STEPHENSON HARWOOD

pensions law group

CLEAR VIEWS

Quarter three 2022 update

September 2022

OVERVIEW

Priorities for trustees this quarter are to:

- be aware of the new draft defined benefit funding regulations. These require defined benefit pension schemes to adopt a funding and investment strategy which ensures benefits under the scheme can be provided over the long term. The funding and investment strategy requires that schemes are not reliant upon further employer contributions to provide for accrued liabilities at the point the scheme reaches 'significant maturity';
- understand that the Pensions Regulator (**Regulator**) and DWP have issued a joint statement providing that if a transfer out cannot proceed as a statutory transfer as a result of the Occupational and Personal Pension Schemes (Conditions for Transfer) Regulations 2021 (**Transfer Out Regulations**), trustees should consider allowing it as a non-statutory transfer if it is low risk of being a scam; and
- be aware that since 1 June 2022, trustees with members who want to transfer or access defined contribution or cash balance benefits are subject to the 'stronger nudge' requirements.

In addition, trustees should be aware that:

- the obligations for trustees to tender for fiduciary management services and set objectives for investment consultants will be put onto a statutory footing;
- TPR has issued guidance emphasising the importance of trustees taking steps to ensure their data is dashboard ready now, regardless of their staging date; and
- schemes that are already subject to TCFD governance requirements, or will be from 1 October 2022, will need to update their compliance arrangements to reflect a new requirement to calculate and disclose a Paris Agreement portfolio alignment metric from 1 October 2022.

KEY DEVELOPMENTS

Development	Date of change	Links to further information
New approach to funding defined benefit pension schemes The Pension Schemes Act 2021 provided for a framework for a new defined benefit funding regime. In particular, the framework would require defined benefit schemes to have a funding and investment strategy for the purpose of ensuring benefits under the scheme can be paid over the long term. As part of this, trustees will be required to produce: • A funding and investment strategy; and	The consultation closes on 17 October 2022. The final form of the regulations will appear sometime after this.	Further information can be found in our briefing on this topic here.

• A statement of strategy. The detail of what this would mean in practice was to be set out in regulations. The DWP has now published a draft of these regulations, on which they are consulting. Funding and investment strategy A key principle that must be followed when determining or revising the funding and investment strategy is that schemes must be in, at least, a state of low dependency on their sponsoring employer by the time they reach significant maturity. This means the scheme should not rely on further employer contributions to provide for accrued liabilities at the point of significant maturity. Statement of strategy The trustees must also prepare a written statement of strategy which will set out the scheme's funding and investment strategy, as well as other supplementary matters.	TPR will be consulting in due course on a revised Defined Benefit Funding Code of Practice.	
DWP and TPR joint statement on Transfer Out Regulations Pursuant to the recent the Transfer Out Regulations, trustees need to undertake additional due diligence prior to a statutory transfer out to assess if either a red or amber flag was present. In practice, the Transfer Out Regulations have caused some delay and concern over transfers, especially where overseas investments exist in the receiving scheme or small-scale incentives feature in the transfer. The DWP and TPR have now issued a joint statement emphasising that the Transfer Out Regulations are not intended to impact transfers that, prior to the Transfer Out Regulations coming into force, would have caused no concern. The joint statement emphasises that, if trustees believe the Transfer Out Regulations mean there is no statutory right to transfer out but that the transfer is at a low risk of a scam, the trustees can proceed with a non-statutory transfer under the scheme rules.	N/A	Further background on the Transfer Out Regulations can be found in our briefing on the topic here.
"Stronger nudge" requirements came into effect from 1 June 2022	The new regulations came into effect	Further information on this topic can be found in

When a member or beneficiary makes (i) an application, or (ii) communicates in relation to an application with trustees about transferring or accessing defined contribution or cash balance benefits, trustees must: • refer the member or beneficiary to Pension Wise guidance; • offer to book a Pension Wise appointment for the member or beneficiary; and • explain to the member or beneficiary that they cannot proceed with the application unless they have received the appropriate Pension Wise guidance or have otherwise opted out of receiving the guidance.	from 1 June 2022	our June 2022 snapshot here.
DWP publishes response to trustee oversight of investment consultants and fiduciary managers consultation In its consultation response, the government is committed to taking forward draft regulations which will integrate the CMA's Order regarding trustee oversight of investment consultants and fiduciary managers, into pensions law. These will require trustees to: • carry out a tender process for fiduciary management services, subject to certain limited exceptions; and • set objectives for their investment consultants and review their performance against these objectives at least every 12 months. For most trustees this change from the CMA Order to DWP regulations should have little impact, with the DWP largely proposing to reproduce the relevant parts of the CMA's Order in legislation with some minor changes.	New regulations expected to come into force on 1 October 2022.	Further information on this topic can be found in our June 2022 snapshot here.
Pensions dashboard developments The Regulator has issued initial guidance setting out the obligations of trustees to onboard onto a pensions dashboard. The Regulator emphasises the importance of schemes starting to take steps now, regardless of their staging date. The project will require schemes to have accurate, up-to-date and digitised scheme information and this is something that trustees should be looking at now. In addition, the DWP has proposed amendments to the draft dashboard regulations. These set out when the 'go live' date will be determined - this is the date the dashboard will be available to the public.	The staging date for each pension scheme to onboard to a pensions dashboard will depend on the scheme's size. Schemes should consider sooner rather than later if their data in accurate, up-to-date and digitised.	Further information on this topic can be found in our July 2022 snapshot here. The Regulator's guidance can be found here.

Further TCFD requirements come into force on 1 October 2022 Schemes that are already subject to TCFD governance requirements, or will be from 1 October 2022, will need to update their compliance arrangements to reflect a new requirement to calculate and disclose a Paris Agreement portfolio alignment metric from 1 October 2022.	1 October 2022	Further information on this topic can be found in our August 2022 snapshot here.

The Stephenson Harwood pensions law group has been promoted to tier 1 and tier 2 by the Legal 500 for pensions disputes and pensions advisory work. Please see the Legal 500 website here for more information.

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