Revised DC Code comes into force

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Introduction

TPR's revised code of practice on the governance and administration of occupational trust-based schemes providing money purchase benefits ("the Code") came into force on 28 July 2016. To coincide with this, TPR has published responses to the consultations on and final versions of its "how to" guides and its compliance and enforcement policy.

Key points

- The Code is deliberately much shorter than its predecessor. It focuses on the key legal duties for trustees of schemes with DC benefits and TPR's expectations of how these will be implemented.
- All references to the "DC quality features" have been removed from the Code.
- New "how to" guides are designed to support the Code and set out practical ways in which trustees can demonstrate their compliance with legal requirements. These are intended to keep up with best practice in the market as it evolves and with TPR's vision for what is required of a 21st century trustee.
- TPR has confirmed that, despite the use of the term "should" in the guides, they are not intended to be prescriptive.
- TPR intends to be "more visible" in its regulation of master trusts.
- In its compliance and enforcement policy, TPR reminds trustees that it is required to issue a mandatory penalty (£500-£2,000) where a scheme fails to prepare a chair's statement. The policy explains how the fine will generally be calculated.

The Code

The main aim of the Code is to continue to raise standards of governance and administration in DC schemes.

The revised document addresses the changes made to DC legislation since the first DC code was published in 2013. It is intended to support DC trustee boards as they adapt to the major reforms of 2015, such as the introduction of legal minimum governance standards and the retirement flexibilities. In our opinion, this latest version of the Code is more pragmatic; rather than just expounding the law it aims to help trustees operate their schemes in compliance with it.

Who does the Code apply to?

The previous DC code applied to trustees of all occupational trust-based pension schemes with two or more members which offer:

- DC benefits, including AVCs under occupational DB trust-based schemes or sections and the DC element of hybrid schemes
- DC benefits with a DB underpin (TPR stated that it expects such benefits to be treated as DC throughout their lifetime).

In contrast, reflecting the different application of the legal requirements to such benefits, the Code is only intended to apply to DC AVCs and DC benefits with a DB underpin “insofar as the relevant pensions legislation applies to them” and trustees are encouraged to apply a proportionate approach. Trustees will therefore need to seek confirmation from their legal advisers on which aspects of the Code are relevant to them.

DC guides

TPR’s six “how to” guides support the Code by providing information on how trustees might meet the standards required in practice. Each guide deals with a section of the Code:

- The trustee board
- Scheme management skills
- Administration
- Investment governance
- Value for members
- Communicating and reporting

and contains links to additional tools, such as checklists and summaries, where appropriate. For example, the guide on value for members sets out an “illustrative approach” to assessing value, and the guide on communicating and reporting includes tips on what should be covered in the chair’s annual statement. While there is no template for this, TPR will consider publishing good examples that it comes across during its regulatory activity. It also encourages schemes to publish their statements both to make it easier for members to access them and to assist in sharing practices across the industry.

Compliance and enforcement

The overriding strategic aim of TPR’s approach to DC regulation is to support the market in delivering good member outcomes, intervening only where the market appears unlikely to do so unaided. As in other areas, TPR intends to apply a proportionate approach “that is mindful of burdens on business”.

In TPR’s opinion, the key DC risk areas are:

- Poor standards of governance

- Poor investment governance and inadequate cost controls
- Poor administrative practices
- Scams and the misappropriation of scheme assets.

Resource will be focused on the risks TPR believes pose the greatest threat to members.

As before, TPR intends to "proactively engage" with trustees, advisers and providers, to understand the risks presented by particular areas or segments of the market. Otherwise, TPR will rely on whistleblowing reports and compliance with scheme information requirements to obtain the information it needs. Where there is evidence of a breach of legal requirements, or a breach is suspected, TPR will consider whether it should investigate. Following an investigation TPR will determine what, if any, enforcement action to take. Its decision will be influenced by, for example, the number of members affected, the extent to which there is a systemic problem and the severity and duration of the breach.

Not surprisingly, TPR has declared that it will be "more visible" in its regulation of certain segments of the DC market, such as master trusts. This ties in with the proposed strengthening of the legislative framework for such schemes.

Transfers and transparency

In the consultation on the "how to" guides, TPR queried whether it should recommend a timescale for processing transfers. Having considered the responses it has decided not to do so. However, it still believes that it would be beneficial to increase transparency on performance. It will therefore use information reported to it in DC scheme returns "to produce further best practice in the new year to highlight industry standards and help trustee boards to scrutinise their own processes".

On the horizon

TPR intends to produce further guidance later in the year covering investment issues applicable to all types of pension scheme. This may include further information on areas such as socially responsible investment.

In addition, TPR has a number of policy initiatives underway with the industry. These are aimed at providing support for trustees in areas including transparency of costs and charges across financial services (for example, the Transparency Task Force).

Action points

Trustees should familiarise themselves with the Code and "how to" guides before assessing their scheme for compliance; there is a revised checklist to help you on TPR's website. Such a review will depend upon a scheme's current governance arrangements and any other assessments which have been recently undertaken. Given that TPR has emphasised the importance of legal understanding, we recommend speaking to your usual contact at Sackers about your legal training requirements and how to undertake your legal compliance review.

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