

DC briefing

August 2020

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



Introduction

It seems not even a global pandemic can stem developments in the DC arena! The last few months have brought us a call for evidence on changes to the default fund charge cap and standardised cost disclosure, proposals from the FCA on “Driving value for money in pensions”, and (last but not least) further targeted guidance from TPR on COVID-19 related issues. We’re also on notice that a response to the consultation on simpler annual benefit statements is due shortly and that we can expect a response to the consultation on investment innovation and consolidation (published on 5 February 2019), together with proposals to address the issue, “in the Autumn”.

Our Spotlight focuses on a key COVID-19 issue for DC trustees: managing the ramifications of the “gating” of certain investment funds. We walk you through the main practical and legal questions which arise from the initial closure to the re-opening of the fund.

Default fund charge cap under review

The Government has begun a review of the default fund charge cap (the cap on [certain costs](#), aimed at protecting individuals who are automatically enrolled into a DC scheme from “high and unfair charges”), with some potentially significant changes on the cards. The first step is a [call for evidence](#) (“CFE”) which, together with a Charges Survey, will inform the Government’s review. The CFE runs until 20 August 2020 and the DWP aims to bring forward proposals “later this year”.

Expanding the cap’s scope

The CFE discusses expanding the scope of the cap in two areas:

- transaction costs (variable trading costs from buying, selling, lending and borrowing investments): the DWP suggests that some of the problems which led to these costs being excluded before (eg lack of transparency) have now been resolved, although some arguments for continuing to exclude them do remain, such as the risk of restricting the ability of asset managers to react to market changes
- default life assurance arrangements: while rare, and potentially beneficial, the DWP is concerned about people being defaulted into products they may not need or want, prices drifting up, and cost transparency.

Reducing the level of the cap

The DWP will look at whether the level of the cap (currently 0.75%) should be reduced, using evidence from the Charges Survey. It recognises that there are arguments for and against making a change. For example, while a decrease might further improve value for members, it could also limit schemes’ abilities to diversify their portfolios.

The CFE also considers whether to introduce additional restrictions on flat fees (which can reduce the value of smaller pots over time) and proposes setting a minimum pot size before a flat fee can be charged, together with a sliding scale.

Standardising cost disclosure

The CFE discusses how best to achieve full take-up of the [CTI disclosure templates](#), to obtain standardised cost and charges information from asset managers. While compulsion is a possibility, the DWP’s preference is to encourage wider adoption of the templates by legislating for disclosure of their usage through the scheme return.

VfM assessments and IGCs

The FCA has launched a [consultation](#) (which closes on 24 September 2020) on providing [IGCs and GAAs](#) with a more formal framework for their value for money ("VfM") assessments of workplace pension schemes. This is another step in the FCA's and TPR's [joint strategy](#) to promote an improved and consistent approach to VfM across the pensions industry.

"To clarify our expectations and promote a consistent approach to assessing VfM", the FCA proposes to introduce new requirements on providers to ensure their IGCs:

- take into account three key elements of value: charges and costs, investment performance, and services provided (including member communications)
- assess and report on VfM, in particular through comparison with some reasonably comparable options on the market or, if available in the future, relevant benchmarks

- as far as they are able, consider whether an alternative scheme would offer lower administration charges and transaction costs and inform the pension provider if so. If the IGC is not satisfied with the pension provider's response, the IGC should also inform the relevant employer
- set out their overall assessment of whether the scheme or pathway investment provides VfM in their reports
- explain how they have assessed VfM in their reports and keep relevant evidence they relied upon for at least 6 years.

As part of its wider strategy on VfM, the FCA is also inviting views on whether pension providers themselves should have a direct responsibility for VfM, alongside the IGC.

PLSA chair's statement template – not a one size fits all

The PLSA has published a [template](#) to help standard occupational DC pension schemes comply with chair's statement requirements.

The PLSA notes that individual schemes will need to consider their own circumstances when meeting the statutory requirements, and should continue to consult their advisers as they produce their statements. This is important, as TPR has made it clear that it has no flexibility over fines for non-compliance with chair's statement requirements, even where the omissions might be considered minor. While a helpful resource, the template does not remove the need for trustee engagement or legal review.

The PLSA has also released [guidance](#) to help schemes with preparing implementation statements (which must be included in annual reports produced on or after 1 October 2020 – see our [ESG guide](#)). The guidance aims to provide "practical, step-by-step support" but, again, trustees and their advisers will need to do the hard work to ensure compliance.

Regulatory delays

A number of regulatory initiatives of importance for DC schemes have been delayed as a result of the current COVID-19 crisis:

- the final suite of remedies from the FCA's [Retirement Outcomes Review](#) (introducing "investment pathways" for consumers entering drawdown without advice, requiring an active choice to invest in cash and extra information on costs and charges for consumers in decumulation) will now come into force on 1 February 2021, not 1 August 2020
- FCA [changes intended to make it easier for consumers to move from one platform to another without liquidating their assets](#) have been postponed from 1 August 2020 to 1 February 2021

- the FCA's [policy statement on pension transfer advice, contingent charging and other proposed changes](#) and the [directory of certified persons](#), are now expected in "H2 2020"
- the [Pension Schemes Bill](#) is set to progress "later this year".

Spotlight: Temporary closure of investment funds



During lockdown, many investment managers have temporarily closed (or “gated”) certain of their funds, in particular property funds where it is not possible to obtain a reliable current valuation and where the suspension is likely to continue for some time. Below, we look at several of the challenges this creates for trustees.



Investing member contributions

Where the trustees are unable to invest a member’s contributions in accordance with their instructions, the trustees will need to direct the money elsewhere. For some schemes, this means asking for an alternative investment choice from the member, and giving the member a reasonable period of time to respond. However, this is not always possible.



Finding a temporary home

The trustees must obtain investment advice on where to hold a member’s contributions until more permanent arrangements are confirmed. They also need to ensure that the scheme’s administrators will be able to action this advice. For example, there may be particular difficulties where the closed fund is a component in a scheme’s lifestyling arrangements.

While it may seem unattractive, it may be necessary and appropriate for the trustees to hold the money in cash or cash-like assets for an interim period, while longer term options are considered.



Accidental default funds

If contributions are invested in a fund without the member’s consent, generally the fund will become a “default arrangement”. In TPR’s [opinion](#), this will only be avoided if members were made aware, before they selected the original fund, that contributions could be diverted to another fund in certain situations.

As soon as a fund becomes a default arrangement, it must comply with the charge cap (if the scheme is used for automatic enrolment).



Paying / transferring benefits

The closure of one or more of a member’s investment funds will restrict their ability to switch their investments, transfer to another scheme and to take their benefits. The impact of this will depend on the particular investment restrictions operated by the manager and also the retirement options available in the scheme’s trust deed and rules. It may be possible to prevent members switching while a fund is gated, or to allow partial transfers or partial retirements. Cases will need to be dealt with individually, as the particular circumstances will influence the outcome (eg the nature of the request and whether the member holds any tax protections).



Re-directing contributions to the original fund

When the original fund reopens, trustees must take care not to turn it into a default arrangement accidentally. There is no rulebook for this situation but one of the issues to consider is whether the member can be said to have consented to their contributions being invested in the original fund. It may be that the original consent will still apply but whether this is the case will depend on the individual circumstances, including the length of the suspension period, the precise terms of the member’s consent and the communications with the member before and after the fund was gated. In TPR’s view, the “pre-existing expression of choice will probably still apply where members have either:

- consented to the redirection of the contributions on a temporary basis, until the original fund ceases to be gated, [or]
- been informed by the trustees that their contributions are being diverted into a default fund but that this will be corrected as soon as the original fund reopens.

It is less likely that the pre-existing expression of choice would still apply where members have formally consented to the redirection of their contributions on an ongoing basis.”

Given the complexity of the issues and the ramifications should a default arrangement be created, it is important that the trustees take legal advice. If you would like further information or advice on any of the above, please speak to your usual Sackers contact.

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.



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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

ESG, climate change and stewardship update	6/10/2020	Webinar (12:30pm-1:15pm) This webinar will highlight the new requirements coming into force in October 2020, with a particular focus on implementation statements.
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