Sackers

DC briefing

August 2018

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

Latest news

It has been a busy year so far for DC pension schemes, their employers and providers. Amongst other things, we've been:

- helping trustees to prepare their chairs' annual statements
- contributing to trustee strategy discussions and business planning
- providing trustee training
- reviewing TKU processes and documents to demonstrate compliance
- advising on investment strategy reviews and fund mapping
- considering the impact of ESG proposals
- advising on security of assets
- arranging transfers of benefits into master trusts
- advising master trusts on TPR's new authorisation process
- reviewing member communications and communication strategies
- advising on plans to introduce pre-retirement support and guidance
- advising on DC scheme wind ups.

In this DC briefing, we look at some of the important issues that you need to be aware of, over the coming months.

Investment changes on the horizon

On 18 June 2018, the DWP published a consultation seeking to clarify and strengthen trustee investment duties.

It is proposed that:

- a statement of investment principles ("SIP") should explain how the trustees take account of financially material considerations (including those arising from ESG and climate change) and stewardship
- trustees will also be required to produce a separate "Statement on Members' Views" explaining the extent to which scheme members' views on financial and non-financial matters will be taken into account in the preparation of the SIP
- "relevant schemes" (broadly, those offering DC benefits) will also have to publish their SIP on a publicly available website and inform scheme members of its availability in the annual benefit statement. At a later stage, they will be required to publish online an implementation report explaining how they acted on the principles set out in the SIP and the Statement on Members' Views.

Trustees are expected to be given a year from when the regulations are laid to prepare for the changes, which means that their earliest effective date would be 1 October 2019. If the regulations are not laid until early 2019, the effective date is expected to be pushed back to 6 April 2020.

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Trustees should be thinking about how they will revise their SIP and prepare a Statement on Members' Views as part of their investment discussions over the next few months. For further information, please see our guide, "Where next for ESG? – An evolving approach for trustees".

Getting transaction costs information

DC trustees are required to assess and report on member-borne costs and charges including, so far as possible, transaction costs (costs resulting from the buying, selling, lending or borrowing of investments).

Getting hold of this information has been a challenge so far, even though FCA rules now require firms to respond to trustee requests for such information.

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Trustees must be able to demonstrate that they have been doing all that they can to obtain details of transaction costs. We therefore recommend that trustees:

- contact their investment consultants well ahead of their scheme's year-end to explain what information is needed from the investment managers and when it is required. As the chair's statement is due within seven months of the year-end, trustees need to build in sufficient time to consider what is received and to raise any queries that they may have
- ask their investment consultants to provide details of the steps they have taken to obtain such information and, if it is not yet complete, any steps that will be taken to obtain complete disclosure in future. This information should be included in the chair's statement, so needs to be sufficiently detailed to enable the trustees to explain what has been done.

Keep on top of your TKU

The chair's annual statement must explain how trustees have met the trustee knowledge and understanding ("TKU") requirements during the scheme year.

By way of a reminder, DC trustees need to be "conversant with", ie have a working knowledge of, the scheme's:

- trust deed and rules
- SIP
- "any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally" (a current example would be the scheme's data protection policy).

The trustees must also have "knowledge and understanding" of:

- the law relating to pensions and trusts
- the principles relating to investment.

Most schemes have an induction process for their new trustees (and it is important to ensure this is reviewed from time to time), but can find it more challenging to explain how they keep TKU up to date. However, it is important to be able to demonstrate and explain how trustees are doing so, as part of the chair's statement.

Each scheme's approach will depend upon its size and resources, but will generally include:

- TKU evaluations at least annually to identify any gaps
- maintaining individual learning logs
- undertaking regular training sessions with advisers on appropriate topics.

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Trustees should review their TKU processes well in advance of the year-end to allow sufficient time for any training or development needs to be addressed. For assistance, please speak to your usual Sackers contact.

Auto-enrolment – mandatory increase to minimum contributions

The second scheduled increase in minimum employer and overall contribution rates for DC qualifying schemes takes place on 6 April 2019. On and from that date an employer must contribute a minimum of 3% and the total minimum contribution to the scheme must be 8% (assuming band earnings (£6,032 – £46,350 for the tax year 2018/19) are used to calculate contributions).

As auto-enrolment legislation does not require employees to contribute, the total contribution could be met solely by the employer. Alternatively, an employer can increase their contribution to, at least, the statutory minimum and require the employees to fund the difference.

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If an employer wishes to introduce or increase member contributions it will need to consult with those affected for a minimum of 60 days. It should also ensure its administration systems are ready to deal with the new deductions and that any necessary changes to the pension scheme's governing documentation are made.

Spotlight: top tips for preparing the chair's statement

A good chair's statement will explain to the wider world what the trustees have done to manage the scheme over the previous year. However, like any homework, it can sometimes lose marks if the explanations and details from the trustees don't go far enough to meet TPR's expectations.

Recently, TPR has issued fines for failing to prepare an appropriate chair's statement. Its guide (updated in June 2018) makes clear the standards it expects from trustees. We set out below some of the common errors arising in practice and how to avoid them.

01 The default arrangement

Any review of the default arrangements must cover both strategy and performance and explain why changes were or were not made as a result. Some schemes fail to append the default SIP, so do make sure this is included. Also, be sure to check that the default SIP itself meets the statutory requirements and, if relevant, has been updated to take account of any changes made during the scheme year.

02 Processing core financial transactions

It is not sufficient to simply state that the administrators have confirmed that core transaction requirements have been met. Make sure there is sufficient detail for TPR to understand any action the trustees have taken. For example, is there an SLA in place with the administrator (there should be!) and how did the trustees monitor performance against it? Also, remember that it needs to cover accuracy as well as timeliness, so projects involving record keeping are important too.

03 Member-borne costs and charges

Do check that costs are shown in a way that members will be able to understand. In particular, can you discern which charges relate to which arrangement? For the value assessment, trustees must set out their conclusion as to whether or not the scheme is offering value for members. Too many schemes simply make a list of statements as to the factors they have considered. The conclusion must be supported by an explanation of how it was reached and, if applicable, any action that the trustees are taking to improve value for members in the future.

04 TKU

A common failure is to offer no explanation as to how compliance has been achieved, or what training was arranged during the scheme year. Similarly, it is not enough to say in-house training is offered without providing any specific details of TKU processes. In particular, you should explain how any gaps in knowledge are identified and resolved. As noted on page 2, an annual evaluation of TKU is now common practice, and should be detailed here.

Action

At the beginning of each scheme year, make sure you understand what your chair's statement will need to cover. (Remember that more detailed information on costs and charges is required for scheme years ending on or after 6 April 2018.) It is also important to have the right processes in place both to discharge your statutory governance duties and to explain how you have done so. The statement will be much easier to prepare if you take the right steps and keep appropriate records throughout the scheme year.

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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 & 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.

Trustee training: pensions for new trustees	09/10/18	All day workshop (9.00am-3.30pm) Aimed at new trustees or those wanting a refresher on DB, DC and hybrid schemes
Quarterly Legal Update	08/11/18	Breakfast seminar (9.00am-10.30am) The latest legal and regulatory developments in the pensions world

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