Sackers

DC briefing

October 2020

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

Introduction

We may be navigating our "new normal", but the current pensions landscape is reassuringly familiar in that it never stands still!

In this issue, we look at the Government's proposals for encouraging consolidation of DC schemes and potential new requirements for pension schemes' governance of, and reporting on, climate change. Both these matters are high on the Government's agenda and we fully expect the measures to be implemented. Another priority for them is the increasingly pressing issue of how to address the proliferation of small, deferred pots following the success of automatic enrolment. It is unlikely, particularly given the economic outlook, that our workforce will become any less transitory, so it is possibly more important than ever that a solution or solutions are found. Our Spotlight takes you through the options on the table and we'd encourage you to consider whether you can contribute to the debate.

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.

Improving outcomes for members of DC pension schemes

The DWP's response to its February 2019 consultation, "Investment Innovation and Future Consolidation", includes a further consultation which focuses on "encouraging consolidation". The Government remains convinced that this 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 total 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 (with reference to new statutory guidance) and to report on it in their chair's statement.

If the trustees conclude that the scheme is not delivering good overall value, the Government expects it to be wound up and consolidated. However, if the trustees are "realistically confident" that required improvements can be made and/or:

- it may be more expensive to wind up
- valuable guarantees would be lost on consolidation

the scheme may seek to improve first. Trustees will be required to report to TPR, in their next scheme return, the outcome of the assessment and the action they intend to take/are taking (if any).

The consultation closes on 30 October 2020, with the draft regulations intended to come into force on 5 October 2021. Should the new requirements not drive consolidation at "sufficient pace", the Government intends to develop legislation to mandate consolidation.

! Action

Consider submitting a response. In our experience, the DWP takes careful notice of the views of those who are responsible for managing pension schemes.

Regulatory update

In September 2020, TPR reviewed and updated its Coronavirus guidance.

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.

TPR is now asking DC schemes and providers 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 that 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

Employers 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.

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

None required, but trustees should consider, with their legal advisers, whether there are any areas they wish to check with TPR before finalising their chair's statement.

Taking action on climate risk

The DWP has published a consultation on pension schemes' governance and reporting on climate risk. It proposes to require 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.

If implemented, the proposals will be phased in from 1 October 2021, starting with schemes with assets ≥ 5 billion, authorised master trusts and authorised collective money purchase schemes (when they come into existence). From 1 October 2022, schemes with assets < 5 billion but ≥ 1 billion will be in scope. Application to smaller schemes will be reviewed in 2024.

Trustees will be required to include a link to their TCFD report in their annual report and accounts, and to notify members of its availability in their annual benefit statements. TPR will be informed of the report's location through the annual scheme return.

! Action

Trustees should start considering how to assimilate the proposals into their current systems and processes. Even those whose schemes will not initially be in scope will be required to address how their system of governance considers ESG factors (including climate change) when the new requirement to establish and operate "an effective system of governance including internal controls" comes into effect. We are expecting a consultation from TPR on this in late 2020 or early 2021. For further information on ESG and climate change for pension funds, please see our 2020 guide.

Moves to master trusts increase

While the market may not be moving fast enough for the Government, we have seen a sharp increase in employers looking to move their DC pension provision into a master trust. For employers, the goal is generally to find an appropriate vehicle for existing employees, as well as to reduce the costs and management time of their occupational DC scheme. Transferring DC assets into a master trust can be a long process and is one that should be planned in detail. There are many legal issues to consider and quite a few potential pitfalls to avoid. It is usual for employers and trustees to work together on such projects and to take advice on important decisions.

! Action

See our Hot Topic for information on the key issues. If this is or could be on the cards for your scheme, please involve us as early as possible so we can advise on the best ways to manage the project.

Spotlight: options for dealing with small pots

The DC universe has grown very quickly over the last few years due to the requirements of automatic enrolment. As a result, there has been a proliferation of small pots. Small pots create many difficulties; they are expensive to administer, can be eroded by charges, and are often forgotten by their owners!

The Government sees the introduction of the Pensions Dashboards as an important first step to managing the small pots issue. While the dashboards should enable individuals to keep track of their pension savings, further measures will be needed to achieve the desired level of benefit consolidation. A new cross-sector Working Group has been convened to consider how to tackle deferred, small pension pots. It is due to report its initial assessment, recommendations and an indicative road map of actions for industry, delivery partners and Government later this autumn.

Having discussed and rejected the use of refunds of pots of a certain size and a Government or commercial consolidator, a recent PPI report set out the following possible policy options:

Same provider consolidation

Already in existence in some schemes such as NEST, this involves a member who leaves and re-joins a scheme being allocated the same pot. To the extent that individuals are enrolled in the same scheme by different employers, it achieves consolidation. For this reason, it would be a greater success in industries that use the same master trusts and, in the future, as the market is likely to contract. A downside is that it is resource heavy for providers.

Pot follows member

Assuming the legislative framework that is already in place is used (see our Alert for details), broadly this would involve automatically transferring an individual's pension benefits to their new employer's scheme when they change jobs. The idea was shelved in 2016, primarily due to administration issues and concerns that members could be disadvantaged if moved to schemes with higher charges.

Member exchange

A version of pot follows member, where schemes agree to transfer their deferred pots to the member's current scheme. The "exchange" refers to the transfer of pots of the same value between schemes. While administratively simpler for providers, it is likely to involve a longer delay in transfers so may be unattractive to those seeking to hasten the transfer process.

Lifetime provider

Members remain with the same provider throughout their working life. Whilst this is simple for employees, it would require changes to the regulatory landscape to allow the provider to undertake the necessary checks on contributions and would also complicate employers' payroll systems.

Default consolidator

Members would either elect or be defaulted into a consolidator scheme after a period of deferral (eg a year). This is intended to prevent premature (and potentially unnecessary) transfers, but could result in some schemes being given a competitive advantage.

As the PPI report makes clear, each potential solution to the small pots issue has its advantages and disadvantages, and commercial and market force implications must be taken into account.

Top tip

We'd recommend that trustees and employers familiarise themselves with the potential policy solutions in preparation for responding to the Government's proposals when they come. The industry's view will be key to the success of this project, and there is a lot at stake, with implications potentially stretching far and wide.

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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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Additional DC resources

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.
Quarterly legal update	04/02/2021	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.

Alternatively, you may prefer to tune in to one of our popular podcasts which highlight specific areas of interest to those running DC arrangements such as DC Chair's statements and DB/DC transfers.

You can sign up to receive any of our free publications and updates here. Our recent Hot Topic on key DC issues for employers can be found here.

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