

DC briefing

October 2016

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



Changes on the horizon

As we move towards the end of 2016, and look forwards into 2017, it seems unlikely that it will be a quiet year. Change is definitely in the air.

Autumn has brought us a bumper harvest of new consultations (for example, the proposal to introduce a £500 pensions advice allowance, alongside the reconfiguration of the public financial guidance market). Meanwhile, the discussion about what it means to be a 21st century trustee continues, and the freedom and choice movement is reaching the realms of the secondary annuity market, against a Brexit background which is proving controversial (to say the least).

Following a recent consultation paper from the FCA, the focus looks set to shift towards charges and improvements in transparency, given its proposal to introduce a new duty on asset managers to report transaction costs. Later on this year we are also expecting an update on the FCA's asset management study, which could herald the start of a different approach to managing funds.

So, to quote John Keats in his poem "To Autumn", this "season of mists and mellow fruitfulness" could lead us to some exciting times ...

Four key DC issues

Environmental, Social and Governance (or "ESG") issues

DC trustees must offer their members an appropriate choice of funds and, if they are an auto-enrolment scheme, an appropriate default. In meeting these objectives is it necessary for them to take into account ESG issues?

TPR expects trustees to bear in mind that most DC investments are long-term and, as such, exposed to longer term financial risks. These potentially include climate change, unsustainable business practices and unsound corporate governance. Once they have considered the longer term sustainability of their investments, TPR suggests trustees might wish to:

- make changes to their range of investments and / or
- engage with the companies in which their investments are held (either directly or via the investment manager or bundled service provider as appropriate).

In devising their default fund, trustees must remember that they are constrained by the duty to act in their members' best financial interests. In practice, this means that they may only take account of ESG factors which they consider to be financially significant. Trustees have more freedom in relation to the range of funds they offer members for self-selection. In this respect, as is the case with determining the range of funds more broadly, trustees should take into account the needs / wants of their membership.

Trustees may wish to factor the need to consider ESG issues into their next investment review and consider whether to canvass members' opinions on the range of funds offered to members who don't wish to invest in the default. For further detail, please see our Sackers' Guide to ESG or sign up for our upcoming seminar (see back page for details).

Four key DC issues cont.

Charges and transparency

Most people accept that we need to build a better understanding of pension charges, particularly regarding their transparency and comparability. However, this is proving a difficult nut to crack.

The cost debate has moved on from the default fund charge cap and bans on behaviours such as active member discounts and member borne commission. Focus is now shifting towards the tricky area of transaction costs.

Trustees have a legal duty to explain, in their chair's annual statement, any transaction costs information that they have been able to gather and the steps they are taking to obtain any missing information in the future. However, there is currently no corresponding obligation on parties involved in pension investments to disclose this information.

The FCA has published a consultation on the disclosure of transaction costs in workplace pensions. It proposes a standard approach to the calculation of transaction costs, together with a requirement for those managing investments to report administration charges and transaction costs to an IGC or to the trustees of an occupational pension scheme, when asked to do so. However, with several initiatives on the presentation of transaction costs already underway, the FCA has opted not to put forward its own rules for this.

The consultation does not close until 4 January 2017. In the meantime, we suggest trustees make use of the pointers TPR provides on transaction costs in its guide on value for money and do all they can to obtain information for inclusion in their chair's statement.

TKU for the 21st century

In July 2016, TPR published a discussion paper setting out what it is doing to educate and support trustees of both DB and DC schemes. Drawing on the findings of its research in a number of key areas (such as the role of the chair, awareness and understanding of the TKU framework and the standard of professional trustees), TPR is also examining what more both it and the wider pensions industry can do to raise standards of trusteeship.

TPR's research indicates that almost one in five schemes are either not familiar with the TKU code or do not know whether their non-professional trustees meet the required standard. To address this, TPR is considering whether to:

- make it mandatory for trustees to pass all relevant modules of the Trustee toolkit within six months of appointment

- introduce a six-month probationary period for new trustees, with appointments only formalised once sufficient TKU is demonstrated
- introduce a formal training framework (for example, a requirement for a certain number of hours' training to be undertaken).

The main barriers to accessing formal training were cited as lack of time and lack of perceived need. Both can be addressed, to at least some extent, by trustee boards having formal procedures for evaluating training needs and organising training.

We recommend putting in place annual learning and development plans to address both individual and collective training needs. Broadly, the contents of the training programme should be influenced by the trustees' agenda for each quarter and input from the board on particular strengths and weaknesses.

Making the most of re-enrolment

Re-enrolment isn't just about putting back into pension saving those jobholders who have previously opted out. We think it is also an opportunity for an employer to assess how auto-enrolment is going and plan ahead for other issues down the track.

Immediate legal issues on re-enrolment will focus on which members of staff are in scope and whether the employer can make use of any of the statutory exceptions to the duty to re-enrol. For example, an employer may have "reasonable grounds to believe" that a form of pensions tax protection applies to a jobholder. In most cases, the employer will have the option of excluding such a jobholder from automatic re-enrolment, but care should be taken to document the position adequately.

Looking further ahead, re-enrolment is the ideal opportunity to check that the pension arrangement an employer uses for auto-enrolment compliance will continue to fit the bill when minimum contribution rates increase (on 6 April 2018 and again on 6 April 2019).

Employers should also check whether:

- the provisions of any auto-enrolment scheme rules need altering to reflect the change in legislation
- if they plan to require jobholders to increase their contributions when minimum rates rise, it will be necessary for them to consult with affected staff before doing so.

Spotlight: Latest news on pension guidance and information



It is generally understood that individuals need a good basic understanding of pensions in order to make informed decisions, both while they are saving and when they decide to take their benefits. The Government has several projects underway to improve the provision of financial advice and guidance, as well as consumer take-up. Trustees and employers may wish to take these into account when planning future communications and projects of their own.

Recent developments include:

1

Guidance on employee / member communications

The recent Financial Advice Market Review identified a natural reluctance to discuss financial matters with employees and members, even though it is legitimate for employers and trustees to provide financial information. In early 2017, we are expecting a joint FCA/TPR factsheet setting out what employers and trustees can tell employees / members about financial matters without falling foul of regulatory restrictions. Trustees and employers may wish to consider how this will fit within their own financial engagement plans.

2

What is “financial advice”

Fear of straying into regulated advice has also made firms reluctant to offer guidance services to consumers. To remedy this, HMT is consulting on amending the UK’s definition of “regulated advice” so that it is based upon an individual receiving a personal recommendation for a specific product. This should allow firms to provide useful information to support customer decision-making, such as more detailed information in product disclosure documents and on websites regarding the types of customer for whom their retirement income products are likely to be appropriate or inappropriate. Changes to the provision of information in the industry more generally are likely to support and further inform any action taken by employers and trustees.

3

Pensions Advice Allowance

HMT is consulting on the introduction of a “Pensions Advice Allowance”. Under the proposals, from April 2017, individuals would be able to withdraw £500 tax-free from their DC pension pots to pay for pre-retirement advice. (This would be in addition to a £500 tax-free allowance for employer-arranged advice on pensions).

Interestingly, HMT does not propose to make it mandatory for schemes or providers to offer the Pensions Advice Allowance. Instead, it would like to know how best to encourage them to do so. Member engagement should be high on your scheme’s agenda so this may be something to consider in the near future.

4

Pensions dashboard

The Government intends to put in place a “Pensions Dashboard” to allow savers to see all their pension pots in one place. Not only would this allow people to plan more effectively for their retirement but the hope is that it would also help them to keep track of all their arrangements and perhaps prompt them to seek advice as to whether they are in the best place.

The platform is due to be available to consumers by 2019 and, on the current timetable, a prototype will be ready by March 2017. If successful, this will demonstrate how innovation in technology can be applied to improve member understanding and engagement.

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, Stuart O'Brien 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	10/11/16	Breakfast seminar (9:00am-10:30am) The latest legal and regulatory developments in the pensions world.
ESG seminar	15/11/16	Evening seminar (5:30pm-7:00pm) An interactive discussion on legal duties, ESG and responsible investing.