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PENSIONS QUARTERLY UPDATE

Text only version

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IN THIS QUARTERLY UPDATE WE COVER...

HIGH COURT CONSIDERS MEANING OF "ACCRUED RIGHTS OR INTERESTS" IN SCHEME AMENDMENT POWER

3i Plc v John Decesare

A restriction preventing reduction of "accrued rights or interests" did not prevent closure to future accrual, the High Court found in November 2025.

BACKGROUND:

The 3i Pension Plan (the Plan) was incorporated in 1973 and closed to future accrual on 5 April 2011, albeit with the salary link preserved.

In 2023, when the trustees began to wind up the Plan, they intended to distribute an £83 million surplus to 3i, as principal employer.

The issue arose in the wake of the decision in the BBC case, where, without going into the detail of the case, a restriction in the amendment power preventing amendments to members' "interests" meant that the scheme could not close to future accrual.

The Plan had a similar restriction, preventing amendments that:

"...diminish any pension already being paid under the Plan or the accrued rights or interests of any Member or other person in respect of benefits already provided under the Plan...".

As a result of the similarities between the restrictions in the BBC's and the Plan's amendment power, the Plan's trustees questioned whether the closure to future accrual, and consequently, the scheme wind-up, was valid.

SUMMARY OF FINDINGS:

Mr Justice Richard Smith concluded that the language of the Plan's amendment power was "unambiguous," concerning itself only with preventing the diminution of past-service benefits. Therefore, the 2011 termination of future accrual was permitted.

In reaching his conclusion, the judge reiterated the rules of interpretation that require consideration of the natural meaning of words, quoting Sir Geoffrey Vos MR in Britvic plc v Britvic Pensions Ltd [2021] ICR 1648:

"if the parties have used unambiguous language, the court must apply it."

THE ARGUMENTS:

The arguments centred on the word "accrued" and whether it should attach to all elements that followed (i.e. "rights", "interests" and "benefits") or just to the first word in the list (i.e. "rights").

On the one hand, 3i applied the reasoning in the Cantor Fitzgerald case:

"where an adjective is followed by a series of nouns in a list, the conventional understanding is that it modifies all the nouns in the list".

Therefore, the word 'accrued' should attach to rights, interests and benefits, meaning that the language was unambiguously focused on protecting only the benefits that had already been earned or 'accrued'. And not, in the alternative, all interests in the scheme, whether accrued or otherwise.

Conversely, the Representative Beneficiary contended that the restriction in the amendment power prevented the closure to future accrual, as the word "accrued" should only be attached to "rights" (and not to "interests" or "benefits already provided"). This would expand the meaning of "interests" to protect future service benefits, in line with the BBC case.

HIGH COURT CONSIDERS MEANING OF "ACCRUED RIGHTS OR INTERESTS" IN SCHEME AMENDMENT POWER

ACCRUED RIGHTS AND THE FINAL SALARY LINK

Mr Justice Richard Smith agreed with 3i. He stressed that the structure of the Plan's restriction, or 'fetter', on the amendment power was distinctly different from the "untethered" interests clause in the BBC case.

He found that the drafting was clear and that the adjective "accrued" qualified all listed elements that followed. He also considered that the words "already provided" in the clause pointed firmly to past service.

WHAT DOES THIS MEAN FOR YOUR SCHEME?

If your scheme has an amendment power that restricts the modification of "interests", it is not a given that it will follow the BBC case. All rules must be carefully considered and given their natural meaning.

Our litigation team worked on the BBC case and has significant experience with other, subsequent cases, so please let us know if you would like us to review your amendment clause.

SCAM PROOFING YOUR SCHEME: ARE YOUR DEFENCES UP TO SCRATCH?

Pension scams are becoming increasingly common. Action Fraud, now 'Report Fraud', reported that the total annual loss to pension fraud in 2024 was £17,567,249, an average of more than £48,000 per day, where the most common types of fraud include taking control of pension accounts by impersonating the victim or pressuring pension holders into scam investments.

The Pension Scams Industry Group (PSIG), a multi-agency taskforce of law enforcement, government and industry, is working to tackle the issue. However, the cases continue. In the past five years, the Financial Ombudsman Service has heard complaints from 650 victims of pension liberation scams and the Pensions Ombudsman regularly hears complaints regarding pension liberation – at the time of writing there had been four since August 2025. Although none were upheld, this is still a costly and time-consuming process for Trustees.

In November 2025, the Pensions Regulator, as part of the fifth anniversary of the Pledge to Combat Pensions Scams campaign, supported the BBC's 'scam safe week'. More than 650 organisations and schemes have already pledged to combat pensions scams, and if your scheme hasn't done so already, you can find more details here.

Our summary of the recent case law below highlights the serious consequences for trustees and administrators who fail to protect members from scams or who themselves engage in dishonest conduct.

TRUSTEES AND ADMINISTRATORS FINED MILLIONS AFTER MAKING WORTHLESS AND DISHONEST INVESTMENTS

On the theme of scams, in November, the High Court rejected an appeal by pensions administrator, Brambles Administration Limited (**Brambles**), and four other appellants (the **Appellants**), who challenged a 2024 Pensions Ombudsman decision. The Ombudsman had ordered them to repay millions to restore assets lost as a result of their breach of trust.

The Ombudsman was highly critical of the Appellants' conduct, finding worthless investments, dishonesty, breach of duty and maladministration. Without going into the details of the scams, the investments were all high-risk, unregulated, highly illiquid and most profited the trustees themselves.

The Appellants appealed to the High Court but lost on all grounds of the appeal. We have summarised the grounds of appeal that were considered by the court below.

Ground 1 for appeal: time limits – suspicion is not knowledge

The Appellants argued that the original complainants to the Ombudsman were time-barred. Members can bring a complaint to the Ombudsman for maladministration or a dispute of fact or law within 3 years from the act or omission which is the subject of the complaint. There are two exceptions:

+ if the complainant was unaware of the act or omission, the time does not begin until the "earliest date on which that person knew or ought reasonably to have known of its occurrence," and
+ the Ombudsman can investigate complaints or disputes beyond that time if he considers it reasonable.

Somewhat surprisingly, the Appellants argued that the members should have known of the scam earlier than they did and that the lack of annual statements should have been clear evidence of an issue.

SCAM PROOFING YOUR SCHEME: ARE YOUR DEFENCES UP TO SCRATCH?

One of the members had become suspicious as early as 2015, but it wasn't until a few years later that they realised their pension investments were a sham. Another member's suspicions were confirmed when he read about other Brambles scams online.

Mr Justice Richards drew a distinction between "getting a bit dubious" and knowing of acts or omissions that can form the subject of a complaint. And in any event, the Ombudsman has discretion to accept claims beyond the three years. As such, the argument was dismissed.

Ground 2 for appeal: separate sub-trusts for each member

The Appellants hoped to argue that each member had an individual trust, meaning that there would be no duty to reconstitute the entire scheme and the trustees may not have failed in their duty to diversify investments.

However, Mr Justice Richards drew the distinction between the fund and the trust:

+ Whilst the fund did include individual funds, the asset allocations were notional and used for accounting purposes to calculate benefits.
+ There was no indication that each fund should constitute a separate trust.
+ Nor was there any agreement with the members that their assets should be held on individual trusts. In fact, investments were merged between members.

Mr Justice Richards concluded, "in order to demonstrate that an individual fund is indeed held on a separate trust, the appellants would need to show how the definition of individual fund is actually used in operative provisions and why those operative provisions establish a sub-trust rather than a notional allocation for the purposes of calculating the benefits only."

Whilst the High Court's analysis applied to Brambles and the Appellants, it also serves as a useful reminder of the rules for schemes that genuinely want to create sub-trusts or segregated sections of trusts.

Ground 3: Can non-professional trustees be held to a lower standard?

The Appellants also challenged the Ombudsman's findings of dishonesty, arguing that the Ombudsman:

"held them to too high a standard by failing to acknowledge that they did not have the level of knowledge that a professional trustee would have and instead had a 'much lower level of knowledge and experience'."

However, it is not the job of the High Court to ask whether it agrees with the Ombudsman's findings, but instead to consider whether the Ombudsman:

1. reached a conclusion that was not available to him on the evidence, or which was perverse,
2. ignored relevant considerations, or
3. took into account irrelevant considerations.

The High Court judgment repeats the clear examples of the trustees' knowledge, including that the investments were designed to advantage the trustees, move funds outside the trusts and charge "exorbitant fees." Richards, J found that the Ombudsman's findings supported a conclusion of dishonesty.

SCAM PROOFING YOUR SCHEME: ARE YOUR DEFENCES UP TO SCRATCH?

Counsel for the appellants also tried to argue that the Ombudsman's conclusions were not properly explained or reasoned and failed to hear oral cross-examination evidence. It was a strange argument to run, as the Appellants had been invited, but they themselves had refused to attend the oral hearing!

As a result, Justice Richards saw no reason to look behind the Ombudsman's hard-hitting conclusions of fact, or to doubt the inference he drew that the appellants refused to attend the oral hearing because they were unable to testify as to the reasonableness of their explanations for the various breaches of trust and maladministration that had taken place.

Further information:

+ The Pensions Regulator's Pledge to combat pensions scams page has a list of helpful links if you would like to know more.
+ The Combating Pensions Scams code of best practice is here.
+ The Pensions Regulator will also be hosting a webinar in spring 2026 to give an update on pensions scams.

TRUSTEES CAN VOLUNTARILY ASSUME A DUTY OF CARE WHEN TRANSFERRING BENEFITS

The Ombudsman saw 42% more cases in 2024/25 than in the previous year. In response to rising demand, the Pensions Ombudsman and Deputy Ombudsman are applying a 'lead case' approach for industry-wide or scheme-specific issues that affect multiple members (see the Pensions Ombudsman's 2025/26 Corporate Plan for more information), thereby reducing the strain on the Pensions Ombudsman's resources allowing future individual claims to follow the precedent of the lead case. Transfers are one of those industry-wide issues, with lead cases for different types of transfer.

For statutory transfers, the lead case involved HBOS Final Salary Pension Scheme and in November 2025, the Deputy Ombudsman, Camilla Barry, published her determination involving historic non-statutory transfers exercised under the rules of the scheme. The case involved Mr S, a member of the BMW (UK) Operations Pension Scheme.

This lead case for non-statutory transfers, follows the question in previous claims, namely whether the trustees had a duty to carry out additional due diligence and thus prevent a transfer that would ultimately cause Mr S to lose all of his pension savings.

The trustees ***"were under a duty to pay benefits and to act fairly in deciding whether to allow his transfer request, but they were under no duty to check his transfer request was in his interests"*** found the Deputy Ombudsman. Nor do they have a duty to advise members on their options.

That said, trustees should be aware that their actions can constitute a voluntary assumption of responsibility to the member to carry out additional due diligence. If that happens, and the member then places reasonable reliance on the trustee's additional due diligence, the member could have a claim.

Since 30 November 2021, a new regime has existed for statutory transfers using a system of red, and amber flags for trustees to decide whether a transfer can proceed. Although directed at statutory transfers, the Regulator's guidance says that where risk indicators are present, trustees can still make non-statutory transfers (i.e. those using rights under the scheme's rules rather than the statutory regime):

"Your scheme rules may still allow you to make non-statutory transfers even when these risk indicators are present. You should consider the checks in this guidance when assessing whether to grant a non-statutory transfer, but the regulations do not prevent you from making a non-statutory transfer payment where you consider that the transfer is in the member's interests and does not pose a risk. You should not use non-statutory transfers to avoid carrying out due diligence."

Therefore, Trustees should consider seeking legal advice before making statutory or non-statutory transfers to avoid being in breach of their fiduciary duties or, going too far the other way and voluntarily assuming additional responsibilities when assisting in the member's due diligence.

SCHEME MEMBER DATA - NEW GUIDANCE AND THE COST OF GETTING IT WRONG

The Pensions Regulator has updated its record-keeping guidance - now called 'scheme member data quality'- setting out practical steps and good practices that trustees and managers should take. Having good data means that members receive correct information, it minimises mistakes and errors, which, as the administrators of the Teachers' Pension (see below) discovered, can be costly to correct.

You can see a full copy of the updated guidance here.

DISCLAIMERS ARE NOT "GET OUT OF JAIL FREE CARDS"

Mr E v Teachers' Pensions (CAS-63587-P0K4)

"I've received my statement of benefits and there's one thing I want to ask you about," said Mr E when he rang the Teachers' Pension (TP) in March 2014. ***"My total reckonable service is higher than I have been teaching,"*** he added.

The operator reassured him that it was correct saying it was compensation for an amount transferred into the scheme. It wasn't correct though. When Mr E retired six years later, his pensionable service was reduced by five years.

Mr E complained to the Ombudsman who considered the facts and found that the TP was liable for negligent misstatement.

An administrator will be liable for negligent misstatement when, broadly:

+ the administrator owed the recipient a duty of care as to the accuracy of the information;
+ the duty was breached (i.e. the information was incorrect);
+ the recipient reasonably relied on the information and suffered loss; and
+ the loss suffered was not too remote.

Whilst the relationship between scheme administrators and members is not a fiduciary one, it is sufficiently proximate for a duty of care to arise in negligence, as has been found in numerous other cases.

Consequently, administrators often seek to limit liability by including a disclaimer and the TP was no different. Each of Mr E's statements included the text:

"Although every effort has been made to ensure accuracy, it is for illustration only and does not give you entitlement to the retirement benefits quoted. At retirement, your membership history will be scrutinised to ensure benefits are calculated on the correct service."

However, the Ombudsman confirmed that disclaimers are not "get out of jail free cards," but instead are one of the facts that must be considered when asking whether the administrator has assumed responsibility for the relevant statement.

This case turned on the transcript from Mr E's telephone call to the TP:

Mr E: ***"So the benefit has been quite significant. I just wanted to check that because that's really good news, but it's not something I want to rely on if it's inaccurate."***

TP: ***"No, not at all, that's perfectly right, sir."***

Mr E: ***"Brilliant. Thank you."***

SCHEME MEMBER DATA - NEW GUIDANCE AND THE COST OF GETTING IT WRONG

This transcript evidenced Mr E's express querying of the inconsistency and his informing the TP that he intended to rely on the information.

TP's response that he was "***perfectly right***" effectively overruled the written disclaimer in the statements, by giving an unqualified assurance that the information was correct.

Accordingly, the Ombudsman found that the test for negligent misstatement was satisfied and directed TP to calculate and pay Mr E's financial loss (on a negligent misstatement basis) and an additional £1,000 for distress.

For administrators, trustees and employers, this is a reminder that disclaimers are useful but not watertight. They may not withstand subsequent assurances on which members then rely.

DEFERRED MEMBERS DESERVE FAIR VALUE UPLIFT AND NOT CONFUSING BENEFIT STATEMENTS

Another recent Pensions Ombudsman case considered a member's complaint that they had received 'misleading communications'.

The claimant, Professor N, had the right to retire on an unreduced pension from age 60. His statements said 'you have a right to retire from age 60 with no reduction of your benefits. However, you can also continue in the Scheme after age 60'.

When he retired at 62, he was disappointed to discover that he had lost out on two years of pension.

The Deputy Ombudsman found that the ***"failure to state that not retiring immediately or taking no action would result in the loss of the value of the pension instalments that the member was otherwise entitled to, was misleading."***

In addition, the line in Professor N's pension statements ***'If you do not want to retire at this time, you need take no action'***, was ***"misleading as it suggested that doing nothing would not impact his rights,"*** said the Deputy Ombudsman.

That said, in her reasoning, Professor N was entitled to an uplift, not because of reliance on the misleading statements, but because of section 71 of the Pension Schemes Act 1993, which requires schemes to make fair provision for short service benefits when members' service ends before 'normal pension age'.

'Normal pension age' is defined as the "earliest age at which the member is entitled to receive benefits… on his retirement from such employment," albeit with an exemption for rules that make "special provision as to early retirement on grounds of ill-health or otherwise."

However, the Deputy Ombudsman did not believe that standard early retirement was caught by this exemption. She relied on Andrew Simmons QC's (as he then was) analysis to the Pension Protection Board that the exemption would not apply to payments of unreduced early retirement pension that were "conditional only on surviving to a particular age" due to the inclusion of the words "special", "early" and "on the grounds of ill-health or otherwise".

Therefore, in considering that section 71 applied, the scheme must apply the 'fair value rule' to short service, to ensure that an actuarial uplift is applied to any permitted period of deferred retirement.

The Deputy Ombudsman found that where scheme rules were silent as to the fair value rule, they should "either be deemed to include one or the Trustee is liable to pay compensation to Professor N for the failure to [include] one."

The Deputy Ombudsman ordered that the fair value uplift be applied, after which, Professor N would not have suffered any loss for reliance on the misleading statements.

STEPHENSON HARWOOD AND THE SOCIETY OF PENSIONS PROFESSIONALS SECURE FIX TO PENSION SCHEMES BILL FOR WOUND-UP SECTIONS

One of the goals of the Pension Schemes Bill 2026 is to end the uncertainty raised by the Virgin Media litigation. The decision cast doubt on past amendments where there was no evidence of the actuary's confirmation (under section 37 of the Pension Schemes Act 1993) that changes to a contracted-out salary-related scheme were permitted.

Clause 102 of the Bill would mean that legacy amendments made to wound up schemes are treated as valid, even where the paperwork evidencing the actuary's confirmation cannot be found.

However, as originally drafted, the clause only applied if the whole scheme wound up, and not if a section was wound-up. In a market where many DB arrangements are sectionalised—notably multi-employer schemes and master trusts routinely wind up or buy out one section years before others—that omission would have produced arbitrary outcomes and unnecessary friction, driven by scheme architecture rather than substance.

Working with the Society of Pension Professionals, Stephenson Harwood proposed a targeted amendment to extend the remediation route to part of a GB scheme. That change has now been adopted in the latest draft. It aligns the statutory validation mechanism across whole wind-ups and section wind-ups, reducing legal risk and cost for trustees, sponsors and insurers.

Without the amendment, trustees of segregated schemes would have faced inconsistent treatment across otherwise identical benefits. This would have forced trustees and administrators into costly, time-consuming reviews of section-specific amendment records (often incomplete where sponsors have exited), complicated pricing and execution of buy-ins and buy-outs for sections and increased the likelihood of member disputes turning on paperwork rather than entitlement.

The amendment removes that asymmetry, supports de-risking and consolidation, and provides a clearer route to regularise benefits where section 37 evidence is missing.

THE AUTUMN BUDGET 2025: BINGO AND HORSE RACING ARE SAFE, BUT WHAT ABOUT PENSIONS?

After months of speculation, Rachel Reeves delivered her second Budget, with as-expected changes that will find higher earners feeling the pinch. In our latest pensions insight, we explain how this Budget will affect the pensions landscape.

Reeves has previously acknowledged that the economy "feels stuck": persistent high prices are dampening economic growth and GDP per head is only 0.8% higher than pre-pandemic levels almost six years ago. She was bound by Labour's manifesto promise to "not increase taxes on working people…increase National Insurance, the basic, higher, or additional rates of Income Tax, or VAT," but needed to plug a black hole of £22 billion, where £1 in every £10 of Government spending is used to pay interest on the national debt.

SALARY SACRIFICE

The biggest change for pensions is the Chancellor's cap on the National Insurance Contributions (**NICs**) exemption for salary sacrifice on pension contributions.

When salary is sacrificed to pay pension contributions the employee's gross salary is reduced, resulting in lower NICs liabilities for both employer and employee. Another advantage for employees is that they obtain full income tax relief on contributions, as opposed to relief at source where they only automatically benefit from 20% relief and have to claim any additional rate tax directly from HMRC, which many employees fail to do.

A recent Pensions Age report found that 2.3 million UK savers - around a quarter of taxpayers in those bands - aren't claiming their entitlement to additional tax relief on their pension contributions.

Currently there is no limit on the NICs relief available when an employee sacrifices salary in return for increased, NICs-free employer contributions. From 6 April 2029, however, the exemption will be capped at £2,000 per annum (which equates to a 5% contribution for an employee with a £40,000 salary).

This will attract NICs on both sides of the ledger — at 8% for employees up to £50,270 of pay (and 2% above that) and 15% for employers – raising an estimated £4.7 billion in 2029-30 and £2.6 billion in 2030-31.

THE AUTUMN BUDGET 2025: BINGO AND HORSE RACING ARE SAFE, BUT WHAT ABOUT PENSIONS?

WHAT IMPACT WILL THIS HAVE ON BUSINESSES AND THEIR EMPLOYEES?

We are already in a weak labour market, with unemployment rising; this change could worsen the situation. It may also damage long-term pension savings for millions of workers, storing up problems for the future and an erosion of trust in a pensions system that is already under considerable pressure.

The new cap will force higher contributors and employers to factor NICs into the cost of pension saving, potentially triggering a redesign of reward structures and contributions or even cutting the employee headcount.

However, salary sacrifice is a contractual arrangement; it's not something that can simply be unilaterally "unwound" by an employer. Changes to existing arrangements will require planning and following the usual processes for amending employment contracts.

Limits to salary sacrifice will also have a detrimental effect on women's pension savings at a time when they already have to work 19 years more than men to reach the same retirement goal, according to the horrifying statistic released by the recent Gender Pensions Gap report from the Pensions Policy Institute.

Historically, salary sacrifice has provided a modest but valuable way to sustain pension saving through parental leave, which is still predominantly taken by women. While employers continue to pay contributions during parental leave, employee contributions fall in line with reduced pay. Any change that restricts salary sacrifice, and a corresponding shift from employer to employee contributions, will disproportionately dent women's pension pots.

SO WHAT CAN BE DONE?

For now, probably nothing. The change isn't due to be introduced until April 2029, and a lot can happen between now and then! Assuming the change happens as proposed, employers and trustees will need to take action and we've put together some thoughts on what that may look like.

One solution could be to switch to a non-contributory pension arrangement under which only employer contributions are made to the pension scheme. There are rules around how and when an arrangement like this can be used, however, so careful thinking will need to be done before implementing any such planning.

Administering a cap on a salary sacrifice arrangement and making the resulting NICs deductions from salary will not be straightforward, particularly where contributions are a percentage of salary and salary changes from pay period to pay period as it will do for many workers on flexible arrangements or who work overtime.

Trustees, employers and administrators may also need to update their scheme communications and payroll processes, and to prepare themselves for members to change their pension saving behaviour as the cap bites.

Get in touch if you would like to talk to us about how to manage this change with your workforce or pension scheme members. We have a dedicated Employment team that works alongside our Pensions team to support clients through changes like this.

THE AUTUMN BUDGET 2025: BINGO AND HORSE RACING ARE SAFE, BUT WHAT ABOUT PENSIONS?

NO CHANGE FOR OTHER PENSIONS TAXES

The State pension is set to rise by 4.8% on 6 April 2026 as Reeves reaffirmed the Government's commitment to the triple lock on state pensions, ensuring that increases are linked to the higher of inflation, earnings growth or 2.5%.

Tax relief on pensions remains unchanged, despite the cost to the Government of around £50 billion to £60 billion per year. Despite fierce rumours that triggered the withdrawal of £10.4 billion of tax-free cash in the six-month period to March 2025 - nearly 75% higher than in the same period to March 2024 - the right to tax-free cash at retirement (by way of PCLS or uncrystallised funds pension lump sum) remains.

Similarly, no changes were made to the availability of income tax relief on pension contributions.

OTHER, LESS EXCITING, CHANGES

From January 2027, the Pension Protection Fund and the Financial Assistance Scheme will provide CPI-linked increases, capped at 2.5% on pre-1997 benefits where the original schemes provided such benefit. This change comes as the PPF is in surplus, improved scheme funding positions have reduced reliance on these rescue schemes, and the PPF levy is set at zero for the 2025/26 financial year.

The government will transfer the Investment Reserve Fund of the British Coal Staff Superannuation Scheme to its trustees. Following the privatisation of the coal sector, the Government guaranteed the scheme's liabilities and became entitled to draw on the surplus in the Investment Reserve Fund. The current surplus - untouched since 2015 - will now be applied wholly for the benefit of the members.

Income tax marginal rate bands have been frozen until April 2031, meaning that anyone receiving a pay rise is more likely to fall into a higher tax bracket, and the inheritance tax nil-rate band (soon to feature much more frequently in conversations about pensions) also remains frozen.

And last, but not least, bingo duty has been abolished from April 2026 and horse racing bets are excluded from the tax increases on other remote betting.

LOOKING TO THE FUTURE

UPDATES: OWN RISK ASSESSMENT REQUIREMENTS COMING IN 2026

The trustee duty to carry out Own Risk Assessments (ORA) will begin for many schemes in 2026.

WHEN DO THEY BEGIN?

The new duties must be satisfied within 12 months of the end of the first scheme year that began after 28 March 2024. As many scheme years begin on 1 April, we expect that most schemes will have to finalise their ORA documentation by 31 March 2026.

WHAT ARE ORAS?

ORAs set out the Trustees' evaluation of how well the scheme's 'effective system of governance' (ESOG) is working and the way potential risks are managed. The Pensions Regulator's Code of Practice sets out the list of assessments that must be carried out, but the broad topics include an assessment of:

+ material risks facing the scheme and any internal control policies or dealing with conflicts of interest;
+ investment risks including selection of investments and funding needs of the scheme;
+ administrative risks, including financial transactions, scheme records and receiving contributions; and
+ operational risks, such as those relevant to the payment of benefits.

Whilst Trustees may need to expand their existing risk assessments to meet ORA requirements, many boards will already be conducting most of these as part of their ongoing governance; duplication is unnecessary.

For further details see the Regulator's Code of Practice here or please contact us to talk about what

MINI UPDATES: LEGISLATION AND REFORM

+ The auto-enrolment thresholds will remain the same in 2026/27.
+ The Finance (No 2.) Bill is moving through the House of Commons. The Committee Stage ended on 26th January. There is also a full list of the Autumn Budget's resolutions to be included in the Bill here.
+ The National Insurance Contributions (Employer Pensions Contributions) Bill is now in the House of Lords. This Bill sets out the limits to salary sacrificed for pension contributions.
+ The Pensions Regulator published draft changes to the CDC code of practice for unconnected multi-employers.
+ The Pension Schemes Bill is currently in the committee stage of the House of Lords. Many of the comments centred around concerns that the Bill was nothing more than a skeleton including almost as many delegated powers provisions as clauses in the Bill. Many of the Members of the House of Lords were concerned about the inclusion of a Government power to require DC schemes used for auto-enrolment to allocate a minimum proportion of their assets to specified investments, such as UK 'productive assets'. The Members pointed to the risk that this undermines Trustee independence and fiduciary duties.
+ Here is the running list of all amendments to the Pensions Schemes Bill in the House of Lords.
+ The Financial Reporting Council published draft technical guidance for actuaries being asked to consider retrospective section 37 certification as set out in the Pension Schemes Bill. See our September snapshot for more details of the draft legislation.

DATES FOR YOUR DIARY:

MARCH 2026	The DWP consultation on improving the standards of pension scheme trusteeship, governance and administration opened on 15 December. It will remain open until 5 March 2025.
EARLY 2026 (NO SPECIFIC DATES KNOWN YET)	+ The Pension Schemes Bill will receive Royal Assent. + The Verity judgment. + We are still waiting for the HMRC guidance on VAT deduction on the management of pension funds that was due in 'autumn 2025'.
SPRING 2026	Expect new training and a webinar from the Pensions Regulator on pensions scams.
BY APRIL 2026	HM Treasury laid a statutory instrument to allow targeted support to assist consumers in making pensions and investment decisions with the new regime applying from early April 2026. See the FCA's Targeted Support Consultation Response for more information.
BEFORE END OF 2027	Surplus extraction: new Pensions Regulator guidance is expected by the end of 2027, including illustrative examples of how members can benefit from surplus sharing.
BEFORE APRIL 2029	HMRC will publish guidance as to the changes to salary sacrifice

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