Sackers

DC briefing

March 2020

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

Introduction

In this DC briefing we focus on recent legal developments, as well as the key themes we see arising in practice for pension schemes and their sponsors.

Improving governance and consolidating smaller schemes are clearly on both TPR's and the Government's agendas. For example, TPR's consultation response on the "future of trusteeship and governance" looks at driving up standards of TKU. In addition, both that response and a DWP consultation (on "the consideration of illiquid assets and the development of scale in occupational DC schemes") focus on how schemes can be encouraged to consider consolidation. It will be interesting to see how these areas develop.

A theme which appears to be gathering momentum is the encouragement of greater awareness of member needs and values. In practice, we are seeing some schemes approach members directly through surveys, so as to get a better insight into their opinions. Our Spotlight explores this trend, and sets out some key points to consider if you want to conduct a survey.

There is always plenty to read about and discuss. As ever, please get in touch with your usual Sackers contact if you have any DC-related queries or information that you would like to share with us.

Future of trusteeship and governance revealed

In TPR's recent response to its consultation on the "future of trusteeship and governance", it is clear that while there will be some changes, TPR has chosen not to adopt some of the more extreme proposals. Most notably, pension scheme boards will not be required to engage a professional trustee.

On **DC consolidation**, TPR's response makes clear that it will not take a "blanket approach". "If a scheme is well-run and can demonstrate it is offering value for members", TPR will not push the trustees to consider consolidation. In the short term, TPR will not provide guidance on winding up for schemes with guarantees, as the relevant issues are likely to be addressed in forthcoming statutory guidance from the DWP. This guidance will support regulations aimed at encouraging further consolidation, following the DWP's consultation on "investment innovation and future consolidation".

On **TKU**, TPR intends to update its Code of Practice and review the Trustee Toolkit to make its expectations clearer, and to drive up standards of trusteeship. It will also seek to simplify how it presents its expectations, differentiating by the type of trustee, as well as the type of scheme (DB, DC and public service).

On **governance**, TPR will create an industry working group and provide guidance to help improve the diversity of scheme boards. However, it does not currently intend to pursue a requirement for schemes to report on the steps they are taking to increase diversity.

For further details, please see our Alert.

! Action

TPR hopes to consult specifically on the revisions to TKU in the early part of 2021. In the meantime, trustees should review their current systems and processes for meeting TKU requirements.

The Pension Schemes Bill returns

The long-awaited Pension Schemes Bill is now making its way through Parliament. The key development for DC schemes is a framework for pensions dashboards – online services intended to enable individuals to access all of their pensions information in one place.

The provisions on dashboards are high level and the detail will be set out in regulations. In particular, there will be a requirement for schemes to provide information to a dashboard service, which will require data to be accurate and complete. We do not know when the legal framework will be in place but Guy Opperman, the Pensions Minister, is encouraging schemes to start preparing now to make sure that their data is up to scratch. In any case, TPR has clear expectations for schemes on reviewing and correcting data and intends to "crackdown" on poor record keeping.

For further details, please see our Alert.

Action

Trustees should ensure that:

- they undertake an annual data review, putting in place an improvement plan to complete any missing data and to ensure it is correct
- the scheme administrator operates appropriate systems and controls to monitor, report, and deal with data errors
- their member data is secure.

Costs information and "investment pathways" in drawdown

The FCA's Retirement Outcomes Review found that many non-advised consumers in drawdown were invested in inappropriate funds.

As a result, new FCA requirements about making costs in drawdown products clearer will come into force on 6 April 2020. They will be followed closely by new rules requiring "investment pathways" for non-advised consumers from 1 August 2020. The investment pathways requirements mean that providers must offer consumers a choice of investment options for drawdown funds, labelled according to a member's intentions for the money (eg do they intend to take it quickly or leave it invested in the long term). The new rules will also require providers to ensure that consumers entering drawdown only invest mainly in cash if they take an active decision to do so.

Action

The focus on member charges is already very familiar to occupational pension schemes, which have been subject to increasing requirements on this front over the last few years. Investment pathways are not currently on the agenda but occupational pension scheme trustees should:

- make sure that, if they signpost their members to drawdown providers, they check how those providers are preparing to meet the new requirements and
- consider how well their member communications deal with drawdown – for example, do they encourage members to think about how their drawdown funds will be invested in the future?

Patience is a virtue

TPR's comments on the "future of trusteeship and governance" consultation (see page 1) suggest that a response to the DWP's consultation on "the consideration of illiquid assets and the development of scale in occupational DC schemes" is on its way. The consultation, which closed on 1 April 2019, focused on removing barriers to investment by occupational DC schemes in "patient capital" (less liquid assets such as smaller and medium-sized unlisted firms, housing, green energy projects and other infrastructure).

The consultation proposes (amongst other things) requiring larger DC schemes to document and publish their policy on investment in illiquid assets and report annually on their allocation to this kind of investment. It also suggests adapting the default fund charge cap to accommodate performance fees, which are often used in patient capital investments.

The Government appears keen to enable schemes to invest in patient capital which, it notes, "drives new investment in important sectors of the economy". Some larger DC schemes have reported moving into this area already, indicating the potential direction of travel.

The consultation also discussed how to encourage consolidation of smaller DC schemes, proposing a potential requirement for schemes to assess triennially whether their members may receive better value in another scheme.

Action

While waiting for the consultation response, trustees could discuss with their investment consultants if and how they could utilise patient capital to benefit members.

Spotlight: canvassing member opinion

The days of expecting trustees to intuitively know what their members want are numbered. There is an increasing focus on seeking member viewpoints on scheme issues, to help trustees with decision-making.

Currently, only "relevant multi-employer schemes" (generally master trusts) must make arrangements that encourage members to make their views on matters relating to the scheme known. However, TPR considers that, for all schemes, there are "a number of areas where having an understanding of your members is key, particularly in gauging member views to inform the design of investment strategies and the assessment of value for members".

While some information may be available from staff forums or representatives, such as MNTs, trustees could consider carrying out a member survey. Surveys can be a good way to get member input to help inform trustee decision-making, but some careful thinking needs to be done beforehand. Below we have set out some key points to consider.

1. What do you want to know? Will your questions elicit this information? Are they sufficiently clear?
2. Should it come from an employer or trustees? Does it need to tie in with wider employer questions about reward and benefits?
3. Who is your audience – active members? Deferred? All members or a sample group?
4. Will it go by email, hard copy or through a website? What is the most engaging format for your members? What has worked well in the past?
5. Who will collate the responses? And how do you want the results to be presented?
6. How long should it be? Member interest might not be limitless!
7. Should there be incentives to encourage responses?
8. Will the survey contain personal data? If so, you will need to consider data protection compliance.
9. What are you going to do with the information once you have it? How do the results tie in with value for members assessments and other trustee work, such as ESG reviews?
10. Should you give any feedback to members at the end and, if so, how?

Member views and ESG

While there is mounting pressure on trustees to consider ESG issues, including climate-related risks, in their decision-making, their primary focus should be to consider these as *financial factors*. Trustees should take them into account in the way they judge to be in members' best financial interests, in particular in default fund composition.

Trustees may wish to use surveys to get a better understanding of what their members want, to ensure they provide an appropriate range of alternative funds. However, trustees should not conflate members' ethical views with financially material ESG factors, and any survey wording on these issues should be carefully considered to make the distinction clear.

For more information, please look out for our forthcoming guide on ESG and climate change for pension funds.

Sackers

Contact

Sackers is the leading specialist law firm for pension scheme trustees, employers and providers. 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. For more information on any of the articles in this briefing, please get in touch with Helen Ball, Claire van Rees or your usual Sackers contact.

Helen Ball
Partner and head of DC
D 020 7615 9509
E helen.ball@sackers.com

Claire van Rees
Partner
D 020 7615 9573
E claire.vanrees@sackers.com

Jacqui Reid
Partner
D 020 7615 9550
E jacqui.reid@sackers.com

Ferdy Lovett
Partner
D 020 7615 9585
E ferdy.lovett@sackers.com

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.

PIL seminar – TPR's powers	31/03/20	Breakfast seminar (9:00am-10:30am) Aimed at employers and trustees of all types of pension arrangements, the seminar will look forward to what the future might hold for TPR's powers
PIL seminar – TPR's powers	02/04/20	Lunch time webinar (12:30pm-1:15pm) Aimed at employers and trustees of all types of pension arrangements, the seminar will look forward to what the future might hold for TPR's powers
Pensions for new trustees	23/04/20	All day workshop (9:00am-3:30pm) Aimed at new trustees or those wanting a refresher on DB, DC and hybrid schemes, this session will look at key legal issues for trustees
Quarterly legal update	07/05/20	Breakfast seminar (9:00am-10:30am) The latest legal and regulatory developments in the pensions world

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com