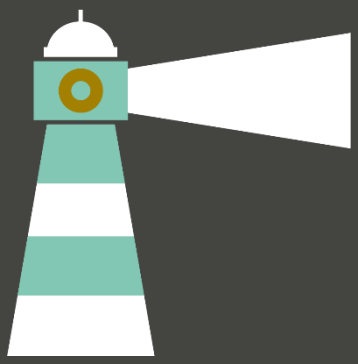
BRIEFING

TRAVERS SMITH

What's Happening in Pensions



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DC illiquid investments: The Government has published a consultation response, final draft regulations and final draft statutory guidance on its proposals to encourage more illiquid investment by DC pension schemes. There will be new requirements for trustees to disclose and explain their policies on illiquid investment and full asset allocations, and a charges cap exemption for performance-based fees that satisfy prescribed criteria.

TPR statement - supporting DC members: The Pensions Regulator has published a guidance statement for DC trustees on supporting members through the current economic environment and strengthening scheme governance arrangements.

DC value for money – consultation: The Government, Pensions Regulator and FCA are consulting on a new framework on metrics, standards and disclosures for value for money assessments in DC occupational pension schemes and personal pensions.

DC small pots - call for evidence: The Government has issued a call for evidence on addressing the challenge of small deferred DC pots. The main options for taking this forward have been narrowed to two.

Retirement advice – FCA thematic review: The FCA is undertaking a thematic review assessing the advice consumers are receiving on meeting their income needs in retirement and on the quality of consumer outcomes.

Collective DC – consultation: The Government is consulting on a policy framework for broadening collective money purchase pension provision beyond single or connected employer schemes, to include commercial operators. The consultation asks for views on questions around both "whole-life" schemes and decumulation-only arrangements.

Automatic enrolment thresholds: A Government review has announced that the automatic enrolment earnings trigger will be kept at £10,000 pa for 2023/24. The qualifying earnings band will also be unchanged.

Carillion – no TPR action: The Pensions Regulator has published a report on its investigation into the circumstances that led to the insolvency of the Carillion Group and the impact on pension savers. It has concluded that there is no basis for it to exercise its anti-avoidance or applicable criminal offence powers.

LDI – House of Lords report: The House of Lords' Industry and Regulators Committee has written to the Economic Secretary to the Treasury and the Pensions Minister with the results of its scrutiny of LDI arrangements used by DB pension schemes.

Pensions dashboards – master trusts: PASA has published pensions dashboards guidance for trustees and administrators of master trusts. Much of this will be relevant to other schemes too.

Negligence claims against advisers – time limits: A High Court case looks set to consider questions around time limits for bringing claims and the extent of any continuing duty of care in respect of specific work during an adviser's retainer.

PENSIONS RADAR: You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our Sustainable Business Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors. See also our latest ESG Newsletter.

DC illiquid investments

The Government has published a consultation response, final draft regulations and final draft statutory guidance on its proposals to encourage more illiquid investment by DC pension schemes. These include new requirements for trustees to disclose the asset allocations of their default arrangements (or, for collective money purchase schemes, all assets) and also to explain their policies on illiquid investment. The regulations also introduce a charges cap exemption for performance-based fees that satisfy prescribed criteria.

Following earlier consultations (see WHiP Issues 75 and 93), the final outcome is confirmed as follows:

- "Well-designed" performance fees will be excluded from the DC automatic enrolment scheme default fund charges cap from 6 April 2023. To qualify, the fees must be:

  "fees, profit-sharing arrangements, or any part of fees or profit-sharing arrangements, which are-

  (a) payable by or on behalf of the trustees or managers of a pension scheme to a fund manager in relation to investments ("the managed investments") managed by the fund manager, either directly or as part of a collective investment scheme, for the purposes of the scheme;

  (b) calculated only by reference to investment performance, whether in terms of the capital appreciation of the managed investments, the income produced by the managed investments or otherwise;

  (c) only payable when—

  (i) investment performance exceeds a pre-agreed rate, which may be fixed or variable; or

  (ii) the value of the managed investments exceeds a pre-agreed amount;

  (d) calculated over a pre-agreed period of time; and

  (e) subject to pre-agreed terms designed to mitigate the effects of short-term fluctuations in the investment performance or value of the managed investments".

  Trustees will be required to have regard to the statutory guidance when considering whether fees meet the criteria.

  Requirements to include disclosures in the chair's statement, which must be published on a publicly accessible website, will apply where such fees are excluded. This will apply in respect of scheme years ending after 6 April 2023.

  The existing legislative provisions allowing the smoothing of performance fees will be repealed but with transitional provisions.

  The Government comments in the consultation response: *"This change places no obligation on schemes to enter into investments that come with performance fees if this does not fit with their investment strategies, or they consider this is not in their members' interest. Similarly, this change is not intended to interfere in trustees' fiduciary duties or to reduce the bargaining power of DC schemes to invest in assets that come without performance fees. The change is intended first and foremost to induce dialogue between the trustees and fund managers to work together to ensure investments work, and in equal measure protect the interests of members."*.

- Relevant schemes (i.e. schemes providing money purchase benefits other than just from AVCs) will have to disclose and explain their policy on investment in illiquid assets in their default fund(s) statement of investment principles (default SIP). This must be done on any revision of the default SIP on and from 1 October 2023 and by 1 October 2024 at the latest. 'Illiquid assets' is defined as *"assets of a type which cannot easily or quickly be sold or exchanged for cash and where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme"*.

- Such schemes will also have to disclose in their chair's statement the percentage of assets in their default arrangement allocated to eight prescribed asset classes. Again, look-through to assets held in a collective investment

scheme is required. This disclosure must be included in the annual report and on a publicly accessible website for scheme years ending after 1 October 2023. Trustees will be required to have regard to the statutory guidance when making the calculations.

TPR statement - supporting DC members

The Pensions Regulator has published a guidance statement for DC trustees on supporting members through the current economic environment and strengthening scheme governance arrangements.

It notes that recent market conditions have affected those accessing their pensions savings, with the value of DC pots having fallen in recent months and particular concerns for those in lifestyle arrangements who are approaching retirement. DC savers who intend to buy an annuity are less affected, due to corresponding improvements in annuity rates, but of course that decumulation option has to a large extent fallen out of favour.

Drawing on existing materials but commenting in the light of economic developments, the Regulator has a long 'to do' list for trustees, including the following:

Governance and investment arrangements

- Follow the requirements of the DC code of practice and review whether their current governance structures are suitable. Does the scheme have sufficient scale, time and resource to operate effective investment governance arrangements?
- Check their investment advisers' strategic objectives to ensure the focus is on delivering good saver outcomes rather than being concentrated on costs and charges. The Regulator expects trustees to carry out regular detailed reviews of their investment advisers' performance and address any concerns. It stresses the desirability of proactive investment advice.
- Understand their saver profiles and scheme experience of how and when benefits are accessed, including how that may have changed recently. This can help to improve outcomes.
- Remember that they have a legal obligation to review their default strategy and the performance of their default arrangement at least every three years and immediately after any significant change in investment policy. They also need to offer a suitable range of other investment options. Trustees may wish to ask their investment adviser to review their strategy in light of current market conditions.
- Monitor the performance of individual funds and consider how that impacts different members or groups of members – for example, members approaching retirement.
- Review how well current arrangements protect savers from high inflation, particularly the use of cash funds. The Regulator notes that some default arrangements build up material cash allocations as the saver approaches retirement and says that trustees should review their objectives with the relevant advisers to assess whether such arrangements remain suitable. Savers should be helped to understand the risk of choosing cash investments.

Supporting and communicating with savers

- On the basis of their understanding of their membership profile and member behaviours (for example, contribution reductions and opt-outs), strengthen their member support capability and target efforts where they are needed.
- Ensure savers have enough information to make informed decisions. Descriptions of investment and decumulation options need to be sensitive to changing market conditions and current perspectives on risk. Members approaching retirement should be referred to the MoneyHelper and Pension Wise resources.
- Help savers to understand what a fall in their DC pension means for them in their circumstances, particularly depending on how far away they are from accessing benefits and how they might expect to do that. Member expectations should be better aligned with where they are invested.
- Highlight to savers the importance of updating the trustees on changes to their retirement expectations, whether as regards timing or the likely decumulation approach. The Regulator also appears to say that lifestyle and de-risking investment strategies should be changed regularly to reflect these changes.

- Encourage members to seek guidance or take advice and not to make hasty decisions based on short-term volatility, and give warnings about scams. Trustees should "Guide them through the trade-offs that they need to make, and the risks that face them". They should also work with the employer to help savers to understand the implications of opting out or ceasing contributions and prompt them to re-join if they have done that.
- Engage as soon as possible and ideally on a continuous basis, whilst understanding that information may be most useful when given alongside an annual benefit statement. The Regulator suggests additional information that could be supplied alongside the shortform statement required by law.

The statement closes with a checklist for trustees to use, based on the above expectations, to develop their own action plan.

DC value for money - consultation

The Government, Pensions Regulator and FCA are consulting on a new framework on metrics, standards and disclosures for value for money (VFM) assessments in DC occupational pension schemes and personal pensions. They propose to require DC scheme trustees and independent governance committees (IGCs) of workplace personal pension schemes to assess in detail, compare and disclose the value for money that their scheme provides. They aim to help trustees to make more informed investment and governance decisions and employers to compare options for pension provision, whilst also driving competition.

This follows preliminary work by the Pensions Regulator and FCA. The proposals are designed to replace the existing chair's statement "value for member" requirements in relation to costs and charges, including the requirement for small occupational pension schemes (less than £100 million assets under management) to compare the value offered by the scheme with three other larger schemes (with a view to prompting smaller schemes to consider potential consolidation into larger schemes or to make changes to deliver better value).. The consultation suggests that small schemes are expected to have reached a resolution under these existing requirements within a few years.

Under the new proposals, schemes of all sizes would be required to consider value for money under a set of prescribed criteria. Underperforming schemes will be encouraged, or perhaps even required, to improve performance, consolidate or wind up. Published data and assessments will allow schemes to compare themselves with other schemes and understand best practice.

The assessment framework

The focus will be on overall value rather than just costs and charges. The key elements of the VFM framework will be:

- investment performance
- costs and charges
- quality of services

The consultation sets out in some detail the proposed metrics framework for measuring investment performance (net of all charges), total charges (including administration costs as well as investment charges), and quality of services (including communications and administration, the latter focusing on the processing of core financial transactions and record-keeping).

The investment performance reporting will be most complicated for multi-employer schemes with different arrangements for different employers, such as master trusts, and where there are age-related investment strategies such as 'lifestyling'.

Comparing costs and charges is difficult where a scheme has a combination charging structure (i.e. one which includes charges on contributions or a flat fee, in addition to a percentage charge on assets under management). The Government is therefore considering requiring schemes that apply such charges, and also legacy schemes with other multi-faceted charges, to switch to a single annual percentage charge.

The consultation proposes two ways of assessing VFM. Benchmarks could be prescribed and schemes would have to meet a threshold below them in order to be assessed as providing VFM. Alternatively, building on the existing requirements for small schemes, schemes could be required to compare themselves with three other schemes that the employer could use instead. In either case, the scheme would then be assessed and categorised by the trustees or IGC and reported as:

- VFM
- Not currently VFM but with identified actions to improve in certain areas that would deliver VFM
- Not VFM

Disclosure

Schemes will have to disclose their metrics data as well as their VFM categorisation. The Government is considering requiring schemes to report data against the above metrics using a prescribed template. Publication would be either on an official central portal or individually by schemes on publicly accessible websites. Schemes may then be required to notify the relevant regulator. This will allow schemes to compare their data with that of other schemes when preparing their VFM assessment report.

In order to ensure comparability of data, there will be the same deadlines for all schemes, irrespective of their scheme year end dates. This means that disclosures will be separate from the chair's statement.

- Schemes would be required to disclose their metrics data by 31 March each year, using net investment returns as at 30 June the previous year.
- This will be followed by the scheme's VFM assessment report by 31 October. The report would state which of the above three VFM categories the scheme falls into, with reasons.

The Government is considering requiring schemes to take specified actions based on the outcome of their VFM assessment, including communications to employers and consideration of transfers and winding-up in "Not VFM" cases. There is the prospect of regulatory intervention where this is not done.

The consultation notes that schemes with year ends between May and October may need to consider changing their scheme year.

IGC chair's reports for contract-based arrangements must currently be published by 30 September each year: this deadline will be pushed back to 31 October so that the VFM report can be included.

Implementation

It is proposed that implementation of the proposals will be in two phases. In phase 1, the requirements will apply in respect of default arrangements in workplace pensions, to include "legacy schemes" that are not used for automatic enrolment as well as those that are. In phase 2, the requirements may be extended to "self-select" options, non-workplace pensions and DC pensions in decumulation (including drawdown arrangements).

Chair's statements

The Government has been thinking for some time about the future of DC chair's statements, having noted that the dual purpose of member disclosure and compliance confirmation is not desirable. It is considering whether to split the chair's statement into two documents or whether some other approach would be better in light of these new overlapping requirements.

The consultation closes on 27 March 2023. Further consultations will follow on the detail.

DC small pots - call for evidence

The Government has issued a call for evidence on addressing the challenge of small deferred DC pots, which the Pensions Minister says it is vital that the Government solves, and potential options for requiring automatic consolidation of such pots.

This follows work from the Small Pots Cross-Industry Co-ordination Group in considering the various options. Alongside the call for evidence, the Government has published research looking at member engagement with workplace pensions.

The call for evidence first asks what value of pot should be in scope (suggesting options ranging from £1,000 to £10,000), whether very small pots should be excluded (it thinks not), and at what point a pot should be considered deferred. It also notes that there are issues with protected pension ages to be addressed when members who may have such a protection are transferred, including the maintenance of the protection and the need for scheme rules to be amended (or overridden).

Respondents are then asked to express a preference between the two options now being considered and to explain their

reasons:

- **Default consolidator**: *"Under this model, deferred small pots which meet the chosen eligibility criteria for automatic consolidation would transfer automatically to a small pot consolidator, with members being given an opportunity to opt-out if they want to. There are a variety of a ways through which a member could be allocated to a consolidator scheme. Some industry representatives have previously suggested this could be based on the consolidator being the scheme that a member is enrolled into when first automatically enrolled into a workplace pension. Alternatively, a member could choose from a list of approved consolidators and where the member does not take the opportunity to make an active decision, they could be allocated to a consolidator from a carousel system."*

  A single default consolidator option also remains on the table, despite being discounted by the industry group. The Government says that "a State-backed solution may be required to deal with non-economic pots".

- **Pot follows member**: *"Under this model, when an employee moves jobs their deferred pension pot in their former employer's scheme would automatically move with them to their new employer's scheme, if it meets the chosen eligibility criteria for automatic consolidation. Individuals would have the opportunity to opt-out and leave any / all deferred pots where they are."*

"Member exchange" is another option that could help in addition to either of the above solutions. This is where providers who each hold benefits for an individual transfer the pot from one provider to the other. Master trust members of the industry group continue to explore this option.

Finally, the Government asks about obstacles to same scheme consolidation (i.e. combining an individual's separate pots in the same scheme). It notes that contract-based schemes cannot currently do this without the individual's consent.

The call for evidence closes on 27 March 2023. The Government says it will consult in due course on the resulting proposals.

Retirement advice – FCA thematic review

The FCA is undertaking a thematic review assessing the advice consumers are receiving on meeting their income needs in retirement and on the quality of consumer outcomes.

It aims to publish a report setting out its findings in Q4 2023. Firms selected for the review can expect to be contacted early in 2023, when the FCA will also engage with trade bodies.

Collective DC - consultation

The Government is consulting on a policy framework for broadening collective money purchase pension provision beyond single or connected employer schemes. The consultation asks for views on questions around both "whole-life" schemes (i.e. schemes providing accrual and paying benefits) and decumulation-only arrangements. The Pensions Minister's introductory comments indicate that the government is very keen to progress this.

The Pension Schemes Act 2021 introduced legislation to allow single employers or connected employers to operate collective money purchase schemes, subject to defined criteria, communication requirements, and authorisation and supervision processes (see WHiP Issue 93). Royal Mail's scheme is expected to begin operating in 2024. This next stage is to consider extending the option to set up a collective DC arrangement that can be operated for unconnected employers. This would enable commercial or non-commercial operators, including master trusts, to establish a collective DC scheme or scheme section. The consultation considers only the trust-based occupational pensions arena, supervised by the Pensions Regulator. It notes that there has been little interest in collective DC from potential providers authorised by the FCA.

The Government says that much of the existing framework can be applied to schemes for unconnected employers but that additional measures and protections will be needed, particularly where the operator is a commercial organisation and/or where (as can be expected) different employers wish to offer different contribution rates and projected benefits and to have the option of varying them from time to time. The consultation poses a series of questions about these.

With regard to schemes offering decumulation only (i.e. by transfers in from DC schemes as an alternative to buying an annuity from an insurer), the Government notes that there is some interest but that detailed proposals have yet to emerge. It notes that there are particular questions concerning achieving and maintaining the scale needed to operate effectively, seed capital, and how to ensure that members transferring to such an arrangement in order to decumulate and those already in the scheme are treated fairly in relation to each other.

The consultation closes on 27 March 2023.

Automatic enrolment thresholds

A Government review has announced that the automatic enrolment earnings trigger will be kept at £10,000 pa for 2023/24. The qualifying earnings band will also be unchanged, at £6,240 to £50,270 pa.

In its separate response to recommendations of the Work and Pensions Parliamentary Select Committee, the Government said that it is still committed to the conclusions of the 2017 automatic enrolment review (see WHiP Issue 68), which included the intention of removing the lower earnings threshold from the qualifying earnings band.

It later added in the thresholds review report that this remains "subject to discussions with employers and other stakeholders on the right implementation approach, and finding ways to make these changes affordable". It continued: "We will pay close attention to the impact and costs in order to develop an optimal approach on implementation which balances the needs of savers, employers and tax-payers. This will include giving employers and savers the time to plan for future changes to help minimise any risk of deterring individuals from continuing to save or undermining employer engagement.".

The Government rejected (among other things) the recommendation that it consults on automatic enrolment for self-employed workers and the proposal to amend the definition of "jobholder" to include more gig economy workers.

Carillion – no TPR action

The Pensions Regulator has published a regulatory intervention report on its investigation into the circumstances that led to the insolvency of the Carillion Group and the impact on pension savers. The Regulator reached the conclusion that there is no basis for it to exercise its anti-avoidance or applicable criminal offence powers.

The Carillion Group went into insolvency in January 2018 with an unsustainable debt level and an £845 million write-down in the value of several major long-term construction contracts. There were 13 defined benefit pension schemes in the group with an estimated total deficit on a buy-out basis of around £1.8 billion at the end of 2016.

The Regulator's focus was on whether there were grounds for issuing a contribution notice. Based on the law applicable at the time of events, it therefore considered whether any acts or omissions had "detrimentally affected in a material way the likelihood of accrued scheme benefits being received" and whether there was any main purpose of avoiding any employer debt to the schemes.

Working with other agencies that were also investigating events, the Regulator reviewed disposals in the years leading up to the insolvency. It concluded that the disposals provided essential liquidity for the group and enabled it to pay deficit repair contributions to the schemes for a longer period than would otherwise have been the case. This meant, the Regulator concluded, that the schemes were not detrimentally affected and there was no purpose of avoiding employer debts to the schemes.

As regards misleading financial information published by the group and the resulting payment of dividends to shareholders, the Regulator concluded that that this had not had a materially detrimental effect. This was on the basis that:

- if the true position of the group's financial position had been revealed earlier, it would have collapsed earlier and the schemes would have missed out on deficit repair contributions; and
- it was by no means clear that withholding dividend payments would have resulted in additional contributions to the scheme, given the group's debts to banks and other creditors and the consequences of defaulting on payments to them.

The Regulator therefore concluded that there was no prospect of securing a contribution notice. It also found no scope for imposing a financial support direction because there were no potential targets capable of providing support. It also decided that no offence of providing false and/or misleading information was made out on the facts of the case.

Of course, the relevant events here took place before the expansion of the contribution notice regime and the introduction of new criminal offences in provisions introduced by the Pension Schemes Act 2021.

LDI – House of Lords report

The House of Lords' Industry and Regulators Committee has written to the Economic Secretary to the Treasury and the Pensions Minister with the results of its scrutiny of LDI arrangements used by DB pension schemes. This followed the economic turmoil surrounding the gilts market that followed the September 2022 "mini-budget" (see our briefing Liability-driven investment (LDI) – Reflections on the mini-budget and the road ahead).

The Committee criticises the use of leveraged LDI strategies by DB pension schemes and raised concerns that regulators had not focused sufficiently on the risks that borrowing to boost investment returns could pose to pension schemes and wider financial stability in the event of interest rates rising.

Its fundamental finding is that *"liability-driven investment strategies, particularly those that use leverage, were created as a solution to an artificial problem created by accounting standards, which drive sponsoring companies to focus heavily on current, rather than long-term, estimates of pension deficits. Pension schemes aimed to hedge volatility in these estimates by investing in bonds, but due to the low returns these offered and the need to close their deficits, they borrowed to boost their returns."*. It says that the Government and UK Endorsement Board should review the approach taken by accounting standards. It is unclear whether the Committee had fully understood the different roles of trustee and corporates in the measurement of deficits for company accounting and scheme valuation purposes and their impact on setting investment strategy.

On scheme investment decisions, the Committee says*: "it is likely some pension scheme trustees were not aware of the potential implications of their LDI strategies and their decision-making struggled to match the pace of markets. This has led them to become dependent on advice from investment consultants, whose advice to schemes is currently unregulated and may not be comprehensive over the whole portfolio or cover operational requirements."*. It calls for tighter controls on, and supervision of, the use of repos and derivatives, to include limits on leverage and reporting requirements. It also recommends that investment consultants should be brought within the regulatory remit of the FCA.

Regulators also come in for criticism for being slow to recognise the systemic risks caused by the concentration of pension schemes' ownership of assets such as index-linked gilts and the increasing use of more complex, bank-like strategies and instruments. The report calls for the Pensions Regulator to be given a statutory duty or ministerial direction to consider the impacts of the pensions sector on the wider financial system and to be supervised in that work.

Pensions dashboards – master trusts

PASA has published guidance for trustees and administrators of master trusts which is aimed at assisting them with their preparations for the new pensions dashboards duties. Much of this will be relevant to other schemes too.

The guidance focuses on three key practical areas: (a) data, (b) technical considerations, including connecting to the dashboards "ecosystem", and (c) legal and compliance requirements.

On data, the guidance:

- emphasises the importance of data accuracy for the dashboards project and flags how data accuracy is a particularly difficult issue for master trusts where there are a number of deferred savers and the prevalence of legacy data;
- flags the steps that master trusts can take to validate and "enrich" their data including existence checks and validating/updating names and addresses using credit reference data;
- notes the need for master trusts to review data storage and the "up-load-ability" of their data to ensure smooth flow of data into the provider or repository being used;
- flags the need to ensure data is retrievable and searchable.

On technical considerations, it:

- emphasises the need for early engagement on the manner of connection to the ecosystem (using an interface built by the scheme's own third party administrator or software/IT supplier, building the scheme's own interface or using an interface provided by an ISP (integrated services provider));
- recommends consideration at an early stage as to what impact the increased volume of data traffic will have on the scheme's IT infrastructure;
- states the need for extensive testing to ensure that the scheme's system connects appropriately with the dashboard ecosystem.

On legal and compliance requirements, it:

- summarises what we already know in terms of schemes (all public and private sector schemes) and member populations (active and deferred members only) covered by the new dashboard requirements;
- flags the pitfalls of non-compliance including the Pensions Regulator's ability to impose fines of up to £50,000 and issue compliance and third party notices;
- notes the need for privacy policies and privacy notices to be updated to reflect the legal basis for processing and sharing data to include dashboards;
- expects a quarter to a third greater volume of member queries for schemes as a result of the dashboards regime and recommends that master trusts make arrangements to meet the increased demand.

Negligence claims against advisers – time limits

A High Court negligence claim in relation to the preparation of a consolidating deed for the Honda UK pension scheme looks set to proceed, after the Court rejected an application by the adviser to strike out the claim. The deed replicated an existing error in the existing scheme rules that had been prepared by a previous adviser, over which it appeared to be too late to sue that previous adviser. The Court will consider questions around limitation periods (i.e. time limits for bringing claims) and the extent of any continuing duty of care of the successor adviser in respect of specific work during an adviser's retainer.

The defendant adviser was engaged in 1994 and instructed to prepare a consolidating deed for the scheme. In 1986, the previous adviser had prepared a deed to adhere a new employer to the scheme but omitted to include provisions introducing a less favourable benefit structure for its workers. An earlier court case had failed to resolve this problem (see WHiP Issue 46). Due to the application of limitation periods, there was apparently no claim against the previous adviser but a claim was brought against the defendant adviser which prepared the consolidating deed for failing to spot the error, thereby replicating it in the consolidating deed and denying the scheme the opportunity to sue the previous adviser.

It is argued by the trustee and employer that the limitation period started to run when the adviser's work on the consolidated deed was complete, which was in 1998; the adviser contends that the operative negligence, if any, was when the first draft of the deed was supplied to the scheme. The resolution of that question could determine whether or not the claim is out of time.

The Court rejected the adviser's application to strike out the claim at a preliminary stage, with the judge deciding that the claim did have more than a fanciful prospect of success. Unless the parties settle the case, the Court will make its final decision after a trial in due course.

FOR FURTHER INFORMATION, PLEASE CONTACT

Daniel Gerring
Partner, Head of Pensions
daniel.gerring@traverssmith.com
+44 (0)20 7295 3341

Susie Daykin
Partner, Acting Head of Pensions
susie.daykin@traverssmith.com
+44 (0)20 7295 3247

Niamh Hamlyn
Partner
niamh.hamlyn@traverssmith.com
+44 (0)20 7295 3287

David James
Partner
david.james@traverssmith.com
+44 (0)20 7295 3087

Andy Lewis
Partner
andrew.lewis@traverssmith.com
+44 (0)20 7295 3444

Dan Naylor
Partner
dan.naylor@traverssmith.com
+44 (0)20 7295 3454

Nick White
Knowledge Counsel
nick.white@traverssmith.com
+44 (0)20 7295 3472