MAYER | BROWN

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The Pensions Brief

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Issues affecting all schemes

Investment consultancy and fiduciary management – trustee duties

Regulations have been laid before Parliament for approval that:

- Integrate into pensions law the remedies imposed by the Competition and Markets Authority (CMA) on trustees following its investigation into the investment consultancy and fiduciary management markets.
- Enable the Pensions Regulator to monitor and enforce compliance with the remedies.

The regulations replicate the CMA's remedies order subject to some minor differences. In particular, rather than submitting annual compliance reports to the CMA, trustees will be required to include details of their compliance with the regulations in their scheme return. The regulations will come into force on 1 October 2022 or, if later, the day after they receive parliamentary approval.

The government has also responded to its 2019 consultation on the draft regulations.

Action

Trustees should ensure that they continue to comply with the requirement to set objectives for their investment consultants and to carry out a competitive tender process when appointing (or reappointing) a fiduciary manager. Trustees should also include the necessary information on compliance in the scheme return.

Climate change – governance and reporting

The government has finalised:

- Regulations requiring trustees subject to the climate change governance and reporting requirements to calculate and disclose a portfolio alignment metric setting out the extent to which their scheme investments are aligned with the Paris Agreement goal of limiting the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels. The regulations will come into force on 1 October 2022.
- Updated statutory guidance on compliance with the governance and reporting requirements. This will likewise come into force on 1 October 2022.

The government has also responded to its consultation on the draft regulations and guidance.

In addition, the Pensions Regulator has published a blog post on climate change/TCFD reports. This notes that the Regulator does not anticipate issuing any penalty notices to trustees of schemes that publish their climate change/TCFD reports in the first wave, other than where:

- The report has not been published – this will result in a mandatory penalty of at least £2,500.
- It is clear that the trustees have not made a genuine effort to comply with the regulations – this would result in a discretionary penalty of up to £50,000.

Action

Trustees of schemes that are subject to the governance and reporting requirements (or will become subject to those requirements when they are extended to schemes with £1 billion+ of assets on 1 October 2022) should ensure that they put arrangements in place to comply with the requirement to calculate and disclose a portfolio alignment metric.

Pensions dashboards – guidance and consultation

The Pensions Regulator has published initial guidance for schemes on pensions dashboards. Based on the draft regulations that the government consulted on in January, the guidance covers the following areas:

- Overview.
- When schemes need to connect to dashboards.
- Connecting to dashboards.
- Matching people with their pensions.
- Information to provide to members.
- Failing to comply with the pensions dashboards duties.
- Preparing to connect – a checklist.
- Staying in touch with developments.

More detailed and up to date guidance will be published by the Regulator later this year, which will reflect the final regulations and the technical standards being developed by the Money and Pensions Service (MAPS). The Regulator has also announced the launch of a "Deadline" campaign reminding trustees to start preparing for their pensions dashboards connection deadline.

In addition, the government is consulting on the following issues in relation to pensions dashboards:

- The "dashboards available point" – this is the point at which the public will be able to access the dashboards to obtain information on their pension benefits. The consultation proposes that this date would be specified in a notice issued by the government which would give schemes three months' notice of the relevant date.
- Proposals to support the disclosure of information between MAPS and the Regulator.

The consultation closes on 19 July.

Lastly, a private member's bill which would prohibit trustees from being indemnified in respect of penalties imposed under the pensions dashboards legislation has been laid before Parliament. The majority of private member's bills do not become law.

Action

If they have not done so already, trustees and administrators should start making preparations for compliance with the pensions dashboards legislation. They should also keep the progress of the consultation and the private member's bill under review.

ESG and stewardship – reporting

The government has published guidance containing:

- Statutory guidance setting out the government's expectations in relation to the implementation statement.
- Non-statutory guidance setting out best practice in relation to those sections of the statement of investment principles dealing with ESG and stewardship.

The government has also responded to its consultation on the guidance.

Action

Trustees should review the statutory guidance and take it into account when preparing their implementation statement. Trustees should also consider updating their statement of investment principles to reflect the non-statutory guidance.

Data protection – reform

The government has responded to its consultation on proposed changes to the UK's data protection regime. Among other things, the response confirms that risk management requirements will be reduced for certain organisations, including small and medium-sized enterprises, including the requirements to:

- Appoint a data protection officer.
- Maintain records of data processing activities.
- Conduct data protection impact assessments.

However, to ensure that organisations still maintain high data protection standards, new requirements will introduced for organisations to implement risk-based privacy management programmes, which will require organisations to consider measures corresponding to existing data protection obligations – for example, in lieu of appointing a data protection officer, appointing a senior member of the organisation responsible for the privacy management programme. The response does not confirm which types of organisations will be able to implement a privacy management programme in lieu of the existing obligations. The changes will be introduced via a Data Reform Bill.

For more information, please see our legal update.

Action

Trustees and administrators should keep the progress of the Data Reform Bill under review.

Collective DC schemes – code of practice

The finalised code of practice on the authorisation and supervision of collective DC (CDC) schemes has been laid before Parliament for approval. The Pensions Regulator has made a number of changes to the code in response to consultation comments, including setting different expectations of competency for new or inexperienced trustees and experienced or professional trustees.

The Regulator has also responded to its consultation on the draft code.

Action

No action required, but trustees and employers of schemes that are interested in applying for authorisation as a CDC scheme should review the code.

Pension scams – reporting

The Pensions Regulator, the Financial Conduct Authority (FCA) and Action Fraud have published a joint guide on reporting pension scams. This covers:

- What information schemes should report – for transfers, this includes any red or amber flags that have been identified.
- When schemes should report – reports should be made when schemes believe a scam has already happened, a red flag is raised when making a transfer, or the scheme suspects that a scam could be taking place or are suspicious of those involved e.g. where amber flags have been raised in connection with a transfer.
- Who the scheme should report to – for schemes in England and Wales, scams should be reported to Action Fraud and, where relevant, the Regulator and the FCA.
- What happens once a report has been made – the guide notes that for legal reasons schemes will not receive feedback on the outcome of any assessment or investigation carried out following a report.

Action

No action required, but trustees and administrators should ensure that they report any scams.

Issues affecting DB schemes

DB funding – new code of practice

The Pensions Regulator has announced that it expects the new DB funding code of practice to become operational in September 2023. The announcement also confirms that the Regulator will consult on the new code this autumn.

Action

Trustees and employers of schemes providing defined benefits should keep the progress of the Regulator's consultation under review.

GMP equalisation – past transfers-out

The Pensions Administration Standards Association has published a checklist setting out the questions in relation to equalisation of past transfers-out which require trustee consideration and their administrative implications.

Action

No action required, but trustees and administrators of schemes providing GMPs may find the checklist helpful.

Issues affecting DC schemes

Pension choices – improving members' understanding

The government has published a call for evidence on:

- What support members of occupational pension schemes need to help them make informed decisions about how to use their pension savings.
- What support and decumulation products are currently on offer to members, and what may be offered to them in the future.

The call for evidence closes on 25 July 2022.

Action

Trustees of schemes providing DC benefits should keep the outcome of the call for evidence under review.

Pensions consumer journey – feedback

The Pensions Regulator and the Financial Conduct Authority (FCA) have published a feedback statement on their joint call for input on the pensions consumer journey. The statement summarises the feedback themes and sets out the Regulator's and the FCA's response, ongoing workstreams and how they will use the feedback to inform future work. The Regulator will undertake a number of steps in response to the call for input, including reviewing the "Communicating to members" section of its DC guidance to provide more information on inclusivity, use of behavioural insights and timing of communication.

Action

No action required.

DC governance – industry guidance

The Pensions Administration Standards Association has published updated guidance on DC governance. The guidance, which was originally published four years ago, covers six key areas:

- Data.
- Transitions.
- Decumulation.
- Reporting.
- Controls and procedures.
- The chair's statement – this section is a new addition to the guidance.

Action

No action required, but trustees and administrators of schemes providing DC benefits may find the guidance helpful.

Mayer Brown news

Upcoming events

All events will take place as online webinars. For more information or to book a place, please contact Katherine Carter.

- **Trustee Foundation Course**
  7 September 2022
  7 December 2022
- **Trustee Building Blocks Classes**
  9 November 2022 – trustee discretions and decision-making
- **Quarterly webinars**
  27 September 2022 – TBC
  13 December 2022 – TBC

Mayer Brown media comment

Richard Evans authored an article for LexisPSL on the Pensions Administration Standards Association's good practice guidance on DB transfers.

Recent Mayer Brown work

Duncan Watson, together with secondary market specialists from our Corporate team, acted for the EDF Energy Pension Scheme on its sale to another UK pension scheme of an illiquid £24 million limited partnership interest in a Luxembourg-domiciled fund which focuses on investments in self-originated whole loans secured against UK commercial property.

Duncan Watson, Liam Kellett and Alex Knowles-Smith acted for the trustee of the Johnson Matthey Employees Pension Scheme on its recent investment in a BlackRock debt fund. This work involved undertaking legal due diligence on the fund, as well as negotiating an amendment to an existing investment management agreement.

Andrew Block and Richard Evans acted for the trustee of the TI Group Pension Scheme on its £640 million "additional risks" buy-in with Rothesay Life and the purchase of "additional risks" cover from other insurers. This was the last in seven buy-ins which have ensured that the Scheme's liabilities are now fully secured by insurance policies.

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

For more information about the Pensions Group, please contact:

Ian Wright

Co-Head of Pensions, London
E: iwright@mayerbrown.com
T: +44 20 3130 3417

Jay Doraisamy

Co-Head of Pensions, London
E: jdoraisamy@mayerbrown.com
T: +44 20 3130 3031

Dates to note over the next 12 months

1 August 2022

Authorisation and supervision framework for collective money purchase schemes comes into force

1 October 2022

- New climate change governance and reporting requirements come into force for schemes with £1 billion+ of assets
- New Paris Agreement portfolio alignment metric requirements come into force for certain schemes
- Integration of CMA remedies on investment consultancy and fiduciary management into pensions law expected to come into force
- New annual benefit statement requirements for DC-only automatic enrolment schemes come into force

31 January 2023

Deadline for schemes to send annual event report to HMRC (2021/22 tax year)

Key:

Important dates to note

For information