Master trust briefing

October 2020

Highlighting key issues and developments for master trust trustees and sponsors

Introduction

We may be navigating our "new normal" but the current pensions landscape is reassuringly familiar in that it never stands still! In this Autumn edition of our master trust briefing, we share the key legal themes and issues for DC master trusts that have landed on our desks as the nights draw in – from challenges around investment governance where employers have their own bespoke sections, to our top tips for publishing implementation statements. We also summarise recent regulatory changes relevant to master trusts and what to expect as 2021 looms. For our recommendations of the actions you need to take or consider, watch out for the cog icons!

We hope you find this briefing useful. Please do let us know if there are any particular topics you would like us to cover in the future.

Regulatory update

Supervisory return

TPR's supervisory return process is now up and running and master trusts will be expected to file their first return within three months of their next scheme year end. Note that, over the summer, TPR has changed the template quite significantly from the one trialled earlier in the year, so it is likely to require additional lead time to source the new information required to complete it.

Action

Check out TPR's revised return and factor timings to produce the required information into your scheme business plan / calendar.

Chairs' statements

TPR intends to "revert to reviewing chairs' statements submitted on and after 1 October 2020 as usual", unless it specifically notifies the scheme otherwise. Any chairs' statements it received before then (including in relation to master trusts) will be returned unread with TPR warning schemes not to take an "absence of comment" as any indication that the statement in question complies with the requirements.

Action

We have seen a number of chairs' statements and SIPs for master trusts recently which have not correctly described "accidental" defaults (which typically arise from the suspension of property funds and/or historic transfers in from single employer schemes). The legislation requires the same level of disclosure for any default, regardless of how it came about. When preparing the chair's statement, we suggest master trust trustees take particular care in drafting these sections.

Outstanding payment reporting

At the start of the COVID-19 crisis, TPR extended the maximum period DC pension schemes and trustees had to report late contribution payments from 90 to 150 days. This extension was intended to give struggling employers more time to work with pension providers to bring late or missing payments up to date before enforcement action was taken.

Regulatory update cont.

TPR is now asking DC schemes (including master trusts) to resume reporting late contribution payments no later than 90 days after the due date from 1 January 2021. However, with the aim of ensuring that:

- schemes have sufficient time to adjust systems and processes, and
- employers who suffered the effects of the pandemic have been afforded the additional time to work with their provider to bring any outstanding contributions up to date

the reversion to 90 days will not become mandatory until 1 April 2021.

Action

Master trust providers and trustees should, so far as possible, start working towards the return to the standard reporting schedule to allow plenty of time for any issues to be addressed. Consider how you will engage with your employers on this issue in light of difficulties arising from the pandemic.

Implementation statements

The second raft of changes to statements of investment principles ("SIP") should now be in place meaning it is time to start preparations for the next stage, the implementation statement. This new annual statement, which must be included in the scheme's annual report and accounts on and from 1 October 2020, explains (among other matters) how the trustees have implemented the policies in their SIP.

As "relevant schemes", master trusts are required to publish the statement online as soon as the accounts are signed off, but in any event no later than 1 October 2021. Some of our master trust clients are choosing to publish implementation statements earlier than the stated deadline, whilst others are waiting until the required time.

Action

✓ **Make a plan**
Confirm the deadlines with your sponsor and your advisers. The timing can be tricky.

✓ **Contents**
Identify the period to be covered by the statement and any changes made to the SIP during that period. Master trust trustees will very likely find that, at least for the first year, they will be reporting on policies which have changed during the year.

✓ **Engage**
Start speaking to your sponsor now and understand how you and they will liaise with asset managers (and investment consultants) to ensure that the required information on voting and engagement will be made available, and in good time, for the master trust trustees to include in their statements. The requirement on trustees to describe the "most significant" votes cast by the trustees (or on their behalf) may also need some parameters defining with managers upfront.

✓ **Identify your aim**
Obviously, the legal requirements must be met, but do you want to use the statement to demonstrate how you are acting as responsible investors and/or to improve member engagement? The PLSA's guidance (which we were involved in producing) has lots of good tips for trustees to consider should they want to go further than mere compliance.

✓ **Remember your audience**
When drafting your statement, bear in mind that it will be public and will no doubt be scrutinised, not just by scheme members but by prospective employers, policymakers and action groups. We anticipate a significant level of interest across all schemes, but master trusts are particularly likely to be put under the spotlight given the current focus on them.

Default funds in master trusts: key challenges

Default funds are a critical component of DC master trusts and trustee governance of them will be a key focus for TPR as supervision beds in. Good governance is likely to be a determining factor for employers as they choose between pension providers and the products they offer.

We frequently see two key issues arise in respect of defaults for our master trust clients:

Employer choice of default

The structure of a default strategy varies depending on whether a pension scheme is contract or trust-based. If it is contract-based, the strategy will usually be determined by the pension provider, whereas strategies for trust-based schemes are determined by the master trust trustees.

Pension providers are understandably keen to offer maximum flexibility to prospective and existing employer clients, and we often see them invite the employer to “choose” the arrangement’s default strategy. Whilst this can work from a contract-based perspective, master trusts need to adopt a different approach. Under pensions law, it is the master trust trustees, not the employer, who must select an appropriate range of funds, including those which make up the default strategy or strategies. Master trust trustees must also monitor and review investment performance of the funds and, if relevant, update them from time to time. Therefore, whilst the employer can ask the master trust trustees to consider a particular course of action, it is ultimately the master trust trustees, acting on their own investment advice, who must make the final investment decisions.

Action

Master trust trustees should check how investment governance in the master trust is being marketed to employers in pitches for new business. In particular, pension providers should take care with the language used when describing the employer’s ability to influence the investment choices. We have seen some pitches where the employers are offered maximum flexibility to design their own bespoke solutions. It is possible to address the needs of the employer and the duties of the master trust trustees, but the necessary actions need to be carefully thought through.

Master trust trustees should ensure that the master trust’s SIP is clear on the trustees’ investment powers and duties. The SIP should not reference an employer’s ability to choose funds.

Master trust trustees must obtain their own written investment advice on an employer’s proposed range of investments. Many employers may well take their own advice, but the master trust trustees cannot rely on it for the purposes of selecting the investments, nor for ongoing changes.

Multiple defaults

Historically, master trusts have operated different strategies which target different outcomes at retirement depending on whether members are likely to access their savings through drawdown, annuities or cash. However, more recently, a number of our master trust clients have chosen to offer multiple “standard” defaults, where more than one default strategy targets the same retirement outcome, for example, drawdown.

Typically, a scheme with multiple defaults has a primary flagship default and then an alternative standard structure which can be requested by an employer, for example, because it is a lower cost solution than the primary default.

From a legal perspective, it is possible to have multiple defaults targeting the same retirement outcome, but it is important that the master trust trustees are satisfied it is in the interests of those members who are defaulted into the alternative default(s) to remain in those alternatives (as opposed to being transferred on a without consent basis to the primary default).

Action

Master trust trustees need to take specific written investment advice on the operation of multiple defaults. Care needs to be taken that the investment advice does not indicate a preference for the primary default where members are invested in the alternative.

Master trust trustees need to ensure that this advice is refreshed regularly and, in particular, when members from new employers are defaulted into the relevant option(s).

Government "encourages" consolidation

We have already seen a sharp increase in transfers to master trusts during the pandemic and this trend looks set to continue. In a recent consultation, "Improving outcomes for members of DC pension schemes", the Government made clear that it remains convinced that consolidation is the best way to ensure all DC savers receive the best value, are in well-governed schemes, and have access to a diverse range of investment products and strategies.

Under the proposals, trustees of DC/hybrid schemes with less than £100 million in DC assets, except those in operation for less than three years at the assessment date, will be required to complete a "more holistic" annual value for members assessment and to report on it in their chair's statement. Subject to limited exceptions, if the trustees conclude that the scheme is not delivering good overall value, the Government expects it to be wound up and consolidated. TPR will be informed, through the scheme return, of the outcome of their assessment and the action they intend to take (if any).

The proposals are intended to come into force on 5 October 2021. Indicating the strength of its determination to achieve its aim, the Government notes its commitment to legislating to mandate consolidation if it is not driven, "at sufficient pace", by the new requirements. The drive for consolidation is good news for master trust sponsors and trustees, and we are seeing our clients start to think about areas which will require scaling up to accommodate further rapid growth. Particular areas of focus are the upscaling of executive support to the trustee board and the need for additional resource from the sponsor on areas such as investment governance, compliance and oversight of administration processes.

Action

Consider your 2021 strategic priorities in light of the new proposals. What areas will need particular focus for you to be ready for further rapid scaling up?

Taking action on climate risk

Improving governance and reporting by occupational pension schemes

The DWP is consulting on new requirements for trustees, with the support of statutory guidance, to satisfy the 11 recommendations of the Task-Force on Climate-related Financial Disclosures ("TCFD") and to report on how they have done so. The TCFD's recommendations are aimed at identifying, assessing, managing and disclosing climate-related financial risks and opportunities.

The intention is for the requirements to be phased in, starting with larger schemes. Under the current proposals, authorised master trusts will be required to have arrangements in place on climate change governance, strategy, risk management, metrics and targets from October 2021, and to publish an annual report on these by the end of 2022 at the latest.

Action

With timing tight, master trust trustees should liaise with their sponsor to consider how to assimilate the proposals into their current systems and processes.

Property funds start to re-open

As many of our master trust clients will be aware, a number of property funds have been suspended during the pandemic requiring member contributions to be diverted to cash and other funds. We are now seeing suspensions start to lift. Communications from master trust trustees to affected members are crucial when the suspension comes to an end to ensure that no accidental default funds are created on a subsequent transfer of contributions. (Broadly, if contributions are invested in a fund without the member's consent it will become a "default arrangement").

As things stand, you may not be able to rely on redirected contributions to the unsuspended property fund being the member's choice, with the result that unsuspended property funds might be treated as a "default fund" and subject to the charges cap and additional governance requirements. This is an area which is under review, so please speak to us if this affects you.

Action

Take care with communications to members as property funds re-open and watch out for developments in this area.

On the horizon

End of October	Supervisory return process begins.
In the Autumn	Summary of the responses to Pensions Dashboard programme's call for input on data standards.
Later this Autumn	Initial assessment, recommendations and an indicative roadmap of actions for industry, delivery partners and Government from the new small pots working group.
Later this year	DWP's proposals for the default fund charge cap and standardisation of cost disclosure.
Q4 2020	• The Pension Schemes Bill which includes measures to enable the introduction of the pensions dashboards and to strengthen TPR's information gathering powers. Its power to inspect premises will be expanded to cover investigations relating to master trusts. • The FCA's policy statement regarding how IGCs compare the value for money of pension products and services and promote the best value for pension scheme members. Note: the FCA, DWP and TPR are working on value for money across trust and contract schemes, so this is relevant for master trusts even if the provider does not have an IGC.
1 February 2021	Investment pathways to come in for contract-based products (delayed from 1 August 2020). Note: investment pathways will be introduced at some point for trust-based schemes but the DWP is yet to confirm timing. Some master trusts have introduced pathways already, but these will need to be revisited for compliance purposes once the scope of the DWP legislation is clear.

Stop the SCAMMERS!

Scammers are obtaining copies of pension scheme trustees' signatures from documents they have published online.

Check with your advisers whether the document requires a signature. If it does, ensure the original is signed but only post either an unsigned, redacted or conformed version online.

Sackers

Contact

Sackers is the UK's leading specialist law firm for pension scheme trustees, employers, providers and corporate investors. Over 60 lawyers focus on pensions and retirement savings, including our DC experts who provide practical and specialist help on all aspects of DC arrangements.

We are recognised as thought leaders on master trusts and their close cousins, IGCs, working to bring regulatory bodies and industry specialists together in various discussion forums and groups. Our insight is used to help clients have a better understanding of the market and its direction.

If you have any questions or would like to discuss how we could help you, please do contact us for further information.

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Upcoming seminars & events

We offer an extensive programme of client workshops and seminars. In addition to the quarterly legal updates, our seminars, which are led by our experts, offer clients the opportunity to ask questions and to share experiences on particular topics.

In the current climate, our regular seminars are going ahead as webinars and we are also offering smaller virtual roundtables on specific topics. You are advised to check our website for all the latest information on www.sackers.com/events

Quarterly legal update	12/11/2020	Webinar (12:30pm-1:15pm) This webinar will provide an essential overview of significant developments affecting occupational pension provision in the UK for employers and trustees.

If you would like to attend any of our events, please contact our marketing team at marketing@sackers.com.
A selection of short videos and webinars on topical pensions-related issues and aspects of our firm is available on our website: www.sackers.com/knowledge/multimedia

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