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The Pensions Brief

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Issues affecting all schemes

Compliance statement deadline approaching

Trustees have until 7 January 2021 to send a "compliance statement" to the Competition and Markets Authority (CMA) confirming that they have complied with the CMA's requirement to set objectives for their investment consultants and for the carrying out of tender exercises for fiduciary managers where required. The form of compliance statement is set out in the CMA's Investment Consultancy and Fiduciary Management Market Investigation Order 2019.

Action

Prepare compliance statement using CMA template wording.

Stronger nudge to pensions guidance: statement of policy intent

The Department for Work and Pensions (DWP) has published a Statement of Policy Intent, setting out its plans to encourage members of occupational pension schemes to take free impartial guidance from Pension Wise prior to accessing their benefits flexibly or transferring their benefits to another scheme in order to access their benefits flexibly.

Trustees and managers will be required to explain the nature and purpose of pensions guidance, presenting it as a normal part of the process of transferring benefits or accessing benefits flexibly. Members may opt out of taking guidance from Pension Wise, but if they indicate they would like guidance, trustees or managers will then need to:

- Offer to book a Pension Wise appointment; or
- Transfer them to the Money and Pensions Service, who will book a Pension Wise appointment.

The DWP will consult on draft Regulations and will commission a regulatory impact assessment in due course. It is expected that the Pensions Regulator will provide guidance to trustees and managers to support the change.

Action

Keep under review. A consultation on draft regulations will be published by DWP in due course.

Lifetime Allowance Increase

The Office for National Statistics has published the annual increase in the Consumer Prices Index for the 12 months to September 2020 (0.5%). The lifetime allowance is linked to this annual increase, and so the government is expected to formally confirm that it will increase to £1,078,900 for the 2021/2022 tax year.

Action

Ensure administrators are aware.

Pensions Regulator publishes corporate strategy discussion document

The Pensions Regulator has launched a 15 year corporate strategy document for discussion. This outlines a shift in the Regulator's focus from DB to DC saving, in a landscape of fewer but larger pension schemes. The Regulator expects that consolidation in the market will reduce DC schemes by 50%, and DB schemes by one third over the period. It analyses groups of savers by generation – Baby Boomers, Generation X and Millennials – and examines the challenges faced by each generation. For savers in retirement or entering into retirement over the next 15 years, the Regulator's focus is on protecting their savings outcomes. For savers that are further away from retirement, the focus is on driving participation and enhancing outcomes. Five strategic priorities are set out:

- Security
- Value for money
- Scrutiny of decision-making
- Embracing innovation
- Bold and effective regulation.

Feedback is invited until 16 December 2020. The Regulator intends to publish its final strategy in 2021.

Action

For noting.

Issues affecting DB schemes

Pensions Regulator publishes guidance on Superfunds

The Pensions Regulator has published new guidance on superfunds, which is aimed at trustees and sponsoring employers who are considering transferring their scheme liabilities to a superfund. Earlier this year, we reported on the Regulator's interim framework for the regulation of superfunds, ahead of a statutory framework being put in place.

The latest guidance says that trustees must be confident a transfer is in the best interest of their members, the transaction must meet the three "gateway principles" and the superfund must be listed on the Regulator's website (an approved list is to be added in due course). The Regulator says that superfunds have the potential to offer good outcomes, but they are not a solution for all schemes. Further guidance will be provided as the market evolves.

The three gateway principles:

1. A transfer to a superfund should only be considered if the scheme cannot afford to buy out now.
2. A transfer to a superfund should only be considered if the scheme has no realistic prospect of buy-out in the foreseeable future (suggested to be up to five years), given potential employer cash contributions and the insolvency risk of the employer.
3. A transfer must improve the likelihood of members receiving full benefits.

Requirement for clearance

Transfers to superfunds are "Type A" events, so a clearance application should be submitted (by the employer) before taking place. The Regulator will assess whether potential detriment to the scheme has been adequately mitigated - the detriment being the removal of the sponsor's covenant, and the mitigation being the transfer of the scheme along with any top-up payment or other mitigation.

Although the clearance application will be submitted by the employer, the onus will be on the trustees to demonstrate that they have carried out appropriate due diligence. What is appropriate will depend on the size of the transaction, the resources available and the potential benefit to members and the employer. The guidance sets out minimum expectations, and details the steps required to show the gateway principles have been met.

The Regulator will scrutinise the superfund as part of the clearance application; it will need to demonstrate that it will continue to meet TPR's expectations after the transaction, in particular capital adequacy requirements.

The employer should support the trustees during their assessment of the transaction, by making available all necessary time, information and resources, including paying for the trustees' professional advice (in addition, to taking their own professional advice).

Other points in the guidance include:

- Trustees should consider the level of knowledge on the board and might wish to consider appointing an independent trustee to support them.
- Trustees will need to obtain appropriate legal, actuarial and covenant advice.
- Member communications should be open and transparent.
- A transaction should normally take place within three months of the Regulator issuing a clear-ance statement.

Action

For noting.

Issues affecting DC schemes

Re-opening of gated funds – avoiding creating a default arrangement

The Pensions Regulator has updated its DC scheme management and investment: COVID-19 guidance on the temporary closure and re-opening of funds and the risk of creating an unintentional default arrangement.

Broadly, a default arrangement arises in a relevant scheme where a member's contributions are invested in a fund without them having expressed a choice about that investment. Certain legal requirements apply to default funds, such as the requirement for a Chair's Statement.

As a result of the pandemic, some member-selected funds were "gated", resulting in members' contributions being diverted to alternative funds. In some instances, this may have resulted in the creation of an unintended default arrangement (with associated legal requirements).

The guidance has been updated with regards to the re-opening of these "gated" funds, where steps are taken to redirect members' contributions and assets accrued in the alternative fund back to the original choice of self-selected fund. Trustees will need to consider whether the pre-existing expression of choice still applies, or whether further consent from the member is required to avoid the original fund becoming a default arrangement. This will depend on the terms of the original consent and correspondence with the member when the original fund was gated. The Regulator has said that it would expect the pre-existing expression of choice to continue to apply where members:

- Consented to the redirection of contributions on a temporary basis, until the original fund ceased to be gated; or
- Were informed that their contributions would be diverted to a default fund, but that this would be corrected as soon as the original fund re-opened; or
- Members are informed that the trustees' view is that the pre-existing expression of choice remains in place, and they are given an opportunity to object before their diverted contributions are re-directed back to the original fund.

Action

Consider whether members' pre-existing expressions of choice continue to apply, or if further contact with members is needed prior to re-directing diverted contributions back to the original fund.

Plans for simpler annual benefit statements

The Department for Work and Pensions (DWP) has published its response to last year's consultation on "Simpler Annual Benefit Statements". In the response, the DWP confirms it plans to press ahead with a number of the proposals, in order to improve the public's engagement with and understanding of pensions.

The key proposals which will be taken forward:

- A simple two-page statement template – the government plans to consult later this year on a mandatory approach to simpler statement templates.
- Initially this will apply to DC schemes that are used for auto-enrolment. However, the government's long-term ambition is to improve consistency across all schemes.
- Information on costs and charges will be referred to, with signposting to where members can access detailed information.
- Statement season - the government supports the idea of having a "statement season", and plans to consult on a mandatory approach. While noting that there may be operational challenges to address, the benefit is the potential to provoke debate among the public, and raise awareness of savers' pensions by allowing an easier comparison between statements and providers. This would be backed by a government-led communications campaign.
- High visibility envelopes – one of the proposals was the use of high-visibility envelopes, as used in Sweden, to try to encourage savers to open their pension statements. The government is still keen on this idea, but will work further to understand the risks e.g. of fraudulent behaviour.

Action

Keep under review. Further consultations will be published by DWP in due course.

Mayer Brown news

Upcoming events

- Trustee Foundation Course
  8 December 2020
- Trustee Building Blocks Classes
  17 November 2020 – DB funding and investment
- Annual Pensions Conference – Webinar Series
  12 November 2020 – Covenant and funding – in the new paradigm
  19 November 2020 – How effective is your trustee board?
  26 November 2020 – What you need to know about the Pension Schemes Act 2020

You should have received an invitation to the series of webinars listed above, including additional information and a registration link. If you have not received this or would like it to be sent again, please ask your usual contact in the Pensions Group to send it to you.

Due to the COVID-19 restrictions, our events will be hosted via telephone/video conference until further notice. We will provide further details nearer the time of each event.

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Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

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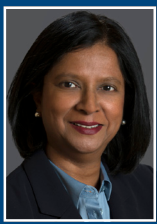

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Dates to note over the next 12 months

31 December 2020

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2018/19 tax year).

7 January 2021

Submit first compliance statement to the Competition and Markets Authority (CMA)

31 January 2021

Send annual event report to HMRC.

Early 2021

Expected consultation on tPR's code of practice on trustee knowledge and understanding.

6 July 2021

Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2020/2021 tax year.

31 March 2021

Submit scheme returns.

31 July 2021

Annual allowance deadline for member requests for "scheme pays" (2020/2021 tax year).

1 October 2021

Climate-related financial governance and disclosure requirements come into force for occupational pension schemes with £5 billion or more assets, authorised master trusts and collective money purchase schemes

5 October 2021

- Automatic enrolment charge cap changes come into force
- Requirement that default arrangements with a "promise" must produce a SIP comes into force
- Requirement for Chair's statement to cover costs and charges for historically selected funds that are no longer available for selection, comes into force

Key:

- Important dates to note
- For information