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Spring Budget, 2023

The Chancellor of the Exchequer, Jeremy Hunt, spelled out his Spring Budget plans on 15 March 2023. This time, rumours of significant pensions-tax changes proved to be true:

- the annual allowance will increase to £60,000 (and the money purchase annual allowance will rise to £10,000) from 6 April 2023, whilst
- the lifetime allowance will be abolished altogether.

Annual allowance

The annual allowance (AA), which has been stuck at £40,000 since 2014/15 (having reached the heady heights of £255k in 2010/11), will increase to £60,000 from 6 April 2023. Pension scheme members can continue to carry forward unused AA from the three previous tax years. At the same time, the money purchase annual allowance (MPAA), which limits further contributions for those who have flexibly accessed their defined contributions (DC) funds, and has been set at £4,000 since 2017/18, will return to £10,000 (its level from 2015/16 until 2016/17).

There is some good news, too, for 'high-income individuals', who currently suffer a tapered reduction to their AAs, pruning them by £1 for every £2 of 'adjusted income' over £240,000, until it bottoms out at £4,000 for those earning £312,000. The taper applies, at present, to those who have an adjusted income for the tax year in excess of £240,000, and a threshold income of more than £200,000.[1] Under the Chancellor's plans, from 6 April 2023, the level that adjusted income must reach for a member to be affected by the taper will rise from £240,000 to £260,000, and the minimum tapered AA will increase to £10,000. This should mean that the taper will reduce the AA to £10,000 for those with an adjusted income of over £360,000.

The Government has also said that members of the public-sector pension schemes will have their open (CARE) and closed (final salary) schemes linked for the purposes of calculating AA charges, offsetting any negative real growth within the legacy schemes.

[1] In the most straightforward cases, threshold income is taxable income minus relievable pension contributions, although salary sacrifice agreements made after 8 July 2015 are penalized. Adjusted income is essentially threshold income plus the member's total pension input amount for AA purposes.

Lifetime allowance

The lifetime allowance (LTA) reached £1.8m in 2010/11, but was subject to successive cuts from 2012/13 onward. It has been fixed at £1,073,100 since 2020/21, and was set to stay at that level until 2025/26. Now, however, the Chancellor has announced that the LTA charge will be removed from 6 April 2023 (so that people will not need to report and pay the tax), and that the allowance will be abolished altogether from 6 April 2024.

In the meantime, the taxation of lifetime allowance excess lump sums (LAELS), serious ill-health lump sums (SIHLS), defined benefits lump sum death benefits (DBLSDB) and uncrystallised funds lump sum death benefits (UFLSDB) will be changed. Currently, SIHLS, DBLSDB, and UFLSDB are tax free up to the LTA for those under 75, but any excess over the member's available LTA is taxed at 55%. The same tax rate applies to LAELS. From 6 April 2023, those lump sums (or parts thereof) in excess of the member's LTA will be taxed instead at the recipient's marginal rate.

The trade-off for all this largesse with the allowances is, however, that the maximum pension commencement lump sum (PCLS) for members without transitional protections will be fixed at its current level of £268,275 (25% of £1,073,100).

LTA addendum

His Majesty's Revenue and Customs (HMRC) subsequently published two bulletins providing additional information about the LTA changes due to take effect on 6 April 2023. *Pension Schemes Newsletter 148* says that scheme administrators must continue to perform lifetime allowance checks, and issue statements to members, when benefits are crystallized. It also announces that members with enhanced or fixed protection that they applied for before 15 March 2023 will, from 6 April 2023, be able to accrue benefits, join new arrangements, and transfer without losing their protection or their entitlements to PCLS of more than £268,275.

In a Lifetime Allowance Guidance Newsletter, HMRC further clarifies that, although there'll be no requirement to report LTA charges via an Accounting for Tax Return for benefit crystallisation events occurring after 6 April 2023, any charges that arise between 1 April 2023 and 6 April 2023 must be reported on the AFT Return for the quarter ended 30 June 2023.

The existing rules for calculating a PCLS will remain in place for 2023/24, subject to some tweaks. Members with enhanced or fixed protection arising from pre-15 March 2023 applications will be able to keep the protection (and the associated higher maximum PCLS) even if they have additional benefit accrual. Someone who successfully applies for EP or FP after 14 March 2023 will secure a higher PCLS, but will lose the protection if they accrue benefits or make certain sorts of transfer. The maximum PCLS calculation for someone with EP is being capped at the amount that could have been paid on 5 April 2023.

The Guidance Newsletter describes the process for making SIHLS, LAELS, UFLSDB and DBLSDB payments in excess of the LTA from 6 April 2023. Normal PAYE rules apply, which in many cases will mean using a 'month 1' emergency tax code. Before paying a DBLSDB or UFLSDB, the administrator will need to liaise with the deceased's legal representatives to establish their LTA position. The recipient can obtain a refund of any overpaid tax from HMRC.

The Guidance Newsletter also asks for volunteers to join a working group that will help with the next stage of reform: full abolition of the LTA.

Other pensions-related announcements

The Government has invited comments on its LIFTS (long-term investment for technology and science) initiative, which aims to foster the creation of new vehicles for investment in science and technology companies. It hopes to attract investment from defined contribution pension schemes.

The main Budget document also says that a forthcoming consultation exercise will propose an acceleration in investment pooling by Local Government Pension Scheme (LGPS) funds. This will entail the transfer of all listed assets into the pools by March 2025. To benefit from economies of scale, it may mean consolidation to create a smaller number of pools with assets over £50 billion. The Government will also consult on requiring LGPS funds to consider investment opportunities in illiquid assets such as venture and growth capital.

Legislation

On 23 March 2023, just over a week after the Budget, the *Finance (No. 2) Bill 2022/23* was introduced to Parliament. It contains the legislation that will:

- do away with LTA charges for 2023/24 onward
- provide for lump sums that would have been subject to the LTA charge to be taxed at the recipient's marginal rate instead
- increase the annual allowance and its money purchase and tapered variants, and
- keep pre-15 March 2023 protections whilst permitting new arrangements and accrual.

Additionally, it will:

- fix the tax legislation to that it will apply as intended to certain payments arising from collective money purchase schemes when they wind up, and
- allow HMRC to make payments to low earners in schemes that apply 'net pay arrangements' to member contributions, to redress the long-standing anomaly that arises from the more-favourable tax treatment of contributions made under 'relief at source'.

We are pleased to see the Government abolishing the lifetime allowance and increasing the annual allowances to more sensible levels for most people. However, it remains to be seen whether this will achieve the Chancellor's aim of encouraging older professionals to stay in work or return to the workplace. Changes to general taxation would probably be more effective: the freezing of the tax thresholds until 2026 is a real disincentive to wealthy over-50s working on; and the removal of lifetime allowance charges might even tempt some of the lucky few toward early retirement.

The maintenance of the AA taper will tarnish the abolition of the LTA for the very highest earners (those with adjusted incomes over £360,000). The freezing of the maximum tax-free cash lump sum at £268,275 will also be unwelcome, especially if it signals the beginning of the end for this much-loved benefit.

Overall, the changes should go some way toward simplifying pensions taxation for many. In the short-term, scheme providers and their members will have some work to do to digest the changes and get to grips with the nuances of a new set of rules.

No change (yet) to SPA-rise schedule

Mel Stride, the Secretary of State for Work and Pensions, has confirmed that there will be no changes to the timetable for increases to State pensionable age (SPA). The position will be reviewed again in around three years' time.

Background

Legislation provides for periodic reviews of the SPA, at least every six years. The Government must commission reports for the reviews: one from the Government Actuary (or a Deputy), on whether the SPA rules mean that people will, on average, spend a specified proportion of their adult lives in retirement; and another, from an appointed person, about other relevant considerations.

The last review was concluded in 2017. It considered a report from John Cridland, which recommended that SPA should rise to 68 over a two-year period starting in 2037. The Government accepted that recommendation in principle, but did not alter the current statutory timetable (which would phase the increase in between 2044 and 2046) pending a further review (due by May 2023). It also decided that the long-run goal should be for people to spend up to 32% of their adult lives in receipt of State pension.

Latest conclusions on SPA

The Government has now published its conclusions upon the 2023 review of SPA, with reports from the Government Actuary and Baroness Neville-Rolfe.

Neville-Rolfe recommended that SPA increase to 68 over a two-year period from 2041: earlier than the statutory timetable, but later than Cridland advised. She also suggested that up to 31% of adult life should be spend in retirement, and that the Government should limit expenditure on State pensions to 6% of gross domestic product (GDP). Current spending on State pensions sits at around 4.8% of GDP, but is projected to increase to 8.1% by 2071/72.

The Baroness and the Government both agree that the legislated increase to SPA 67 should proceed as planned between 2026 and 2028. However, the Government has deferred any conclusion on her recommendation for the increase to SPA 68 until a further review, scheduled to take place within two years of the next Parliament (so, probably around 2026), when the effects of the COVID-19 pandemic and inflationary pressures should be clearer.

The Government says that it '*remains committed to the principle*' of giving people at least 10 years' notice of changes to their SPA.

DWP delays dashboards

The Government will postpone the deadlines for schemes to connect to the pensions dashboards infrastructure, to allow more time for development.[1] Details of the revised connection deadlines are not yet available.

Recap

Pensions dashboards will enable people to see all of their State and private pension entitlements in one place, online. The *Pensions Dashboards Regulations 2022*[2] contain a 'staging profile' that specifies when each scheme must connect with the dashboards infrastructure. The staging dates range from 31 August 2023, for master trusts with 20,000 or more members[3], to 31 October 2025 for schemes with between 100 and 124 members. The Government had indicated that smaller schemes might begin to connect in 2026, under subsequent regulations.

Set-back

The Government is now backing away from the staging profile set out in the Regulations. Laura Trott, the Parliamentary Under Secretary of State for Pensions, said that the Pensions Dashboards Programme (PDP), the body responsible for setting up the system, requires extra time to establish the '*complex technical solution*' for the dashboards. The pensions industry also needs more time to ensure that the various IT systems that it uses can interface with the new system.

The PDP will draft a new timetable, for which the DWP will legislate '*at the earliest opportunity*'. Trott said that the Government '*will ensure that the pensions industry has adequate time and the necessary technical information to prepare for any revised connection deadlines.*' She nevertheless offered reassurance that the Government will press ahead with the technology, despite the issues to be resolved. An update is expected before the House of Common's summer recess (usually in July).

As the Pensions Minister said, '*it is vital that the foundation upon which the dashboards ecosystem is built is safe, secure, and works for both the pensions industry users connecting to it and the end users of the service.*' The industry will be grateful for more time to get it right, but providers need clarity as soon as possible. The facilities that the dashboards will provide are needed by retirees now, so we can ill afford long delays.

Equality, diversity & inclusion—the Regulator's guide

The Pensions Regulator has issued guidance on equality, diversity and inclusion (EDI) within pension schemes' governing bodies.

Meanings

The Regulator quotes a definition of equality by the Equality and Human Rights Commission. It says that equality is about ensuring that everyone has the same opportunity to make the most of their lives and talents; that no-one should have poorer life chances because of the way they were born, where they come from, what they believe, or because they have a disability; and that certain groups of people have been discriminated against.

The guidance encourages trustees (and managers of public-sector schemes) to take a similar approach to the Pensions and Lifetime Savings Association when defining diversity, by (for example) recognizing socio-economic and educational differences in addition to legally protected characteristics.

Finally, the Regulator says that 'inclusion' entails effective involvement, by creating an environment in which people can thrive and reach their full potential; and that, in an inclusive environment, diverse characteristics are harnessed in a way which is mutually beneficial to individuals and organisations, enabling the best decisions to be made.

Overview

The guidance explains why EDI is important: it fosters 'robust discussion and effective decision-making'. The Regulator also discusses the barriers to diversity, and lays out the sorts of things that governing bodies can do quickly, as well as changes that may be longer-term aspirations. It acknowledges that trustees' actions will have to be appropriately tailored to the needs and characteristics of their schemes.

The Regulator emphasizes the pivotal role of the trustee chairperson throughout, and how sponsoring employers can support the governing body's efforts. The recommendations are backed with examples.

Getting started

The Regulator discusses training, formulation of EDI policies, and the desirability of establishing a plan for assessing performance (for example, by setting goals and reviewing progress annually). It suggests that employers can help by widening their pool of employer-nominated-trustee candidates, nurturing new trustees through shadowing and mentoring, advertising the positive effect of trusteeship on career development, and effective succession-planning for the trustee chairperson's role.

Forward thinking

The guidance recommends that governing bodies plan for change by identifying any gaps in representation, experience and skills. Trustees might need to reconsider the size and composition of their board, perhaps making temporary changes whilst moving toward a smaller, more-diverse body, but bearing in mind the need for efficiency and the cost implications. The governing body can use the quest for new trustees as an opportunity for reflection, and the chairperson can help by ensuring that there is a focus on EDI. The Regulator notes the importance of good succession planning for the chairperson and the other trustees. It suggests that selection panels may have advantages over member ballots when meeting EDI goals. It also mentions positive aspects to fixed-term appointments with a limit on the number of successive terms for which a trustee can serve, but suggests that governing bodies stagger the ends of trustees' terms in office, to minimize loss of valuable knowledge.

Culture

The guidance extols the virtues of an inclusive culture within the governing body: encouraging full participation, understanding and accommodating personality differences and preferred working styles, and thoughtful adaptations for trustees' personal circumstances (for example health or caring responsibilities). It suggests how trustee chairs might improve intra-board relationships and cohesion, for example by soliciting the views of others before giving their own, being conscious of group dynamics and watchful for signs of disengagement, having one-to-one discussions with fellow trustees, recognizing training needs, and using their advisers effectively. The trustee chairperson could also give other trustees opportunities to chair meetings and sub-committees, and use shadowing, buddying or mentoring to support new recruits. The Regulator recommends an awareness of biases such as 'group-think' and the tendency to defer to authority figures.

Finding the right people

The Regulator has ideas for attracting and appointing the right mix of candidates for trusteeship. It recommends involving deferred members in nomination processes for mature schemes (possibly with confidentiality and conflict policies if they now work for the sponsor's competitors), and—again—suggests that selection has advantages over election.

Other advice covers the desirability of simplifying the nomination process as far as possible, countering discouraging perceptions about the trustee role, emphasizing desired skills and the availability of support, advertising the career-development opportunities in trusteeship, and staging 'candidate days' to introduce and promote the role. The Regulator also discusses possible roles for independent or professional trustees, and for trustee remuneration.

Outside voices

The Regulator suggests ways in which governing bodies can benefit from external sources of viewpoint diversity. This might come from advisers, by canvassing members' views, or through recruiting non-trustees to committees and other discussion forums. Trustees should consider advisers' potential contributions to diversity and inclusion when tendering for services.

Additional resources

The publication contains an employer guide that covers professional trustees and the rights and statutory protections of employees who have trustee responsibilities. It discusses the likely time commitments of trustees, and how employers might accommodate them. There is a section devoted to the subject of inclusive communication, as well as examples of a trustee recruitment leaflet and an advertisement drumming up interest in trusteeship.

The Regulator's guidance is a good reminder of the value of equality, diversity and inclusion in sound governance. Its publication is timely, given the absence of EDI within the (draft) General Code of Practice. Those who already consider EDI in their annual effectiveness reviews and subsequent actions are aware of the issues, but the guidance is a useful prompt for reflection.

Stop-gap guide to transfer due-diligence

The Pension Scams Industry Group (PSIG) has published an *Interim Practitioner Guide* to its Code of Good Practice. It is 'interim' guidance because the PSIG is expecting the Department for Work and Pensions (DWP) to address several well-known problems with the *Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021*, such as the amber flag for receiving schemes with overseas investments, and the fatal red flag that is waved when the member is offered an 'incentive' (however small). The PSIG plans to update the Code and accompanying documents once the DWP has reviewed the legislation and made changes.

Select Committee calls for evidence on DB schemes

The House of Commons Work and Pensions Committee has launched an enquiry into defined benefit (DB) pensions. Its call for evidence is open until 26 April 2023.

The Committee would like answers to the following questions:

1. Is the right regulatory framework in place to enable open DB schemes to thrive?
2. Is there sufficient capacity in the buy-out market to meet demand from DB schemes? If not, what are the alternatives?
3. What should the Pensions Regulator (TPR) do to improve the quality of trustee boards?
4. What, if any, further steps should be taken to encourage DB scheme consolidation?
5. Are there any circumstances in which consolidation should be mandatory?
6. Do the recent improvements in funding levels change the future role of DB schemes in UK pension provision?
7. How should scheme surpluses be treated? For example, should they remain in the scheme or be shared between employers and scheme members? Are the issues different for open and closed schemes?
8. What are the implications of improved funding levels for the Pension Protection Fund?
9. Should changes be made to the Pension Protection Fund (PPF), Financial Assistance Scheme (FAS) or Fraud Compensation Fund (FCF) to improve outcomes for members?

We are compiling our response to the call for evidence.

Regulator round-up

Climate-change governance

The Pensions Regulator has published a promised review of trustees' climate-governance (TCFD) reports. There were few instances of late reporting, and most were substantial documents (averaging 34 pages). The Regulator identifies examples of good practice, and areas for improvement (such as information that was often omitted).

Blog posts

It has published *All Pension Savers Deserve Value for Money*, from Sarah Smart, the Regulator's Chair. It clarifies the Regulator's approach to 'value for members', and encouraged readers to contribute to the VFM Framework consultation exercise that closed to comments on 27 March 2023.

You can read some of Callum Stewart's thoughts about the framework on our website.

Charles Counsell, the departing Chief Executive, penned a blog post entitled *Data is King*, which announces the creation of a new Digital, Data and Technology directorate, but also strays into other territory such as the likely extension of auto-enrolment via a Government-supported Private Member's Bill. It says that the new General Code of Practice is expected to launch '*later this spring*'.

Nicola Parish posted *Trustees: engage with us promptly if your sponsoring employer is in difficulty*. It uses the example of the company voluntary arrangements relating to the Arcadia Group to advertise the benefits of getting the Regulator on-side as early as possible. That aside, the emphasis is on obtaining comprehensive and regularly updated information from the sponsor, and ensuring that the trustee board has the right skills (and advisers) to navigate its way through.

Employer-related investment

The Regulator has issued guidance on *Employer Related Investments*, following the *Norton Motorcycles* and *Eastman Staples* cases. The guidance is short and to the point: breaches could result in fines or imprisonment (or both), but should be reported and disclosed in annual reports. They may also have an adverse effect on a defined benefit scheme's funding position, because investments made in contravention of the rules will not count as assets.

In a new regulatory intervention report, the Pensions Regulator summarizes its involvement in the *Eastman Staples* case, which resulted in suspended prison sentences for two trustees who pled guilty to making illegal loans and providing false or misleading information to the Regulator (in an attempt to cover their tracks).

In hindsight, the Regulator might regret having let the trustees get away with just a warning about an earlier ERI breach, on receiving assurances that it was a one-off mistake.

And finally…

The Pensions Ombudsman's determination in the case of Mr R (CAS-33474-K7Y1) has been niggling at the edges of *AF's* consciousness for the past couple of months. Mr R complained that he'd been asked to repay almost £10,000 worth of benefits that the Principal Civil Service Pension Scheme had put into payment even though he'd (twice) queried whether they had the correct person: he told them that he'd never worked in the Civil Service, and that the NI number on their records wasn't his. Racking his brain at their prompting, Mr R mentioned that he'd been in the Territorial Army, which seems to have sealed the deal, and pension payments commenced.

The Ombudsman rejected the complaint. His decision turns upon the legal concept of 'Nelsonian knowledge'. That's not about which arm was missing and how Emma Hamilton liked her eggs in the morning (nor, for that matter, does it involve a bright yellow cartoon character jeering, 'Hah-ha!'). It *is*, however, a reference to Admiral Lord Nelson, and specifically to the (apocryphal) story that, before the Battle of Copenhagen, he responded to a signal directing him to break off his attack by raising a telescope to his bad eye and saying, in effect, 'Signal? What signal?'. Applied to Mr R's case, the idea of Nelsonian knowledge is that he couldn't in good faith claim to have believed that he was entitled to the benefits, as his misgivings were never fully allayed.

Legalities notwithstanding, *AF*'s disquiet with this determination comes from the sneaking suspicion that his mum could easily fall into the same trap. In his head the conversation goes something like this:

Mrs *AF*, Senior—	I don't know how I could be entitled to a pension from the World Wrestling Federation Retirement Fund. I've never been a professional wrestler. I'm a diminutive Scottish woman, not a six-foot-seven American man with 28-inch biceps, a mullet, and a penchant for hitting people with folding chairs.
Scheme administrator—	Are you sure you've never wrestled, though? Didn't have an infamous years-long grudge with Dwayne 'The Rock' Johnson that culminated in a titanic match that spilled over into the dressing rooms and car park?
Mrs *AF*—	N-n-n-o-o-o… I *was* in a mild altercation once, in the school playground. It was *my* skipping rope, and Margo McTavish shouldn't have touched it without asking.
SA—	Ah, there you go then. Give us your bank details and we'll get you sorted…