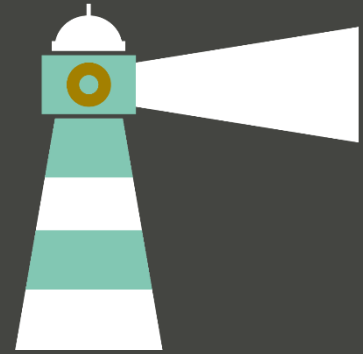


What's Happening in Pensions



Issue 84 – October 2020

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GMP equalisation: In the ongoing Lloyds Banking Group GMP equalisation case, the judge has asked further questions of the parties, which will be the subject of a further hearing.

Automatic enrolment – DB and hybrid schemes: The government has issued a call for evidence on the operation of the alternative quality requirements for DB and hybrid schemes.

Transfer illustrations: Concerns have been raised with the FCA about proposed revised guidance for employers and trustees on providing support to members on financial matters, with regard to transfer illustrations.

Investment consultancy / fiduciary management: The government has informed respondents to its summer 2019 consultation on regulations about setting investment consultants' objectives and the engagement of fiduciary managers that the regulations will not be finalised until after the first quarter of 2021 at the earliest.

Pensions Regulator codes of practice: The Pensions Regulator has updated its statement on moving towards a single code of practice.

Normal minimum pension age: The Government has confirmed, in response to a written Parliamentary question, that it still intends to "increase the [normal] minimum pension age from 55 to 57 from 2028".

Climate change consultation

The government [is consulting](#) (until 7 October 2020) on proposals to require trustees of larger occupational pension schemes and all authorised master trusts and (when permitted) collective DC schemes to have specific governance, strategy, risk management and accompanying metrics and targets for the assessment and management of climate risks and opportunities, and on proposals to disclose these in line with the recommendations of the Task force on Climate-related Financial Disclosures (TCFD). The disclosures would be required to be made publicly available on a website, with notifications to members and the Pensions Regulator.

The obligations would apply in stages. It is proposed that, from 1 October 2021, schemes with £5 billion or more in assets and authorised master trust and collective DC schemes will have to meet new climate risk governance and risk management requirements and publish their first annual TCFD disclosures report within seven months of the next scheme year end (or by 31 December 2022 if earlier). Schemes with £1 billion or more in assets would be subject the same requirements a year later, with smaller schemes perhaps to follow later subject to a government review of the legislation in 2024.

A key practical compliance issue for trustees will be the availability of climate change metrics and data from their investment managers and consultants. An industry working group of investment consultants has been established to explore these issues. The FCA has also [announced proposals](#) to align regulated manager disclosure duties with the TCFD requirements and this [has been welcomed](#) by the Pensions Minister.

The proposed requirements and disclosure obligations are as follows:

	Activity	Annual disclosures
Governance		
G1	Establish and maintain, on an ongoing basis, oversight of climate-related risks and opportunities.	Describe the (board of) trustees' oversight of climate-related risks and opportunities.
G2	Establish and maintain processes by which trustees, on an ongoing basis, satisfy themselves that persons managing the scheme are assessing and managing climate-related risks and opportunities.	Describe the role of those persons managing the scheme in assessing and managing climate-related risks and opportunities, only insofar as they relate to the scheme itself, and the process by which trustees satisfy themselves that this is being done.
Strategy		
S1	Identify, on an ongoing basis, climate-related risks and opportunities that will have an effect on the investment and, in the case of defined benefit (DB), funding strategy of the scheme, over the short, medium and long term.	Describe the climate-related risks and opportunities those persons described in G1 and G2 have identified over the short, medium, and long term.
S2	Assess, on an ongoing basis, the impact of the identified risks and opportunities on the scheme's investment and, in the case of DB, funding strategy.	Describe the impact of climate-related risks and opportunities on the scheme's investment and, in the case of DB, funding strategy.
Scenario analysis		
S3	At least annually, as far as they are able, assess the resilience of the scheme's assets, liabilities and investment strategy and, in the case of DB, funding strategy to climate-related risks in at least 2 climate-related scenarios, including at least one scenario that represents an eventual global average temperature rise of between 1.5 and 2°C on pre-industrial levels.	Describe the resilience of the scheme's investment and, in the case of DB, funding strategy, as far as trustees are able, in at least two climate-related scenarios, including at least one scenario of between 1.5 and 2°C.
Risk management		
R1	Trustees must adopt and maintain, on an ongoing basis, processes for identifying and assessing climate-related risks.	Describe the processes that the trustees have put in place for identifying and assessing climate-related risks.
R2	Trustees must adopt and maintain, on an ongoing basis, processes for managing climate-related risks.	Describe the processes that the trustees have put in place for managing climate-related risks.
R3	Trustees must ensure, on an ongoing basis, integration of climate-related risks into their overall risk management.	Describe how these processes are integrated within their overall risk management.

Metrics		
M1	Select at least one appropriate greenhouse gas emissions (GHG) based metric and at least one other non-emissions-based metric to assess scheme assets against climate-related risks and opportunities and review the selection on an ongoing basis.	Disclose the emissions-based metric(s) and non-emissions-based metric(s) that the scheme has calculated and that is used by trustees to assess the climate-related risks and opportunities relevant to the scheme.
M2	At least quarterly, calculate at least one GHG emissions-based metric (for example, Weighted Average Carbon Intensity) to assess scheme assets against climate-related risks and opportunities. At least quarterly, calculate at least one other, non-emissions-based metric to assess scheme assets against climate-related risks and opportunities.	Describe why, if trustees have only been able to obtain partial or estimated data, their data does not cover the whole portfolio.
Targets		
M3	At least annually, set at least one target to manage climate-related risks for one of the metrics calculated in accordance with M2, which can be an emissions-based metric, or a non-emissions-based metric.	Disclose the target(s) selected in accordance with M3.
M4	At least quarterly, measure, as far as trustees are able, performance against the target(s).	Disclose performance measured against the selected target(s) in accordance with M4.

The requirements are to be implemented by regulations under the Pension Schemes Bill currently making its way through Parliament and there will be statutory guidance. Accompanying this will be the non-statutory guidance to be published by the Pensions Climate Risk Industry Group (PCRIG), expected this autumn (see [WHiP Issue 81](#)). There is another consultation to follow on alignment with the Paris Agreement on temperature reductions.

There would be a mandatory fine, enforced by the Pensions Regulator, for complete failure to publish a TCFD report, with a discretionary fine for other breaches.

DC member outcomes

The government [has responded](#) to its February 2019 consultation on DC scheme investment innovation and consolidation (see [WHiP Issue 75](#)). Where we refer to DC schemes here, this includes hybrid DB/DC schemes, except where the DC benefits all derive from AVCs. (The draft regulations use the now familiar term "relevant scheme", which excludes executive pension schemes and many SSASs.)

The government response confirms some proposals regarding issues with DC schemes making illiquid investments and announces new measures to put pressure on smaller DC schemes to consolidate. There will also be additional content required in chairs' governance statements.

The response also includes a consultation on draft regulations and on new and updated government statutory guidance, which closes on 30 October 2020. Changes take effect either from 5 October 2021 or from the beginning of the next scheme year to begin after that date.

Illiquid investment

The 2019 consultation considered aspects of the charge cap legislation that make it difficult for DC schemes to invest in illiquid assets, such as venture capital, real estate and infrastructure.

For venture capital investments in particular, performance fees are typically charged and these can vary considerably throughout a year. The pro-rating requirement in the charges and governance regulations does not always work well in this context. The regulations are therefore to be amended to exclude performance fees from the cap calculation, in certain circumstances, when pro-rating for part of a year.

The same regulations will be amended to confirm, as already stated in the charge cap guidance, that costs attributable to the holding of physical assets such as real estate and infrastructure are excluded from the charge cap calculation.

The guidance is also being clarified to set out the treatment of underlying costs in investment trusts.

Consolidation

There will be pressure on small DC schemes to consolidate, with the government saying that legislation requiring action

(where appropriate) will follow, if needed. DC schemes with assets of less than £100 million (£10 million was the originally proposed threshold) that have been operating for three or more years will be required to:

- report in their annual chair's governance statement, in accordance with statutory guidance (a draft of which has been published), on "value for members". This is expanded from the existing requirement regarding only charges and transaction costs to include also an assessment of net investment returns compared with three or more large comparator schemes, into at least one of which the scheme could consolidate. Trustees must also report on how specified governance and administration criteria are met; and
- report to the Pensions Regulator in their annual scheme return on the "value for members" assessment.

If the report to the Regulator is that the scheme does not provide good value for members, the trustees must say whether they propose to wind up the scheme and transfer members to another scheme or, if not, why not and what improvements they propose to make.

All schemes (not just "relevant schemes") will have to report to the Pensions Regulator in their annual scheme return on the value of scheme assets as at the last scheme year end.

It appears that DB assets can be taken into account when measuring hybrid scheme assets against the £100 million threshold.

Further chair's governance statement content

In addition to the above, the DC scheme annual chair's governance statement will have to include:

- in respect of default and member-selected funds, a report on the net return on investments (in accordance with the statutory guidance) – the draft guidance says that this should cover the period since at least April 2015; and
- in respect of the levels of charges and transaction costs, details for funds which members can no longer select but in which any are still invested, as well as for those which can still be actively chosen (this was apparently always the policy intent).

The existing statutory guidance on reporting charges and costs information is to be clarified in some respects, giving more information on how to set out information in the chair's statement: a revised draft has been published.

Other

As regards website disclosures of costs and charges, the draft updated guidance on charges and costs says that the information does not have to be included on a single web page or pdf document: it can, if desired, be spread over "a number of linked documents and pages".

Where a default fund is a 'with profits' arrangement, it is (contrary to policy intent) outside the rules for default fund statements of investment principles (SIPs). This is being corrected, so such arrangements will need to prepare a default fund SIP.

Wholly insured schemes will not be required to include details of arrangements with asset managers in their SIP.

Proposals not being taken forward

Proposals that would have required trustees of large schemes to:

- state their policy on illiquid investments in their SIP; and
- report percentage holdings in illiquid investments in their annual report implementation statements

are not being taken forward.

Pension protection levy

The Pension Protection Fund [has published a consultation](#) on its proposed 2021/22 pension protection levy determination and certain appendices, including the contingent assets appendix.

The PPF comments:

"Our strong financial position at the start of the COVID-19 pandemic has meant that despite increased risk,

we've avoided increasing the levy. In fact, this - coupled with an update to the way scheme underfunding is calculated and our policy developments – has meant the amount of levy we expect to collect will drop to £520 million in 2021/22 - £100 million lower than 2020/21.

We're proposing two developments for the 2021/22 levy year that better reflect the risk posed to us by small schemes, and help with the cost of the levy:

- ***The levy for schemes with less than £20 million in liabilities will be halved, to better reflect their risk to us. The reduction will be tapered so only schemes with £50 million or more in liabilities will be charged in full. This long-term measure will benefit close to 2,000 schemes with SME employers, at very limited overall cost***
- ***The cap on the amount of levy paid by any individual scheme will be cut from 0.5 per cent of that scheme's liabilities to 0.25 per cent"***

Pensions Regulator COVID-19 guidance

The Pensions Regulator [has updated](#) its [COVID-19 guidance on reporting](#). Key new points are:

- From 1 January 2021, DC trustees and providers are asked to resume reporting late contributions after 90 days (rather than 150). From 1 April 2021, this is mandated. (Trustees were never told publicly that they could ignore the 90 day requirement; only providers were. But letters were sent by the Regulator to many trustees.) Separately, the Regulator is quoted as saying: "*Whether it is 90 or 150 days does not change that schemes which have any concerns around material payment failures should report these to TPR at the earliest opportunity as set out in our codes.*".
- The Regulator will review DC chairs' governance statements it receives from 1 October 2020. Before then they were returned unread – nothing has been said about resubmitting. (Note that chairs' statements do not have to be sent to the Regulator unless it asks.) The Regulator will not be publishing details of chair's statement compliance fines in its next compliance and enforcement report and may not report all fines in future: it has no discretion over fining for such breaches but is not required to 'name and shame'.
- As previously announced, most other reporting requirements resume from 1 October 2020.

Job Support Scheme

The Chancellor of the Exchequer [has announced](#) a new [Job Support Scheme](#), offering financial support to employers from 1 November, after the Job Retention Scheme (furlough) ends. This applies where workers' hours are lower than normal due to reduced demand. Payment for the hours not worked will be 2/3rds of the full pay for that time, shared equally by the employer and government (though the government support will be capped at £697.92 per month). This support will last for six months. Employers will be reimbursed for paying the government share. Larger businesses (not yet defined) need to have had their turnover adversely affected and must not pay dividends. For more detail, see our [Employment department's alert](#).

A government [factsheet](#) states that (unlike the furlough scheme) there will be no government support for pension contributions (nor for National Insurance contributions). It is not yet clear whether or not employers will have to pay pension contributions on pay for hours not worked.

PPF compensation

The government and PPF are [seeking permission to appeal](#) different aspects of the decision in the *Hughes* case on PPF compensation (see [WHiP Issue 83](#)).

- The government is seeking to appeal the ruling that the compensation cap is unlawfully age discriminatory. The PPF is continuing to apply the cap as set out in legislation "until we know more".

- The PPF is seeking to appeal regarding (a) the approach it can adopt to meet the requirement for members to receive 50% of the value of their entitlement and (b) how survivors' benefits should be dealt with. It is also asking the Court of Appeal if it can wait until the appeal process is completed before making any changes to payments as a result of the High Court's judgment. It is not making changes in the meantime and continues to withhold arrears payments for those with increased benefits as a result of the *Hampshire* ruling (see [WHiP Issue 72](#)).

GMP equalisation

The [Lloyds Banking Group pensions website](#) notes, in relation to the ongoing GMP equalisation case, that the judge has asked some further questions of the parties which will be the subject of another hearing scheduled for 28 and 29 October 2020. The judgment, which will address questions around historic transfers, will therefore not be issued until after this new hearing.

Automatic enrolment – DB and hybrid schemes

The government has issued a [call for evidence](#) (closing on 21 October 2020) on the operation of the alternative quality requirements for DB and hybrid qualifying schemes. This review is required by law every three years.

These requirements are the following alternatives to the standard quality requirement of 1/120ths of qualifying earnings:

- Pensionable earnings are at least equal to basic pay (as defined); and the cost of future accruals would require total contributions of at least 11% of pensionable earnings.
- Pensionable earnings are at least equal to basic pay (as defined) but there is a basic state pension or lower earnings limit offset; and the cost of future accruals would require total contributions of at least 13% of pensionable earnings.
- Pensionable earnings are at least equal to basic pay (as defined); the cost of future accruals would require total contributions of at least 10% of pensionable earnings; and aggregate pensionable earnings constitute at least 85% of aggregate total earnings.
- All earnings are pensionable; and the cost of future accruals would require total contributions of at least 9% of total earnings.

Transfer illustrations

Concerns have been raised with the FCA in consultation responses by various industry bodies about proposed revised guidance for employers and trustees on providing support to members on financial matters, with regard to transfer illustrations.

This was contained in Annex 2 of a [consultation](#) predominantly concerning issues regarding advisers who advise on pension transfers. The draft guidance includes the following text (on page 82):

"Some employers and trustees want to give their scheme members illustrative figures that compare the outcomes a member might get if they keep a safeguarded benefit or transfer/convert it into flexible benefits. But this kind of analysis might steer a member towards a specific course of action, which is part of the regulated advice process. As a result, we consider that providing such figures could mean that firms are likely to be giving advice or an inducement. If an employer or trustee provides a transfer value comparator, in accordance with the FCA's rules, they should consider whether they are doing it by way of business and need FCA authorisation. A transfer value comparator is different to the statement of entitlement that certain members have a statutory right to request every 12 months."

The concerns are that this does not accurately describe the true legal position. Final guidance is expected in the first quarter of 2021.

Investment consultancy / fiduciary management

The government has informed respondents to its summer 2019 consultation on regulations about setting investment consultants' objectives and the engagement of fiduciary managers (see [WHiP Issue 77](#)) that the government's response and regulations will not be finalised until after the first quarter of 2021 at the earliest.

The consultation was on amending regulations reflecting (though not all in the same terms) the existing Competition and Markets Authority (CMA) order setting out remedies for competition within the investment consultancy and fiduciary management markets. The delay means that schemes will again have to report annual compliance to the CMA rather than to the Pensions Regulator: the deadline for doing that is 7 January 2021.

See our 2019 briefing note "[Investment consultancy and fiduciary management: a dose of CMA medicine](#)" for more detail.

Pensions Regulator codes of practice

The Pensions Regulator has updated its [statement](#) on moving towards a single code of practice.

The work is focusing initially on governance matters, including the new and forthcoming investment governance and disclosure requirements. Codes 9 (internal controls) and 13 (DC) are therefore being looked at first. Trustees will need to be able to demonstrate that they have an effective system of governance within 12 months of publication of the updated code.

The Regulator now says: "We are planning to launch a formal consultation in late 2020 or early 2021, but before that we will engage with stakeholders for feedback on the proposed design and content".

Normal minimum pension age

The Government has confirmed, in [response to a written Parliamentary question](#), that it still intends to "increase the [normal] minimum pension age from 55 to 57 from 2028". Any increase requires an amendment of the Finance Act 2004. There are potential issues for pension schemes that may need to be addressed nearer the time, when the increase is more certain and there is more detail.

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