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The Pensions Brief

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Issues affecting all schemes

Liability-driven investments – risk management

The Pension Regulator has published a statement on managing investment and liquidity risk in light of the current volatility in market conditions. The statement sets out the actions that the Regulator expects trustees of DB and DC schemes to consider taking before the end of the Bank of England's gilt purchase scheme and in the near-term as the market volatility continues. The Regulator will continue to monitor the situation and will provide further updates if necessary. For more information, please see our legal update.

Action

Trustees should note the Regulator's expectations and comments, in particular the importance of taking advice as appropriate. Trustees will need to ensure that they are getting sufficient information from their investment advisers and managers to enable them to make decisions. They should also keep a record of the questions asked of their advisers and managers.

Pensions dashboards – requirements finalised

Regulations setting out the detailed requirements for pensions dashboards have been laid before Parliament for approval. The regulations will come into force 21 days after they receive parliamentary approval. For more information on the content of the finalised regulations, please see our legal update.

The government has also responded to its June 2022 consultation on further issues in relation to the introduction of pensions dashboards. Among other things, the response announces that the government will give schemes at least 6 months' (rather than 90 days') notice of the dashboards available point and must be satisfied that the dashboards ecosystem is ready to support widespread use by the general public. The consultation outcome has been reflected in the regulations laid before Parliament.

In addition, the government has published draft guidance for schemes on applying to defer their connection to the dashboards ecosystem, as well as template deferral applications forms. Deferral is only possible in limited circumstances.

Action

Trustees and administrators should review the finalised regulations and update their dashboards preparation as necessary.

Pensions Regulator – enforcement

The Pensions Regulator has finalised and published:

- Its new scheme management enforcement policy – this consolidates and updates the enforcement policies for DB, DC, hybrid and public sector schemes.
- Its revised and updated prosecution policy.

In addition, the Regulator has published a new enforcement strategy and updated case team and Determinations Panel procedures. The enforcement strategy sets out the aims of the Regulator's enforcement work and provides insight into the framework that the Regulator applies when selecting cases for enforcement action. The case team and Determinations Panel procedures set out how the Regulator's case teams and the Determinations Panel operate. The Regulator has also published a blog post on the new policies and strategy.

Action

No action required.

Compensation for changes to pension rights – tax treatment

The Upper Tribunal has allowed an appeal against the First-tier Tribunal's decision that payments made to employees in exchange for them agreeing to change their future terms and conditions of employment as to accrual of pension rights were not compensation for loss of pension rights and were therefore taxable as employment income. The Upper Tribunal held that the First-tier Tribunal had erred in law and the payments did not derive from the employees' employment. They were not therefore taxable as employment income.

Action

No action required.

Issues affecting DB schemes

M&A activity – Pensions Regulator expectations

The Pensions Regulator has published a blog post on its expectations of trustees and companies in relation to M&A activity involving companies who sponsor a DB scheme. The Regulator expects trustees to be robust in defending members' interests and employers and bidders to treat the scheme fairly and equitably. Employers should immediately alert trustees about proposed corporate transactions, while trustees should engage early to understand the status of the proposed transaction and its potential impact on the employer covenant. Bidders should have a credible business plan which considers the scheme's long-term funding objective and is underpinned by suitable protections for the scheme. Where the strength of the employer covenant will be impacted by the proposed transaction, tangible protections should be put in place. Bidders should reach a legally binding agreement with the trustees before completion.

Action

No action required, but employers contemplating any M&A activity, and trustees that become aware of any potential M&A activity, should bear the Regulator's expectations in mind.

Issues affecting DC schemes

Investment in illiquid assets – new requirements

The government is consulting on draft regulations:

- Requiring trustees of schemes that provide DC benefits other than additional voluntary contributions (relevant schemes) to:
  - » Disclose and explain their policy on investment in illiquid assets in the default arrangement statement of principles.
  - » Disclose and explain their default arrangement asset class allocation in the annual chair's governance statement.
- Excluding certain "specified performance fees" from the scope of the default fund charge cap.
- Requiring trustees of relevant schemes that are being used for automatic enrolment to:
  - » Calculate any specified performance fees incurred in relation to the default arrangement(s) and assess the extent to which they represent good value for members.
  - » Set out the amount of any specified performance fees incurred in relation to the default arrangement(s) in the annual chair's governance statement.

The government is also consulting on draft statutory guidance on the proposed asset allocation disclosure requirements and the exclusion of performance fees from the default fund charge cap. The consultation closes on 10 November 2022. For more information, please see our legal update.

Action

Trustees of relevant schemes should keep the progress of the consultation under review.

Reporting costs and charges – statutory guidance

The government has updated its statutory guidance for DC schemes on reporting costs, charges and other information to include content for collective money purchase schemes.

Action

No action required.

Transfers – industry guidance

The Pensions Administration Standards Association has published good practice guidance on DC transfers that is designed to achieve faster and more secure transfers. The guidance includes:

- A standardised and non-prescriptive process flow for transfers.
- A recommendation that trustees agree acceptable service level agreement timescales for processing transfers upfront with their administrators.
- Template communications for improving transfer processes.

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

Mayer Brown media comment

- Mayer Brown has recently launched a mini Q+A series focussing on the economy, with each episode concentrating on specific points of discussion. In this episode, Amy Jacks, partner in our restructuring team, asks Andrew Block ten key questions on pensions.
- Katherine Carter authored an article for Lexis PSL on the Pension Protection Fund's consultation on the 2023/24 levy rules and the outcome of its long-term funding strategy review.

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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Dates to note over the next 12 months

31 January 2023

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

31 March 2023

Expected PPF levy deadline for submission of scheme returns, contingent asset and asset-backed contribution certificates and special category employer applications

1 April 2023

Expected PPF levy deadline for submission of supporting contingent asset documents

6 April 2023

Exemption of performance fees from the DC default fund charge cap and new performance fee-related disclosure requirements for DC schemes expected to come into force

29 April 2023

Expected PPF levy deadline for submission of deficit reduction contribution certificates and exempt transfer applications

30 June 2023

Expected PPF levy deadline for submission of full block transfer certificates

31 August 2023

Start of the pensions dashboards staging timetable

31 August 2023

- New default arrangement illiquid investment disclosure requirements for DC schemes expected to come into force
- New default arrangement asset allocation disclosure requirements for DC schemes expected to come into force

Key:

- Important dates to note
- For information

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