By Nigel Cayless, Associate Director, Sackers

The regulatory system: room for improvement?

The past year has seen the Government focus on improving the way that occupational pension schemes are managed. The Pensions Regulator (TPR) has also announced that it intends to drive up standards in the pensions sector by being "clearer, quicker and tougher". As part of this campaign, the Department for Work & Pensions (DWP) published a White Paper on "Protecting DB Pension Schemes". In it, the Government argued that the existing regulatory system is working well for the majority of DB schemes, members, trustees and sponsoring employers, but that it could see ways in which it could be improved.

Consultation

In June 2018, the DWP published the first of the consultations promised by the White Paper. It covered three key areas:

+ increasing TPR's and trustees' access to timely information
+ extending the sanctions regime to deter wrongdoing and to punish it when necessary, and
+ expanding on TPR's existing anti-avoidance powers.

The aim is to improve TPR's oversight of corporate transactions by broadening the current notifiable events regime and introducing a new requirement for sponsors to produce a "declaration of intent" (to be addressed to the scheme's trustees and shared with TPR), prior to certain business transactions.

> **The DWP also proposes extending the existing penalty regime, to include a new power to impose a civil penalty of up to £1 million for serious breaches, and criminal offences to punish wilful or grossly reckless behaviour in relation to a DB scheme.**

Clearer, quicker and tougher?

A key theme is improving the flow of information between employers, trustees and TPR. This aims to ensure that trustees (and TPR) have a better early warning system of problems with the scheme sponsor, and, in theory, allow them to act quickly if needed.

The planned changes to the notifiable events framework, backed up by the new sanctions, and the new declaration of intent, could have a significant effect on corporate activity where there is a DB pension scheme. Companies would have to engage with trustees at an early stage in a transaction. However, a balance will need to be struck between protecting pension benefits and not impeding normal corporate activity.

The Government did not go as far as including dividend payments in the set of circumstances that must be reported to TPR. However, in recent weeks, TPR set out its new approach to regulation. In addition to establishing a closer supervision regime, including one-to-one contact, a pilot run of around 50 DB schemes is to be assessed on compliance with TPR's 2018 annual funding statement, and in particular whether schemes are treated fairly in relation to dividend payments to shareholders.

In terms of improving anti-avoidance powers, TPR already has scope to seek payments to schemes where an employer's actions have caused loss or detriment, or employer support for a scheme where it is reasonable to impose this. In practice, the process involved with any exercise of these powers is complex, and to date they have been used sparingly. There is certainly potential scope for simplification here and any such steps should be welcomed by trustees.

The DWP's consultation closed in late August and we await the response. A recent written statement from Guy Opperman noted that the DWP hopes to publish its conclusions "towards the end of this year". TPR has said that it is "reviewing and streamlining" its existing guidance, "to make sure [its] expectations are clear", and that it is currently "working closely with Government" to ensure that any changes that result from the White Paper would work successfully when implemented: it stresses that any new powers it is given need to be "proportionate, reasonable and workable."