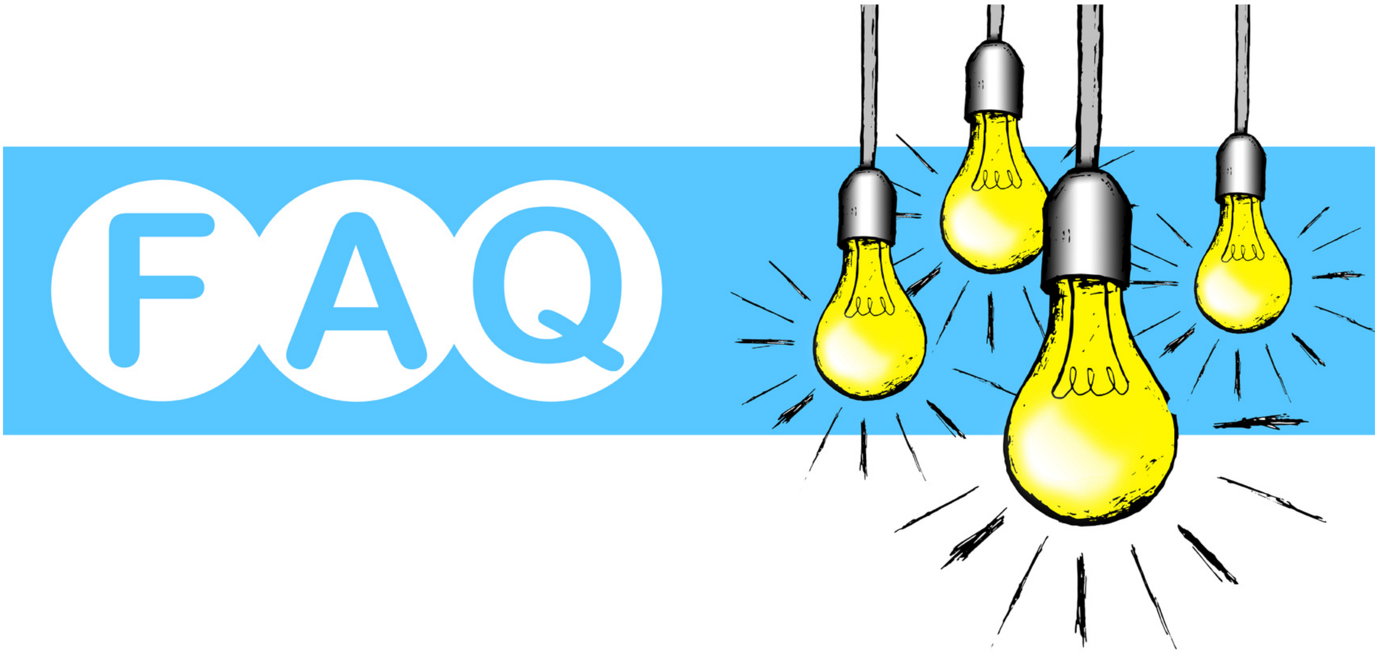
- The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill;
- The HMRC GMPE newsletter published in April 2022; and
- The PASA GMP equalisation FAQs.

The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill
The GMP conversion Bill has now received royal assent. This Bill has been designed (i) to provide more clarity on GMP conversion, (ii) to clarify the minimum survivor's pension required, (iii) to substitute the requirement to receive the employer consent with the requirement to receive consent from 'each relevant person' and (iv) to remove the current requirement to notify HMRC of GMP conversion.

The HMRC GMPE newsletter published in April 2022
HMRC has published this newsletter about GMPE to clarify a few points, mainly on GMPE for members who transferred out and GMP conversion.

The key points from the newsletter are:

1. GMPE - making a transfer top-up payment: the Scheme Administrator may decide that a member, who, as a result of an historic transfer out, was underpaid, is entitled to receive a top-up payment in order to equalise for the effect of the GMP. In order to make an authorised payment, the top-up transfer payment must satisfy the conditions for a recognised transfer that apply at the time the top-up transfer is made. Therefore, the top-up payment can only be made to a scheme which is a registered pension scheme (or a qualifying recognised overseas pension scheme (**QROPS**)) at the time of the top-up.
2. GMPE - making a lump sum payment: a lump sum payment to the member to equalise for the effect of the GMP is an option, provided it is an authorised payment and it meets the payment conditions at the time the payment is made. This includes small lump sums and winding-up lump sums.
3. Taxation: the right to receive a top-up payment represents an uncrystallised right for tax purposes and the payment to the member in respect of an uncrystallised right is taxed on 75% in the lump sum but not on the remaining 25%. The HMRC Pensions Tax Manual provides further information.
4. GMP conversion: the newsletter considers conversion (i) for members who have not retired or are deferred members (ii) for pensioners, and those who have left pensionable service pre 6 April 2006 and (iii) for pensioners that have recently retired.



The PASA GMP equalisation FAQs

In March 2022 PASA published new guidance which is designed to help administrators implement GMPE and addresses the following specific queries. We recommend reading the guidance for further detail and considerations.

Q: Is the 'look-back' approach in assessing crossover points between member and comparator pensions in periods between pension increase dates appropriate for administrators and trustees to consider?
A: View of the group - The 'look-back' approach is an appropriate solution for most scheme structures and members.

Q: What PAYE tax considerations are there regarding the payment of arrears and interest?
A: View of the group - When communicating with members in bulk about any arrears they are due, trustees may wish to consider taking the approach of providing the total amount of arrears due (with interest separately identified), rather than a detailed breakdown.

Q: Death benefits - what are the practicalities including member communications, which should be considered when undertaking the project to equalise benefits for members in scope?
A: View of the group - It's important as part of the due diligence phase of a GMP Equalisation project to discuss and agree with the trustees the approach to be taken where the member has died. If GMP rectification has been completed the approach taken for this exercise may form a precedent. Further help and information is also contained in the PASA GMP Guidance Note 6.

Q: If the member has been underpaid and is receiving an arrears payment and/or an increase in pension, do I need to check whether this causes them to exceed the LTA?
A: View of the group - A pragmatic approach should be taken to checking the LTA position of an in scope member.

Q: Commutation: meeting minimum pension and position for a comparator – what approach should I take?
A: View of the group - Ultimately this will be a trustee decision based on the factors like scheme rules, membership profile, administration system capabilities, past precedents and member experience and transitionary issues.

OUTCOME OF DWP'S 'STRONGER NUDGE' GUIDANCE

Draft regulations made under the Financial Guidance and Claims Act 2018 were laid before Parliament on 17 January 2021 and will now come into force on 1 June 2022.

The new regulations - The Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022, (SI 2022/30) - implement the DWP's 'Stronger Nudge' for occupational pension schemes.

In February 2020 Stronger Nudge trials were completed to test the effect of presenting taking Pension Wise guidance as a normal part of the process and making it easier to book an appointment, when receiving or transferring flexible benefits.

The results from these Stronger Nudge trials has shown that 'nudging' members to take appropriate pensions guidance from Pension Wise significantly increased the take-up of Pension Wise.

These new rules which followed the Stronger Nudge trials, mean that:

1. Trustees are required to refer scheme members (or other beneficiaries) to Pension Wise when they apply to transfer or to start receiving their flexible benefits
2. Trustees need to ensure that such members (or other such beneficiaries) have either received, or opted out of receiving, guidance from Pension Wise before proceeding with their application.

Defined benefit (**DB**) schemes that have a defined contribution (**DC**) AVC facility also fall under these requirements.

The Regulator has also updated their online guidance on member communications at retirement.

PENSION SCAMS - A NEW WEBINAR FROM THE REGULATOR

The Regulator has released a new webinar to bring together various pieces of guidance and updates surrounding pension scams and reminds trustees, and the rest of the pensions industry, on how they can help combat these devastating scams.

The webinar covers:

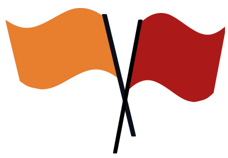
- The evolving pension scams landscape
- Guidance on the new regulatory transfer duties (see HPW's January 2022 Insight)
- The Pledge to Combat Pension Scams, which sets out TPR's expectations for the pensions industry
- Updates from the Pension Scams Industry Group which details the steps that the industry can take to protect members.

The webinar can be accessed online on the Trustees Toolkit page here.

Below we listed some key takeaways from the webinar:

Communicating about scams only when they think a member is being scammed isn't enough. The trustee should send members communications about scams each year, when new guidance comes out, and in their transfer packs when they request a transfer.

Having checked the Financial Services Register and FCA warning list, call the member for more information if you still can't rule out a scam and further due diligence is required.



Look out for red and amber flags when it comes to pension scams such as unsolicited contact, concerning phrases like "free pension reviews", high returns or unusual investments.

Pension scam tactics evolve, so regularly check the FCA and TPR's website for warning signs of a scam.

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