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DC briefing

October 2017

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

Latest news

The final piece of the DC legal framework is falling into place. We will soon have the transparency rules that, together with the existing rules on governance and charges, will control how we manage workplace DC pension schemes going forward. Whether this will lead to any significant change in practice remains to be seen but, in the short-term, it should help trustees and IGCs to address the tricky "value for members" question that they have been grappling with over the last couple of years.

Meanwhile, TPR is continuing with its programme of improving trustee governance, with further developments expected to be rolled out over the coming months. As a result, there has been a revived interest in trustee training, trustee effectiveness reviews and risk management tools, which is likely to continue for some time. Trustees and employers are also working side by side with their service providers on business continuity plans, cybersecurity and data protection reviews, demonstrating that DC pensions really are a team effort.

It will be interesting to see how the big picture news on matters such as auto-enrolment, asset management and master trusts will start to influence the day-to-day running of schemes over the next few months. As ever, we don't expect things to stand still for too long…

Update on costs and charges

- The FCA has published a Policy Statement on transaction cost disclosure in workplace pensions. With effect from 3 January 2018, if requested by an IGC or a scheme's trustees, a firm must provide:
  - information about transaction costs (calculated according to the FCA's methodology)
  - information about administration charges
  - appropriate contextual information.
- The DWP intends to consult on proposals as to how costs and charges relating to occupational pension schemes should be published and disclosed to scheme members. Subject to their final regulations coming into force, the FCA intends to consult in the second quarter of 2018 on its proposals to achieve similar outcomes for workplace personal pension schemes.
- The Government is currently examining the composition and level of the default fund charge cap. In particular, it is considering whether some or all of the costs associated with investment transactions should also be covered. Given the complexity of making any changes, and the amount of Parliamentary time that will be devoted to Brexit, the prospects of delivering any significant changes appear remote at this time. However, we will need to wait and see.

! Action

Trustees must assess, and explain in their annual governance statement, the extent to which any member-borne charges and transaction costs represent good value for members. While obtaining detailed information, especially in relation to transaction costs, may remain challenging until legislative changes come into force, trustees must make reasonable efforts to do so.

TPR finds improvements needed in DC governance

Survey results

TPR has published the results of its 2017 DC schemes survey in which it has focused on five Key Governance Requirements:

- Trustee boards must possess or have access to the knowledge and competencies necessary to properly run the scheme ("TKU")
- Trustee boards must assess the extent to which charges / transaction costs provide good value for members (the "VfM" assessment)
- Core scheme financial transactions ("CFTs") must be processed promptly and accurately
- Trustees of master trusts must meet independence requirements
- Trustee boards must ensure the default investment strategy is suitably designed for their members.

The survey results indicate that larger schemes tend to meet these requirements more often than smaller schemes – perhaps this will be seen as another validation of the push towards greater scale and the consolidation of pension schemes. However, both large and small schemes fell down on their approach to the VfM assessment and the processing of CFTs.

Value for members

The greatest barrier to schemes meeting this requirement was a failure to research and take into account members' preferences.

Core financial transactions

Many schemes failed to address this requirement because they do not track and / or do not have documented standards in place for measuring performance on the promptness and accuracy of processing transactions (such as the transfer of funds or investment of contributions).

Following these findings, TPR has launched a new campaign to protect workplace pension savers by driving up the standards of governance across pension schemes.

! Action

Trustees must ensure they understand the statutory DC governance requirements and have the necessary processes in place for them to be addressed. It is also a good time to review general governance processes and consider whether improvements can be made.

Keep your eye on your member communications

Designing member communications is not an easy task. Trustees and employers often grapple with:

- **Saying enough but not too much.** It can be difficult to condense information without sacrificing some meaning or accuracy, and legal requirements must be met (even if they do add extra words!) It saves time and cost to involve your legal advisers right from the start, for example with a booklet review, so wholesale changes aren't needed towards the end of the process.
- **Providing information, but not advice.** Trustees must always be careful that their communications are factual and do not, even inadvertently, advise members to take a certain course of action (for example, by enclosing a leaflet for a particular drawdown provider).

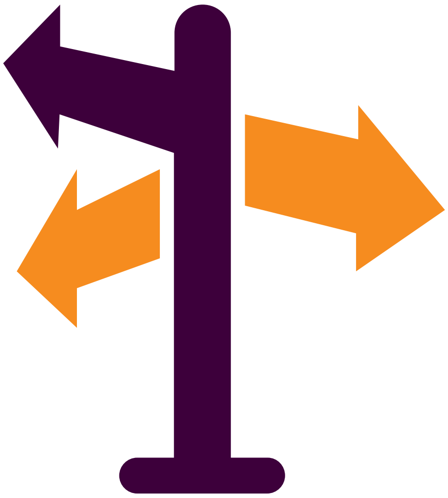
Following a recommendation from the Financial Advice Market Review, on 28 September 2017 the FCA and TPR published a guide for employers and trustees on providing support with financial matters without needing to be subject to regulation.

Trustees should consider developing a communications strategy. While there is no legal problem with drafting and reviewing communications piecemeal, such an approach can make it difficult to ensure communications are sent at all the appropriate points during a member's saving journey. An absence of information at key points could lead to inappropriate member decisions, poor member outcomes and, ultimately, put trustees at risk of future claims.

! Action

Consider a communications strategy. Ensure communications have been reviewed by your legal adviser to confirm that they meet legal requirements and do not stray into regulated advice.

Spotlight: retirement options



Many DC schemes are considering the extent to which retirement options can be signposted to their members and the potential for the employer or trustees to agree preferential rates and structures as part of the process.

The “at retirement” market is very much in its infancy and we expect to see some development within the next 12 to 18 months. Current products are typically designed using either a SIPP (self-invested personal pension), a master trust, or a combination of the two.

SIPP

- Generally retail.
- Individual policy between the member and the SIPP provider but trustees can agree the initial funds to be offered and negotiate competitive fee rates.
- Will typically offer a long list of funds (often in excess of 4,000 with the larger providers), often with complex charging structures.
- May offer guidance and / or bolt-on advisory services.

Master trust

- Typically bundled.
- May be able to use the same administration platform as the scheme.
- Trustees and scheme sponsor can agree a “protocol” setting out the terms on which members will be signposted to the master trust and any special arrangements as to fees or advice options.
- May offer “shared governance” (the drawdown strategy of the master trust is aligned to the scheme’s default investment strategy in the accumulation period by sharing advice from the scheme’s investment advisers).

Key issues

- Scope of trustee governance – trustees should be careful not to extend their duties to members beyond the member leaving the scheme. This is one of the risks of the shared governance approach.
- Out of market risk / transaction costs – trustees should ensure these are easily identifiable and clearly communicated to members.
- Fit with scheme structure – the employer and the trustees must be satisfied that the policy will work for scheme members and dovetails with scheme design.
- Signpost only – the employer and the trustees must be careful not to recommend or even tacitly endorse a certain product by their actions. Members should be directed to the information they need to make a decision, not to an end product.

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Contact

Sackers is the leading specialist law firm for pension scheme trustees, employers and providers. Over 50 lawyers focus on pensions and retirement savings, 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, Jacqui Reid or your usual Sackers' contact.

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Upcoming seminars

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.

Getting ready for GDPR, 16/10/17
Lunchtime webinar (12:30pm-1:15pm)
Practical tips to help trustees and employers get ready for the new rules which come into force in May 2018

Quarterly legal update, 09/11/17
Breakfast seminar (9:00am-10:30am)
An overview of the latest legal and regulatory developments in pensions and retirement savings

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