

DC briefing

July 2016

Highlighting the latest developments in DC for trustees, employers and providers



Lawyers lighting the way

To run a successful DC scheme you need a really strong team: willing and capable trustees, an engaged employer and understanding advisers. The role of the lawyer is crucial to this mix as trustees cannot operate without the right kind of legal support. (In fact, acting upon advice which has not been given by a properly appointed legal adviser is a breach of the law in itself!) In this DC briefing, we look to the horizon and see what new legal requirements could be arriving shortly. After all, a good lawyer will operate like a legal lighthouse, alerting you to any hidden legal risks before you reach the rocks.

Our spotlight section in this DC briefing is a good example of the need to consider legal matters whenever you are undertaking any kind of DC project, however big or small. In our experience, a short phone call to identify any legal issues at the start of a project can save a lot of heartache, time and costs, later on.

Enjoy the summer, which looks like being a busy one (politically at least) and until next time....

Four key DC issues

Impact of Brexit vote

While the political results of Brexit will be played out across a (currently) unknown timetable, trustees face the more immediate question of what, if anything, to say to their DC members.

Although such members make their own investment choices and trustees may be anxious to avoid straying into "investment advice" territory, there are some practical steps that could be taken to help members. For example, trustees could:

- speak to their investment advisers (particularly regarding default arrangements) to ensure their strategy remains appropriate
- consider issuing communications to remind members of the importance of diversity within their portfolios and the need to keep investment options (and target retirement ages) under review
- consider building additional steps into the process for making transfers or taking retirement benefits to double check that those members who may have indicated their decision before 23 June still wish to proceed as originally indicated.

Four key DC issues cont.

Revised DC Code and trustee guides

The revised DC Code and supporting guides for trustees are due to come into force in July 2016. The Code sets out the standards TPR expects trustees to meet when complying with the law, and the six new guides (which reflect the key areas of the Code) provide information on how trustees might meet those standards in practice. TPR has designed these documents to be accessed online, in keeping with the increasing use of technology in scheme management and administration (one of the key themes which emerges from this review).

While there is no sea change in TPR's approach or requirements, trustees should take the time to familiarise themselves with the new documentation and to assess their scheme against TPR's expectations. The appropriate place to start for such a review will depend upon a scheme's current governance arrangements and what, if any, reviews have been recently undertaken. If you would like advice on which areas to focus on, any training on the revised Code and guides, or assistance with a review, please speak to your usual contact at Sackers.

Trustees' and employers' roles when communicating with members

With an increasing number of companies offering flexible employee benefit packages and new retirement options, the issue of "wealth management" and financial education is becoming a familiar talking point.

Providing practical financial information without straying into "advice" territory can feel a rather dangerous business and is a risk that many would rather avoid. Trustees and employers have no legal duty to provide financial advice and they must not do so unless they have the appropriate authorisation from the FCA. They should also be careful to avoid the trap of endorsing (explicitly or implicitly) any particular services or options, such as pension drawdown vehicles or other retirement products.

Fortunately, help is at hand, in the form of a recommendation by the recent Financial Advice Market Review. This called on the

FCA and TPR to develop and promote a new factsheet setting out what can be said to employees about financial matters without falling foul of regulatory restrictions. Although it is unclear at the moment when the factsheet will be produced, this is good news for employers and trustees and will hopefully draw a line around what it is "safe" to mention and what should be avoided.

Meanwhile, be aware that trustees:

- must comply with statutory disclosure and information requirements
- can also inform, educate and enable members to make pension savings decisions, in line with TPR's guidance on DC communications.

Summer expectations

Although we are well on our way to the summer break, many expected publications have not yet appeared. Following announcements in this year's Budget and Queen's Speech we are waiting for, for example:

- consultations on the introduction of a "single, clear definition of financial advice" and on a "Pensions Advice Allowance" to allow individuals under the age of 55 to withdraw up to £500 tax free from their DC pension to redeem against the cost of financial advice
- The "Lifetime Savings Bill" which, among other matters, will:
 - put in place stronger legislative standards for master trusts
 - introduce a cap on early exit charges from trust-based occupational pension schemes and remove "unreasonable barriers" to consumers wishing to access pension freedoms
 - restructure public financial guidance.

The above is in addition to:

- a promised consultation on dealing with existing (ie pre-6 April 2016) member-borne commission arrangements in certain schemes with DC benefits
- a "package of measures" from TPR in relation to processing and reporting on transfers
- an update from the FCA regarding their Asset Management Market Study and
- any changes following the outcome of consultations on transaction costs and an early exit charge cap.

And of course, all of these will now be subject to any pensions and tax changes coming out of the EU Referendum decision, which remain uncertain for the time being.

Spotlight: moving DC funds



Trustees sometimes need to move their DC funds without member consent, for example, when:

- one or more of a scheme's current investment options are no longer available or suitable eg due to the 0.75% charge cap on default arrangements
- trustees decide to change their investment provider or platform
- schemes transfer or merge into a different arrangement, such as a master trust
- trustees wish to consolidate their DC AVC arrangements.

Although this can be worrying if the new investment decision will override a member's previous investment choice, trustees can minimise the legal risks involved, provided that the right process is followed.

There are four key stages which are usually involved in this kind of exercise:

1 Review

- The trustees agree the objective of the investment review.
- It is important to consider the context of that review. For example, is this prompted by charge cap concerns, investment performance, or wider changes such as the introduction of pension flexibility options or alterations to the scheme's structure?
- It may also be helpful to seek the employer's support at this stage, as there could be costs and communication issues generated from any resulting change.

2 Advice

- The trustees seek investment advice on their options (and obtain a formal advice letter from their investment adviser).
- The trustees consider legal advice on the trust deed and rule provisions. In particular, do they have power to make the change without member consent and, if so, would it be in members' best interests to exercise such a power?
- The trustees consider the impact on the statement of investment principles (if this needs to be amended, they must first consult with the employer).

3 Decision

- The trustees consider the advice received.
- The trustees weigh up whether the proposed change is in the best interests of members. For example, would there be any transition costs for members, what would happen to any members who are part way through a lifestyle process?
- The trustees document their decision and reasoning appropriately (as required by the April 2015 governance legislation).

4 Action

- The trustees issue member communications.
- The trustees issue the instructions to investment managers and administrators.
- The trustees update the statement of investment principles.

We anticipate that this kind of exercise is likely to take place more often in the future given the legal requirement to review default arrangements every three years. Trustees should not feel constrained by previous investment choices if they receive advice which suggests that changes are required. What is important is to make sure of the legal position early on in this process and to approach such an exercise in a sensible and measured way.

Contact

Sackers is the leading law firm for pension scheme trustees, employers and providers. Over 50 lawyers focus on pensions and its related areas, including our DC experts who provide practical and specialist help on all aspects of DC arrangements. For more information on any of the articles in this briefing, please get in touch with Helen Ball, Paul Phillips or your usual Sackers' contact.



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Upcoming seminars & events



We offer an extensive programme of workshops, seminars and trustee training specifically on DC issues and developments. If you would like to attend any of our events, please contact us at events@sackers.com or visit www.sackers.com.

Quarterly legal update	28/07/16	Breakfast seminar (09:00am-10:30am) The latest legal and regulatory developments in the pensions world.
DC Seminar	22/09/16	Breakfast seminar (09:00am-10:30am) Aimed at trustees and employers of DC arrangements, this seminar will focus on the practical implications of the new DC Code, how to manage legal risks and moving DC funds without member consent.
Pensions for New Trustees	11/10/16	Workshop (09:00am-3:00pm) Aimed at new trustees or those wanting a refresher on DC and DB benefits, this session will look at key legal issues for trustees.
Quarterly legal update	30/11/16	Breakfast seminar (09:00am-10:30am) The latest legal and regulatory developments in the pensions world.