TRAVERS SMITH

What's Happening in DC?

July 2024

This briefing is for trustees and managers of DC occupational pension schemes. It outlines the latest legal developments and ongoing initiatives in the DC world, with links to issues of our regular publication 'What's Happening in Pensions' (WHiP) and other resources for those who want to read more.

Please subscribe to our alerts to receive regular updates on pensions developments.

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1 TPR's General Code of Practice – one code to rule them all

The Pensions Regulator's General Code of Practice came into force on 28 March 2024. It replaces ten of the Regulator's 16 codes of practice. The principal new content relates to the requirements for schemes to have an effective system of governance and (for schemes with 100 members or more) to conduct an own risk assessment. The web-based version on the Pensions Regulator's website also includes content from codes of practice that were excluded from the consolidation exercise.

See our initial briefing for general information and our series of detailed briefings about different aspects of the Code.

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2 Investment - illiquid refreshment

Prior to the General Election, the Government had been looking to encourage DC schemes to allocate more of their default fund assets to illiquid investments, including infrastructure projects and high growth companies.

The 'Mansion House Compact', signed by various pension providers, set out the aim of increasing unlisted investment by their DC default funds to 5%. The British Private Equity & Venture Capital Association (BVCA) later launched the 'Venture Capital Investment Compact'. This agreement, signed by many UK venture capital and growth equity firms and with Government support, is intended to make it easier for the signatories of the Mansion House Compact to hit their 5% targets by 2030. Read more in WHiP Issues 104 and 106.

To ensure that DC schemes actively consider illiquid investment, they are now required to disclose:

- in their default arrangement statement of investment principles, their policies on illiquid investment (since 1 October 2023 when amending it and by 1 October 2024 at the latest); and
- in their annual chair's statement and on a website, their default fund asset allocation percentages (for scheme years ending after 1 October 2023).

In both cases, look-through is required where there is investment in a collective investment scheme. Read more in WHiP Issue 102.

Going further, the Government announced the intention to require DC schemes to disclose publicly "the breakdown of their asset allocations", including UK equities, by 2027 (read more in WHiP Issue 107). The Labour Party General Election manifesto promises to "undertake a review of the pensions landscape to consider what further steps are needed to improve pension outcomes and increase investment in UK markets". Whatever the outcome of the Election, therefore, we expect further activity in this area.

3 Charges and more – how to evaluate value

The Government, Pensions Regulator and FCA have consulted jointly on a new framework on metrics, standards and disclosures for value for money in almost all DC occupational pension schemes and personal pensions. They proposed to require DC scheme trustees and (for workplace group personal pensions) independent governance committees to assess in detail, compare and publicly disclose the value for money that their scheme provides. 'Value for money' here includes much more than just charges: it is also expected to include metrics related to investment performance and the quality of member communications and scheme administration. They acknowledged that some of these aspects of how a scheme operates can be difficult to measure and benchmark in a consistent way and that further work will be needed with the pensions industry in this area. There was no indication on when the new value for money framework would be introduced but it looks to be at least a couple of years away. The next step will be an FCA consultation on rules for the framework that will apply to personal pension providers, with which occupational pension scheme trustees will be encouraged to

engage. Read more in WHiP Issue 106. This consultation has been delayed by the calling of the General Election but we expect the initiative to continue regardless of any change of Government.

In the meantime, the Pensions Regulator has been checking that trustees of small schemes (i.e. those with assets under management of less than £100 million) are applying the 'value for member' rules that already apply to them. These are designed to put pressure on such schemes to consolidate, where they cannot conclude that they offer good value in comparison with alternative options. Read more in WHiP Issue 108.

4 ESG round-up – climate, nature and social factors

The Pensions Regulator is continuing to review schemes' compliance with the statutory requirements for climate change reporting and has published its second annual report, which considers a sample of 30 schemes of various types and identifies examples of good and unsatisfactory content. Read more in WHiP Issue 108.

One area which has attracted attention is scenario modelling. Some industry commentators have suggested that current approaches exclude many of the most severe impacts we can expect from climate change, such as tipping points and second order impacts. The Institute and Faculty of Actuaries partnered with the University of Exeter to address this in its report, The Emperor's New Climate Scenarios.

The Taskforce on Nature-related Financial Disclosures (TNFD) has published its final recommendations, and accompanying guidance, for nature-related risk management and disclosure. These build on the recommendations from the Task Force on Climate-related Financial Disclosures (TCFD). This framework is voluntary but reflects that nature and biodiversity issues can raise financial risks for investors.

The UK Taskforce on Social Factors has published a Guide to Considering Social Factors in Pension Scheme Investments. This is intended to provide pension trustees with the tools to identify and monitor social risks and opportunities and embed social factors within schemes' investment decisions and stewardship policies. Read more in WHiP Issue 107.

5 Lifetime allowance – gone but not forgotten

The lifetime allowance was abolished from 6 April 2024 and replaced with a new regime based around a 'lump sum allowance' and a 'lump sum and death benefit allowance', with taxation of lump sums above those allowances at the individual's marginal rate of income tax. There are new disclosure requirements for schemes to implement and member literature referring to the lifetime allowance should be updated.

The transition is complicated, especially as regards taking into account lump sums already received and the various kinds of lifetime allowance protections. The legislation in the Finance Act 2024 has already had to be corrected by regulations. More are awaited but these have been delayed by the calling of the General

Election. HMRC has addressed various issues and FAQs in several newsletters and has updated the Pensions Tax Manual. Labour originally pledged to reverse the abolition if it forms the next government but that would not be at all straightforward and its General Election manifesto is silent on the matter. That policy may therefore have been dropped: time will tell!

Read more in WHiP Issues 106, 107 and 108.

6 Pensions dashboards – better late than never

Legislation now specifies a legal deadline of 31 October 2026 for all schemes with 100 or more non-pensioner members to connect to the pensions dashboards 'ecosystem' and be ready to respond to 'find' and 'view' requests. But Government guidance sets out a staged timetable for connection dates ahead of that ultimate legal deadline. Schemes and providers are required by law to have regard to this guidance. Staging dates are determined based on scheme type and number of relevant members (i.e. active members, deferred members and pension credit members) and are set out in part 3 of the guidance. The earliest date is 30 April 2025 and the latest is 30 September 2026.

The Pensions Regulator urges schemes to prepare well in advance of their deadline and has issued a checklist which schemes can use to ensure they are on track. PASA's Pensions Dashboards Connection Readiness Guidance, published in December 2023, can also help schemes and administrators become "connection ready".

For more, see our briefing '10 actions for getting to grips with pensions dashboards', which we have updated to reflect the staged connection guidance, and our video series. More information about the guidance can be found in WHiP Issue 108.

7 Transfer scams – flagging issues

The Pension Scams Industry Group has published an Interim Practitioner Guide, which provides guidance on the legal requirements and good practice when assessing a transfer request, in light of the 2021 transfer conditions regulations. This has been made available pending (we hope) resolution of issues with the regulations that have caused difficulties for the industry. The Guide addresses, among other things, the use of 'clean lists'/'green lists' and consideration of discretionary transfer powers in clear low risk cases where there could be obstacles to using the statutory transfer procedure. Read more in WHiP Issue 101.

In the meantime, in a helpful determination the Pensions Ombudsman has endorsed a trustee decision to apply the 'amber flag' rules and refer a member to MoneyHelper in circumstances where the member wanted to transfer to a pension plan under which there would be underlying overseas investments. This was despite there being no suspicion of scam activity: the trustees, on advice, were proceeding cautiously and applying the strict wording of the regulations. Read more in WHiP Issue 106.

8 Decumulation – accessing pension funds

The Conservative Government intended that, before long, DC schemes will become required to offer a range, or "suite", of decumulation options that they consider suitable for their members, including a default pathway. Collective DC may ultimately be an encouraged option. Schemes will be permitted to partner with an external provider to do this. There has been no indication that a Labour Government would scrap this initiative but legislation will take time; in the meantime, the Pensions Regulator intends to publish interim guidance encouraging voluntary action and innovation. Read more in WHiP Issue 106.

9 Automatic enrolment – widening the net

A statute has paved the way for:

- reduction of the automatic enrolment age from 22 to a lower age (likely to be 18); and
- abolition of the qualifying earnings band lower threshold, below which no contributions need to be paid so that contributions are payable on all pay up the upper threshold (with phasing-in possible).

A consultation on proposals was promised but no timescale was indicated. Employer costs will, of course, increase but the intention is to build upon the success of automatic enrolment. Read more in WHiP Issue 105. None of the major parties' General Election manifestos mentions these reforms, so it is unclear when, or if, they will be taken forward.

10 Small DC pots – together forever

Multiple default consolidators

For some time, the Conservative Government has looked for solutions to the ongoing issue of members accumulating small deferred DC pension pots across multiple pension arrangements. The solution it settled on was "multiple default consolidators". A Small Pots Delivery Group will provide recommendations on how best to implement this.

This solution involves members' eligible deferred small pots being transferred automatically to a consolidator scheme by default, unless the member opts out. For these purposes, a pot is considered small if it is worth less than £1,000 and deferred if no contributions have been paid into it for 12 months. Subject to further review by the industry delivery group (see below), a deferred small pot will be eligible for transfer if it was created since the introduction of auto-enrolment and is held within an auto-enrolment charge capped default fund. Those wishing to act as consolidator schemes will need to apply voluntarily for authorisation and meet certain minimum criteria (which are yet to be fully decided).

A central clearing house will be set up to match and allocate eligible pots as well as lead on communications with members and schemes. The allocation process currently proposed is that if the member with a deferred small pot is already a member of an authorised consolidator, that would be the

scheme to which the transfer is made. Otherwise, a 'carousel' allocation approach would apply where each consolidator is provided with an equal number of deferred small pots for members falling into this category. If the member has pots with more than one of the default consolidators, the transfer would be to the one that holds the member's largest pot.

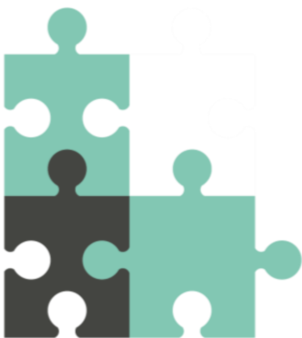
The Government has set up an industry delivery group to take these proposals forward with a view to providing proposals for ministerial consideration in "late 2024". The General Election subsequently intervened but there has been no indication that a Labour Government would wish to reopen decisions already taken.

Lifetime provider

For the longer term, the Conservative Government said that it would be exploring a "lifetime provider" (also known as "pot for life") approach. This aims to limit the creation of new pots in the first place. Employers would pay contributions to a scheme of which the worker is already a member but an exemption would apply if the employer provides a better pension offering. The Government issued a call for evidence on the "lifetime provider" model and next steps are awaited.

Read more in WHiP Issue 106.

11 EDI – creating a diverse and inclusive industry



Last but not least, the Pensions Regulator published guidance on equality, diversity and inclusion (EDI) for trustees and employers. The guidance covers the role of the chair, EDI policies and assessments, practical steps to improve diversity and reasonable adjustments for disabled trustees. There is also some new guidance on accessible member communications. Read more in WHiP Issue 102.

The Regulator has also been surveying DB and DC trustees to find out how far they have got with EDI. Its first report confirms that pension trustees are less diverse than the overall population but there is industry recognition of the importance and benefits of having inclusive and diverse boards. Having said that, fewer than half of schemes have taken steps to improve. While the survey highlights in particular the lack of trustee diversity in terms of protected or visible characteristics such as ethnicity, most trustee boards were seen as diverse in terms of other characteristics. Read more in WHiP Issue 108.

So far, the Regulator's focus has been on EDI within trustee boards and governing bodies. We may yet see more from the Regulator on equality and inclusion for pension scheme members, and on EDI performance of the businesses in which pension schemes invest (covered by the "S" and the "G" in ESG).

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