

# News on Pensions

MARCH 2015

## High Court ruling on frozen schemes

The judge has handed down her ruling in the High Court case of the Merchant Navy Ratings Pension Fund (MNRPF) v Stena Line Ltd and Others. This ruling could have implications for trustees and sponsoring employers of multi-employer schemes previously believed to be closed, but where the accrued pensions of members who remain employed by scheme sponsors is revalued more generously than the statutory minimum.

### Background

The MNRPF is a non-sectionalised, non-associated multi-employer scheme which closed to accrual in 2001. At the point of closure, members of the scheme who remained in employment were granted better-than-statutory revaluation of their accrued pension rights. These members were given a choice between having their accrued benefits revalue in line with national average earnings, or in line with price inflation (capped at 7% pa).

The MNRPF is currently faced with a significant funding deficit and the trustees wanted to impose a funding 'recovery plan' on more than 200 employers who had not contributed to the fund since it closed, as well as the 40 or so who had. However, the trustees also proposed that those employers who had contributed to the fund since 2001 should be given credit for this in formulating the new deficit funding plan.

Some of the employers argued that this was unfair, and not in members' best interests. The Court therefore attempted to clarify the extent to which trustees should take employers' interests into account when making such funding decisions.

Moreover, the Court also considered whether a scheme that offers enhanced revaluation of this type is a 'frozen' scheme? If not, then each time an employer's last 'active' member leaves, an expensive 'section 75' debt could be triggered.

### Employers' interests

With regard to taking employers' interests into account, the judge's comments were fairly unequivocal:

*"...as long as the primary purpose of securing the benefits due under the Rules is furthered and the employer covenant is sufficiently strong to fulfil that purpose, it is reasonable and proper ... to take into account the employer's interests".*

This clarification is unlikely to change the way most UK defined benefit (DB) schemes operate. In particular, trustees are already explicitly able to consider sponsoring employer's commercial interests when negotiating on funding matters, as reflected in The Pensions Regulator's (TPR's) Code of Practice on Funding DB Schemes (which in turn reflects TPR's own objective to 'minimise any adverse impact on the sustainable growth of an employer').

## Employers' responsibilities

If it had been decided that the MNRPF was not a frozen scheme, then employers without 'active' members would not be classed as 'statutory employers' and therefore would not be obliged to sign up to the new contribution schedule.

Moreover, if the MNRPF was deemed not to be a frozen scheme, employers who historically had stopped employing active members could have been liable for a significant debt under section 75 of the Pensions Act 1995. In future, debts could be triggered if an employer exits while another employs anyone 'in a category of employment to which the scheme relates'.

However, the court decided that the MNRPF is a frozen scheme so that the trustees are able to require former employers to contribute, and debts were not triggered.

Whilst this will be of interest to all multi-employer frozen schemes, this case relates to the specifics of the MNRPF arrangements. In particular, 'active' members of the MNRPF were offered enhanced revaluation while they remained in employment – the judge did not consider whether and how the ruling could be extended to closed schemes with benefits that remain explicitly linked to members' salaries.

**BLOG - FROZEN SCHEMES: "I WANNA KNOW WHAT I OWE, MAN" >**

## DB to DC transfers: TPR guidance

TPR has been consulting on [new guidance for trustees](#) regarding transfers from DB to defined contribution (DC) schemes after 5 April 2015.

### Advice requirement

Under the proposed rules:

- Within one month of receiving a request for a transfer value, trustees must inform the member of the legal requirement to take appropriate financial advice before transferring from DB to DC.
- The trustees should tell the member (via the transfer value statement) that the member must provide evidence that financial advice has been received, before the transfer value can be paid. Trustees cannot proceed with a transfer if this evidence is not received.
- Trustees should check that the adviser is on the FCA register, but are not required to check the advice, or that the member has followed the recommendation.

### Trustees' role

TPR says trustees should prepare for an increase in the number of transfer requests they receive from members in light of the additional flexibilities announced in the 2014 Budget, and consider the likely risks to the scheme. The draft guidance reminds trustees of their powers to delay transfer payments and reduce transfer values to address these risks.

Trustees should also ensure they 'have processes in place to implement transfer requests in a timely manner' and to consult their advisers on the potential impact of large transfers on their scheme's investment and funding strategies, taking into account TPR's earlier [guidance on calculating transfer values](#).

TPR reminds trustees that it is not their role to 'second-guess' individual members' personal situations and they should not 'prevent a member making decisions which the trustees might consider to be inappropriate to the member's circumstances'.

The consultation closed on 17 March 2015 and we expect final guidance to be issued shortly. TPR intends to review the guidance in 2016 in light of experience.

## DC Schemes: TPR 'flexibilities' guide

TPR has issued a [draft essential guide](#) to communicating with members about pension flexibilities which provides information on changes to the disclosure regulations, and good practice suggestions for communicating with members about their retirement choices.

The guide, aimed at trustees of DC schemes, sets out when and how to tell retiring members about Pension Wise; the generic 'risk warnings' that members should receive; and the statutory disclosure requirements in the run-up to members' retirement dates. The guide also includes a seven-step good-practice process for managing retirements.

### Regulations

To ensure the new pension flexibilities operate as intended, the Department for Work and Pensions (DWP) has published a raft of new regulations, including those which will [allow trustees to modify schemes' rules](#) so they can pay an uncrystallised funds pension lump sum (UFPLS) for example, and regulations [setting out additional requirements for transfer values from DB schemes to flexible benefits schemes](#).

### Accessing DC savings

The Government has launched a new [website](#), in which it outlines the steps and options individuals may wish to consider in accessing their DC savings. HM Revenue & Customs (HMRC) has also published [guidance](#) on how individuals can access their DC savings and the tax implications of the various options.

#### “” Comment

*The majority of the legislative framework is now in place for the changes which come into effect on 6 April. If they have not done so already, trustees should consider the options they intend to offer at retirement, review their scheme's rules, and check that their administrators are ready to provide the necessary additional information to members.*

## Pot-follows-member

Following a long period of discussion with the pensions industry, the DWP has [published proposals](#) for automatic transfers of small DC pots when members change jobs.

Only pots worth less than £10,000 that are held in default, charge-capped arrangements, with the first contributions having been made after 1 July 2012, will be eligible to be transferred. Members' Additional Voluntary Contributions (AVCs) will not be included. There will be certain other exemptions, in particular executive pension schemes, where members are likely to be engaged with their pension savings, or very small pots.

The system will be phased in commencing from October 2016. Workers leaving a job will be offered the option to consolidate their pension pots through the system. The process will initially apply to a limited number of larger schemes, before rolling out to the majority of pension schemes. In this second phase, members would have the option to 'opt out' rather than 'opt in' to automatic transfer.

Details of the schemes to be included at the first stage will be published together with draft regulations later this year.

## DC schemes: governance & charging

The DWP has published its [response](#) to its 'Better workplace pensions: putting savers' interests first' consultation and laid draft regulations before Parliament. The regulations introduce minimum governance standards and charge caps for DC workplace pension schemes which are regulated by TPR. The Financial Conduct Authority will be introducing equivalent rules for other workplace pension schemes.

Following the consultation, the DWP has added a new easement relating to members with DC AVCs in a DB scheme used as a qualifying scheme for auto-enrolment. Such AVCs are now excluded from the charge cap if they are the only DC benefits being provided through the scheme.

TPR has issued an [essential guide](#) to governance standards and charge controls which provides an overview of the new requirements. TPR will review its DC code of practice later this year. The DWP has also published [guidance](#) on the charge cap.

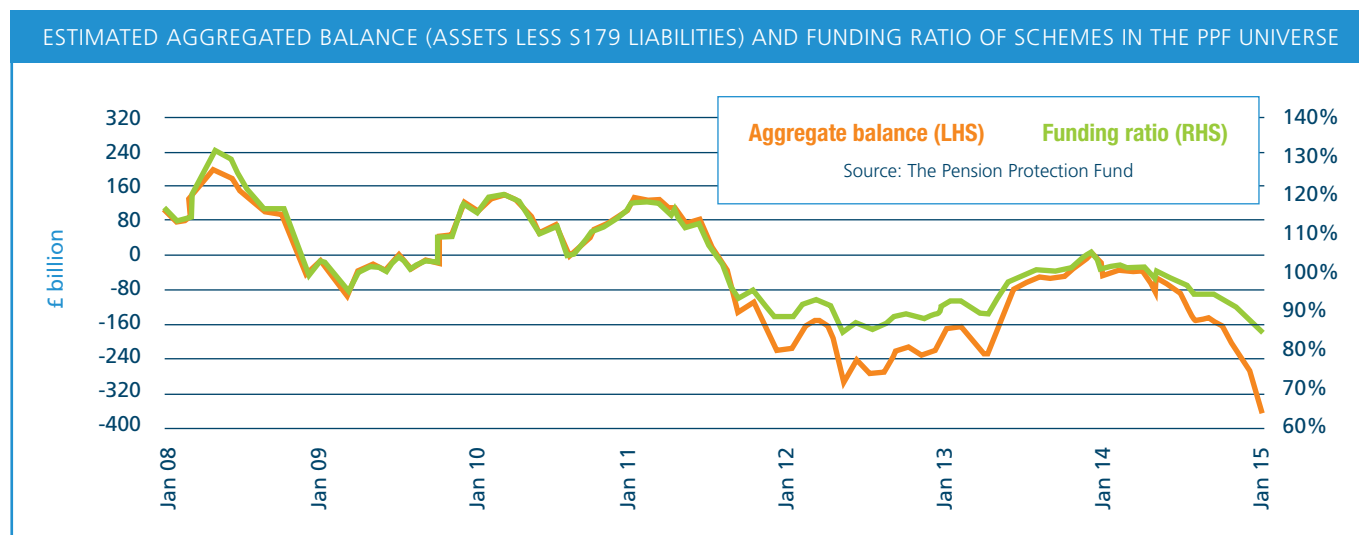
## Other news

### PPF: 7800 Index

The February 2015 [update](#) of the PPF's 7800 index of schemes' funding (on the s179 basis) has been published.

The aggregate deficit of the 6,057 schemes in the index is estimated to have increased over the month to £367.5 billion at the end of January 2015 (there was an aggregate deficit of £266.3 billion at the end of December 2014).

The funding ratio decreased from 82.3% to 77.6%. There were 5,175 schemes in deficit and 882 schemes in surplus.



### Pension scams: update

HMRC has outlined recent changes to its procedures intended to help combat pension scams in a [newsletter](#). HMRC believes it has made the process of pension scheme registration more robust, and that where HMRC has reason to believe the scheme is being used for pension liberation, it is now easier for it to de-register that scheme.

From April 2015, further information will need to be provided to HMRC in relation to scheme administrators and scheme changes.

### IBM: breach of duty

The High Court has ruled that agreements to make future salary increases non-pensionable for members of IBM's DB schemes are unenforceable. Furthermore, members who did not sign the non-pensionability agreements will be able to [claim damages](#) against the company to reflect the salary increases they would otherwise have received.

The ruling, which follows an earlier judgment finding that IBM had not met its obligations to members when closing the schemes to future accrual, will be challenged.

### FRC: FRS102 amendments

The Financial Reporting Council (FRC) has issued [amendments to FRS102](#) which enable sponsoring employers reporting under UK GAAP to continue with current practice in accounting for DB pension schemes.

In particular, the FRC has confirmed that no additional liability need be recognised for deficit contributions agreed under a 'schedule of contributions' where the deficit is already accounted for under the reporting standard. However, companies should disclose the payments they are committed to make under a schedule of contributions.

The FRC has also confirmed that the effect of not recognising any irrecoverable surplus in a defined benefit plan is shown in other comprehensive income, rather than profit or loss.

The amendments have the same effective date as FRS102 – i.e. applicable to accounting periods beginning on or after 1 January 2015.

## DWP consults on changes to investment regulations

The DWP is consulting on [changes to investment regulations](#) following the findings of the Law Commission's report on 'Fiduciary Duties of Investment Intermediaries'.

The DWP notes that trustees are often uncertain as to the appropriate balance between financial and non-financial factors in making investment decisions. Through this consultation, the DWP hopes to develop outcomes to address this concern.

The DWP also proposes introducing a requirement for trustees to either comply with the FRC's UK [Stewardship Code](#), or explain why they have not.

## Further information

### On our website:

You may find the following recent blog posts and information sheets interesting:

- [Frozen schemes: "I wanna know what I owe, man"](#)
- [Does your contingent asset meet the PPF's new requirements?](#)
- [How is technology helping pension schemes?](#)
- [All is not lost if the PPF decides to reject a contingent asset](#)
- [Under starter's orders: Pensions key for the election race](#)
- [Budget 2015 roundup](#)

## Seminar: The new pensions landscape – are you ready?

We are hosting a seminar in Swindon aimed at employers who provide pensions for their workforce, and their advisers.

The changes introduced by the 2014 Budget will have wide-ranging implications for all pension schemes (from small group personal pension plans to large DB schemes). Our seminar, which is free to attend, will guide you through the new pension landscape and help you to identify the opportunities that the changes create.

For further details, please see our [website](#).

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Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact us via the following:

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