Your Quarterly Pensions Update

Dalriada Trustees – Industry Changes

Quarter Two 2022

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A better way

Contents

Introduction

The purpose of this report is to provide an update for pension scheme sponsors and trustees on recent industry changes in the quarter.

For your convenience, we have summarised the key developments and highlighted the necessary actions sponsors and trustees may need to take.

We also include links to further relevant information and any deadlines of which you should be aware.

We trust you will find the update useful and informative. If you require further information about how any of the topics covered might impact on your scheme specifically, please get in touch with Adrian Kennett (adrian_kennett@dalriadatrustees.co.uk) or your usual Dalriada contact.

NOTES

This document is aimed at providing you with generic information about recent developments in the pensions industry.

You should not take any action as a result of information included in this document without seeking specific advice in relation to the impact these matters might have on your scheme or company. Dalriada Trustees Limited accepts no liability for actions taken or not taken as a result of this document.

1 2022 Q2 Investment Update

Over the quarter investors were concerned with high inflation, rising interest rates and recession fears with most equity markets posting losses such as US equities declining c.-10% and UK equities losing c.-5%.

The Bank of England raised its base rate by 0.50% to 1.25% aimed at reducing inflation. This resulted in long-term nominal and real UK gilt yields increasing. All else being equal, the move in gilt yields acts to decrease the value placed on pension schemes' liabilities. Fixed income assets declined (yields increased) and global credit spreads widened as weaker investor sentiment weighed on risk assets. The U.S. Federal Reserve hiked rates by 0.75%, the largest increase since 1994, aimed at reducing inflation as it reached its highest level in more than 40 years.

Energy provided a positive return with Brent Crude up c.6% over the quarter while industrial metals such as copper were down c.-20% due to continuing concerns about the global economy.

Emerging markets had weak returns due to the depreciation of their currencies versus the U.S dollar and the rise in local interest rates. However, Chinese equities had a positive return as authorities released a set of stimulus measures to jumpstart the economy and eased some Covid restrictions.

2 Government's response to consultation: 'Trustee oversight of investment consultants and fiduciary managers'

Summary

The Department for Work and Pensions (DWP) has, after a considerable delay, published the Government's response to the **2019 consultation** on delivering the Competition and Markets Authority's recommendation for trustee oversight of investment consultants and fiduciary managers. The response sets out the changes to the Government's policy proposals and the rationale for these changes, along with the changes being made to the draft Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations which have now been laid before Parliament and will come into force in October.

Background

By way of reminder, a Competition and Markets Authority (CMA) investigation into the 'Investment Consultants Market' identified weak competition within both the investment consultancy (IC) and fiduciary management (FM) markets. Consequently, the CMA introduced an Order with remedies to address the market failure which came into force on 10 December 2019. Two of the remedies required pension scheme trustees to:

- carry out a qualifying tender process when entering into or continuing an agreement with a fiduciary management provider under certain circumstances; and
- set objectives for the investment consultancy provider when entering into an agreement for the provision of investment consultancy.

DWP needs to integrate these remedies into pensions legislation to enable The Pensions Regulator (TPR) to oversee them. This change is intended to improve IC and FM market engagement and will enable TPR to monitor and enforce compliance.

Government response to 2019 consultation and final regulations

DWP intends to replicate the relevant parts of the CMA Order so that the above duties on trustees will continue 'broadly' as they were. There are, however, some noteworthy changes in the prospective regulations (effective **1 October 2022**). In particular, there is more clarity around the application of the requirements:

- carrying out transition management services alone will not mean that a person is a fiduciary management provider
- high-level commentary provided by an actuary in an actuarial valuation will not of itself be a service falling within the definition of 'investment consultancy services'
- exclusion of asset-backed contributions and buy-in policies from the '20 per cent of a scheme's assets' threshold for tendering
- an asset manager that is connected to an investment consulting provider via a joint venture can be a fiduciary manager
- asset managers who provide advice after they are appointed as a manager will be a fiduciary management provider irrespective of whether IC services are provided within the first 12 months of their appointment as asset manager
- schemes' review periods for investment consulting providers are limited to three years.

Also, trustees will report compliance to TPR as the regulator, rather than the CMA.

Currently, the CMA's Order requires pension scheme trustees to submit compliance statements to the CMA confirming the extent to which they had complied with the articles of parts 3 and 7 of the CMA Order which were in force during the reporting period.

The regulations will enable TPR to oversee the remedies that apply to trustees and for them to carry out the appropriate monitoring, compliance and enforcement activity. Trustees will be required, **within the**

existing Scheme Return process, to report compliance in relation to the new requirements outlined in the legislation.

TPR will be providing further guidance to trustees in due course. There will be penalties for non-compliance.

What do you need to do now?

No immediate action is required. The existing CMA requirements will continue to apply until October after which trustees will need to comply with the new regulations. Working with their advisers, trustees should ensure that, after October, they will be ready to provide the new scheme return information by their scheme return deadline.

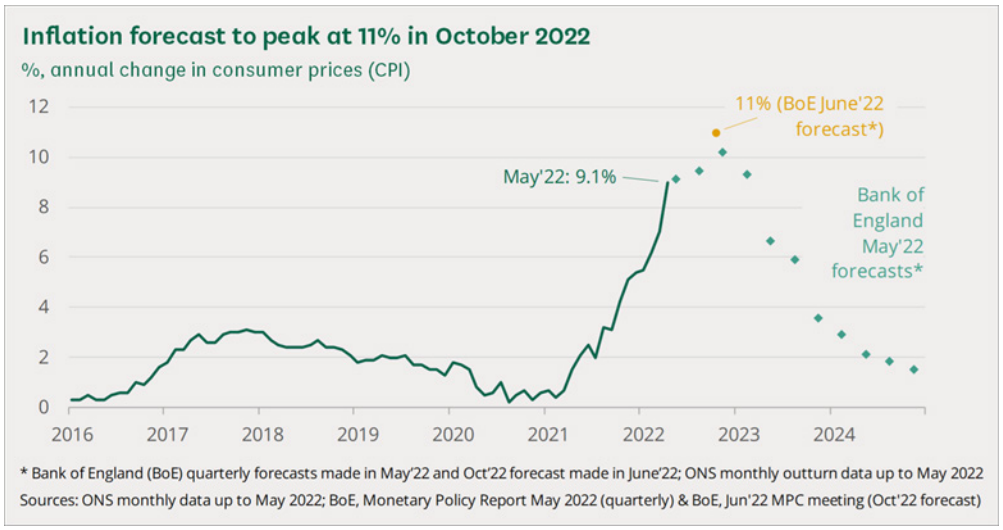
Helpful Links

Trustee oversight of investment consultants and fiduciary managers - GOV.UK (www.gov.uk)

3 UK inflation has hit a 40 year high at 9.1% - what does this mean for defined benefit pension schemes?

Funding

Funding defined benefit pensions is a long-term game. The Bank of England forecasts that high inflation will last around two years and will reduce to the long-term target of 2% p.a. after this. Trustees should, therefore, avoid making any knee jerk reactions.



Pension benefits are inflation linked, but in most cases subject to a cap. If inflation continues to rise, it is unlikely that liabilities will significantly increase as caps are biting.

Investment

Inflation linked assets will increase in value as inflation rises. If assets are hedging inflation risk, they will rise to match rises in liabilities. However, hedging may get out of sync as caps are hit - trustees may need to revisit hedging strategies to ensure they remain appropriate.

Administration

Pension scheme members are likely to read about high inflation in the news and administrators may get more queries than normal. High inflation will erode the value of benefits.

Trustees may wish to consider discretionary increases where there is appetite/funds to do so. It is relatively common for schemes to contain the power to provide additional (discretionary) pension increases, but employer consent is usually needed. Trustees may want to review their rules to check whether there is a discretionary increase provision. If there is, consideration can then be given to whether or not it should be exercised and, if so, to what extent. It would be sensible to document the trustee considerations, whether or not the discretionary increase power is used.

Administrators should be aware of anomalies that may exist to ensure that members are not disadvantaged by taking a certain course of action, given high inflation levels. For example, a deferred member giving up uncapped deferred revaluation for capped pension increases. Transfer values for members close to retirement may also need careful consideration. Trustees may want to consider a generic communication to members around issues to consider, in light of high inflation.

Company Accounting

Accounting figures are normally carried out on a roll-forward basis where liability figures are estimated rather than recalculated on a member by member basis.

It is important that this estimate allows correctly for inflation, as allowing for actual inflation over the year may exceed the employer's materiality limits.

4 TPR consults on a draft scheme management enforcement policy and an updated prosecution policy

On 4 May 2022, The Pensions Regulator (TPR) issued a consultation document on a simpler draft enforcement policy and a draft updated prosecution policy. As TPR explains, its approach as to how it uses its enforcement powers has changed over the years and these powers have recently been extended by the Pension Schemes Act 2021. In light of this, TPR has produced these policies so that those who could be subject to TPR's powers are clear as to what they can expect from TPR in this regard. According to David Fairs, TPR's Executive Director of Regulatory Policy:

"We want to be clear with the pensions industry about our approach to enforcement and prosecution. With our new powers to help us ensure savers' money is secure, we felt it was timely to review our existing policies and consolidate them where possible, so they are easier to navigate. We've simplified, consolidated and clarified the way in which our regulated community accesses important information about enforcement."

The consultation on these policies closed on 24 June 2022 and we wait to see whether any changes will be made to the draft policies, following responses received by TPR.

Enforcement policy

The draft enforcement policy now incorporates TPR's use of its 'overlapping powers' (i.e., imposition of significant financial penalties and/or criminal sanctions in relation to the same act) and its approach for 'information-gathering'. It consolidates previous policies for defined benefit, defined contribution, hybrid, and public sector pension schemes. The draft follows the modular approach adopted for the prospective TPR Single Code of Practice, which TPR hopes is more user-friendly, and contains 12 separate chapters as follows:

- Introduction
- Assessment of risk and harm
- Investigations
- Using our enforcement powers
- Enforcement outcomes
- Enforcement options (including anti-avoidance and scheme-funding powers)
- Overlapping powers (including case examples)
- Enforcement procedures
- Challenging enforcement action
- Debt recovery
- Measuring impact
- Publishing information about cases

Not all of the chapters were open to consultation. For example, TPR confirmed it was not seeking comments on the 'overlapping powers' and 'investigations' chapters as these were part of TPR's new enforcement policies consultation issued in autumn 2021. The draft enforcement policy now incorporates TPR's finalised approach with regard to these. It also takes account of responses received by TPR on its proposed approach to using the new powers introduced by the Pension Schemes Act 2021.

TPR further confirmed that its automatic enrolment and master trust authorisation compliance and enforcement policies have not changed and remain separate.

Prosecution policy

The draft prosecution policy includes TPR's general approach to prosecuting criminal offences, who it can prosecute, and how it will select cases for investigation and prosecution. It also outlines what actions it may take, including the issuing of cautions and preventing offenders from benefitting financially from their criminal activity. Appendix I in the draft prosecution policy helpfully includes a list of all the criminal offences under workplace pensions legislation.

High fines

Under the autumn 2021 consultation, TPR also consulted on proposed policies in respect of its ability to impose high financial penalties of up to £1m. Those policies (covering avoidance-type penalties and failure to pay a contribution notice issued under section 38 of the Pensions Act 2004 and penalties for breaches of the notifiable events regime and penalties for providing TPR or a trustee with false and misleading information) have now been published in final form. They set out TPR's penalty bands and the factors it will take into account when deciding which band applies to the facts in question, and how the penalty amount within that chosen band will be determined.

Comment

The policy aims to provide greater clarity on how TPR will use its existing and new enforcement powers, and follows responses received by TPR to its autumn 2021 consultation that requested this detail. The policies are also intended to reduce the number of documents that need to be referred to by the pensions industry when understanding TPR's approach to enforcement. It will be important for those involved in workplace pensions to review these documents to ensure they understand how TPR will use its enforcement powers, and to ensure decision-making and corporate activity does not bring these powers into play.

Helpful Links

Proposed approach to our new powers | The Pensions Regulator

Proposed approach to our new powers: consultation response | The Pensions Regulator

High fines policy (avoidance) | The Pensions Regulator

High fines policy (information requirements) | The Pensions Regulator

Enforcement and prosecution policies consultation | The Pensions Regulator

Draft: Scheme management enforcement policy | The Pensions Regulator

Draft: Prosecution policy | The Pensions Regulator

5 Environmental, Social & Governance (ESG) Update: the legal addition

We have recently seen several legal cases involving ESG investing. We thought the following cases were worth highlighting to trustees.

Butler Sloss – ESG focus on the expenses of financial return

In the case of Butler-Sloss v The Charity Commission for England and Wales, the High Court permitted the trustees of two charities to adopt an ESG based investment strategy, even though the trustees acknowledged that this strategy could provide a lower rate of return in the short-term when compared with other, less restrictive, investment strategies.

The Ashden Trust and the Mark Leonard Trust have been permitted to exclude investments not aligned with the Paris Climate Agreement to limit global warming to 1.5 degrees Celsius. The Court held that this is the case even if it means the trust's financial returns are less than they could be. Although these are both charities, the case is indicative to the likely future of any legal decisions around pensions and ESG inclusion. This is especially relevant as schemes become more focused on the carbon transition and Paris-alignment.

Uber – Sharia Investments

The App Drivers and Couriers Union (ADCU) has started legal action against Uber for failing to make Sharia compliant pension arrangements. The ADCU estimates that up to 75% of UK Uber drivers are Muslim and the lack of Sharia compliant arrangements forces them out of participation in the pension scheme.

Across the UK, it is estimated that around one-third of Muslims do not have a pension due to the lack of Sharia compliant pension options. This basic issue – pensions and discrimination on grounds of religion and belief – is not new. Regulations on unlawful discrimination in this area have been around since 2003 and key provisions are now in the Equality Act 2010.

Discrimination on the grounds of religion or belief is unlawful and can only be objectively justified if the discrimination is indirect. Failure to provide investment choices in a defined contribution scheme which meet certain religious requirements (e.g., funds which conform to Sharia law) could prevent certain employees from joining the scheme on religious grounds. This could constitute indirect discrimination unless the practice could be objectively justified. It should be relatively straightforward to offer investment choices which meet religious requirements, in which case it would be hard to justify not doing so. Trustees should consider whether their pension schemes could be impacted. The issue is very relevant to automatic enrolment schemes, but other DC arrangements could be affected too (even AVC arrangements).

Helpful Links

High Court Judgment Template (bailii.org)

ACDU (adcu.org.uk)

6 DWP response to climate and investment reporting consultation

Summary

The DWP has published the response to its consultation on climate and investment reporting. It has also published the draft Occupational Pension Schemes (Climate Change Governance and Reporting) (Amendment, Modification and Transitional Provision) Regulations 2022 and two sets of guidance.

From 1 October 2022, pension schemes within the scope will be required to measure and publish how their investments support the Paris Agreement climate goal of limiting global warming to 1.5 degrees Celsius above pre-industrial levels. The Government suggests that the new measures will mean that from October, more than 80% of UK pension scheme members will be invested in pension schemes subject to these new rules.

The draft regulations amend the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 which, **from 1 October 2022, apply to trustees of trust schemes with relevant assets of £1billion or more on their first scheme year end date to fall on or after 1 March 2021.**

DWP has also finalised its statutory and non-statutory guidance for trustees of all schemes to help them understand and consider financially material Environmental, Social and Governance (ESG) factors and stewardship approaches in their investment decision making.

The DWP has launched a 'Green Nudge' trial too, which is intended to test the impact of behavioural nudges and messages on increasing saver engagement with the sustainability of pension investments and how this could translate into greener pension decision-making. The DWP, in partnership with the Behavioural Insights Team (BIT), is working with Aviva, Smart Pension and, Hargreaves Lansdown to deliver the 'nudges' to members to encourage savers to invest in more sustainable pensions or learn more about the sustainability of their pension.

Key Points

- Larger occupational pension schemes (with assets in excess of £1 billion) and authorised DC master trusts will need to calculate and report an additional 'portfolio alignment' metric from 1 October 2022. The portfolio alignment metric will measure the extent to which a scheme's investments are aligned with the Paris Agreement goal of limiting the global average temperature increase to 1.5°C above pre-industrial levels.
- Final stewardship guidance is split into statutory guidance and non-statutory (best practice) guidance. The statutory guidance applies to Implementation Statements for any scheme year ending on or after 1 October 2022. The non-statutory guidance focuses on stewardship reporting in Statements of Investment Principles (SIPs) and applies from 17 June 2022. The final guidance confirms that The Pensions Regulator (as opposed to pension scheme members) is the primary audience for the SIP and Implementation Statements (IS), but member facing summaries of these documents are encouraged.
- New non-statutory guidance for SIPs explains that the Government expects trustees to either set their own voting policy or, if they have not set their own policy, to explain in the SIP how they will monitor their asset manager's voting policy. Trustees should not simply state in the SIP that they delegate engagement and their voting rights to their investment managers.
- Statutory guidance for the IS provides that trustees should explain whether the voting undertaken on their behalf reflects their voting policy (or, if they use their asset manager's voting policy, they should summarise how it reflects the trustees' stewardship priorities). If asset managers are unable to give details of significant votes in time for publication of the IS, trustees should include as much detail as possible (including what information is missing, and why). There is clarification that trustees can provide links to their managers' voting policies, if applicable. Where trustees set an expression of wish on voting in relation to a particular investment, they should indicate in the IS whether this has been taken into account by their asset manager when describing voting behaviour. The guidance also provides information on significant votes and sets out how trustees should disclose the most significant votes (by company name, size of holding, summary of resolution, explanation for vote, voting outcome and next steps).

Actions

The non-statutory guidance on SIPs took effect on 17 June 2022, so trustees should already be starting to consider how to reflect their stewardship policies in the SIP. Trustees should also be thinking about the prospective impact of the new statutory guidance on ISs.

Helpful Links

Climate and investment reporting: setting expectations and empowering savers - GOV.UK (www.gov.uk).

7 Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

Members of contracted-out final salary schemes between 1978 and 1997 earned Guaranteed Minimum Pensions (GMPs). Compared to main scheme benefits, this portion of a member's benefit typically carries different increases, both in deferment and payment, and has different rules around payment. Therefore, schemes with GMPs are generally much more complex to administer. And for trustees, complexity equals additional costs and poorer member understanding. So, when GMP conversion was first proposed in 2009, many thought this was a panacea to get rid of GMPs once and for all. However, GMP conversion did not take off at the time as there were too many unanswered questions (one of them being whether GMPs for men and women need to be 'equalised').

Then came along the Lloyds case on GMP equalisation in 2018. This reawakened the debate on GMP conversion, as this was one of the methods highlighted as a possible acceptable method for addressing inequalities in GMPs.

Using conversion for dealing with GMP equalisation would not only remove the differences between benefits for men and women, but would also have the added advantage of simplifying pension scheme benefits. The idea of this is very attractive to trustees and members for the reasons set out above.

However, there were still a number of issues regarding GMP conversion. Many of these remain unanswered, even after the latest legislative development.

The Pension Schemes (Conversion of GMP) Act 2022 seeks to clarify a couple of points and introduces the power to make regulations on two further areas, which have been complicating GMP Equalisation conversion projects.

The two points the Act has clarified are:

- GMP conversion applies to survivors of those who earned GMPs; and
- there is no need to notify HMRC of each and every individual whose benefits are being converted.

The first of these changes removes any ambiguity when applying GMP conversion. The second will reduce the burden on trustees and hence reduce the cost of implementing GMP conversion. Both changes are to be welcomed.

The two areas where the Act brings the power for future regulations are:

- Confirmation of which entity needs to consent to conversion.
- What minimum level of survivor's pensions needs to be provided post-conversion.

The employer needs to consent to GMP conversion being used as a method of equalising GMPs. However, for some schemes with very complex structures, it is not always clear who the employer is. If the wrong employer was consulted, the conversion may be invalid. Therefore, clarity around this issue may mean that GMP conversion is accessible to a wider number of schemes.

The conversion legislation refers to survivor's benefits being a minimum of 50% of the value of the member's pension earned between certain dates. The use of the word 'value' has caused some issues in the industry, although Pension Administration Standards Association (PASA) working group guidance has assisted schemes on making decisions regarding this. However, it would be helpful if this point were clarified in legislation.

With the PASA guidance and the industry seeking ways to manage some of the complexities and issues raised by GMP conversion, we are seeing an increasing number of schemes looking at conversion as a route for GMP equalisation. This latest Act will only serve to increase the move to conversion and is welcomed, but we need to wait for regulation for two of the changes to be enacted.

Furthermore, there are still areas we would like to see resolved (in particular around tax), which are putting trustees off from using conversion as the method of choice for GMP equalisation.

So, whilst the Act may see more schemes using conversion as a means of implementing GMP equalisation, it is still not a solution for all.

Helpful Links

Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022 (legislation.gov.uk).

8 Pensions Dashboards: further consultation and TPR guidance

Following a consultation in January, a supplementary consultation on two further provisions has been launched to complete the Pensions Dashboards Regulations. This is in part in response to industry feedback:

- Dashboards Available Point (DAP): In the January consultation, DWP included some brief information on the DAP. Having carefully considered responses to the consultation, it was clear that industry wanted more clarity. DWP suggests providing further clarity through the proposed DAP provision within the regulations.
- Disclosure of Information: DWP is consulting as this was not included in the earlier draft Regulations. It is a supplementary measure as it is needed to support the dashboard delivery and operational processes. It does not affect what schemes need to do but it is necessary to consult ahead of laying the draft Regulations before Parliament.

Separately, as part of a new campaign launched by The Pensions Regulator (TPR), trustees are being warned they must start preparing for their Pensions Dashboards deadline.

To help trustees meet their duties, TPR has now published new Pensions Dashboards guidance, which outlines the legal duties and includes a handy checklist to help schemes manage their progress – the guidance will be regularly updated.

More detailed and up-to-date guidance will be published by TPR later this year, which will reflect the final regulations and the technical standards being developed by the Money and Pensions Service (MaPS). It is expected that pension schemes will connect to the Pensions Dashboards through a phased approach according to size and type of pension scheme. Each scheme will belong to a category which will have a specific deadline set out in legislation. Connecting to the Dashboards means schemes must have an appropriate interface in place to receive information requests from savers and accurate data to provide them with the information they require about their pensions.

The largest schemes are expected to connect to the dashboards system from June next year and TPR will now begin writing to them to alert them to their connection deadline and will advise them what they need to do.

Actions

Trustees should now:

- check their connection deadline (the date by which they will be legally required to be connected to the Pensions Dashboards)
- have Pensions Dashboards firmly on their board agendas
- be deciding how they will connect (whether they will develop a solution in house, or use a pensions administrator or integrated service provider)
- be taking stock of and digitising their data (this is crucial so that savers are successfully matched to their pensions).

Helpful Links

Pensions dashboards: further consultation - GOV.UK (www.gov.uk)

Trustees warned: be prepared - "your pensions dashboards deadline is coming" | The Pensions Regulator

10 DC update

Collective Defined Contribution (CDC)

CDC legislation coming into force this year will assist the Royal Mail scheme to get up and running. Moreover, to further the development of CDC, the DWP is aiming to hold a consultation on multi-employer CDC schemes for non-associated employers later this year. The government believes that there is an appetite for 'third way' schemes, especially amongst workforces that just want a 'wage' in retirement rather than freedom and choice. Even if you accept that the decline of traditional Defined Benefits (DB) is terminal, there is a growing school of thought that conventional DC is not the only option and that, for the same level of contributions, CDC can produce a better outcome for many members.

Stronger nudging

From 1st June 2022 trustees and Group Personal Pension (GPP) providers have to give members with flexible (DC/cash balance) benefits a stronger nudge to book a free Pension Wise appointment when accessing their savings.

The stronger nudge to pensions guidance aims to increase take up of pensions guidance, by requiring trustees to ensure that individuals have either received or opted out of receiving appropriate pensions guidance before proceeding with their application. The goal of this is to present taking pensions guidance as a normal part of the application process and to require members (and other relevant beneficiaries) to make an active choice to opt out of receiving guidance.

The stronger nudge guidance is to be delivered to all relevant beneficiaries, aged 50 or above, who contact a scheme to request to access their pension benefits or to transfer those benefits with the intention of accessing their pension flexibilities. However, schemes will not need to deliver the nudge to beneficiaries transferring for the sole purpose of consolidation.

Trustees should note that, for schemes in scope, they and their administrators need to ensure they have received confirmation of attendance at a Pension Wise appointment, or an opt out, before proceeding with the application process.

Chair Statements and new Value for Members (VfM)

For specified DC schemes with year ends after 31 December 2021 and assets of less than £100m, the new VfM information will need to be included.

When carrying out the new VfM assessment, trustees must consider three factors: costs and charges; net investment returns; and administration and governance.

Net investment returns

Trustees must report on the 'net investment returns' for their default arrangement(s) and for each self-select fund in which members are invested during the scheme year. Net investment returns refer to the returns on funds minus all transaction costs and charges. The information on net investment returns must be stated in the annual Chair's Statement for the first scheme year ending after 1 October 2021, and published on a publicly available website.

Comparators

For the purposes of assessing costs and charges and net investment returns as part of the VfM assessment, each specified scheme must compare itself with three 'comparison schemes'.

Each scheme used as the basis for the comparison should be either an occupational pension scheme which held total assets equal to or greater than £100 million or a personal pension scheme (but not a self-invested personal pension).

Of the three factors, administration and governance is further subdivided into seven sections:

- Promptness and accuracy of core financial transactions;
- Quality of record keeping (including security of data);

- Appropriateness of the default investment strategy;
- Quality of investment governance;
- Level of trustee knowledge, understanding and skills to operate the pension scheme effectively (including whether sufficient time is spent running the scheme, diversity of trustee board in terms of background, experience and skills, quality of leadership and effectiveness of board decision making, trustee continuous learning and development, quality of working relationships with employer/third parties);
- Quality of communication with scheme members and
- Effectiveness of management of conflicts of interest.

In addition, in September 2021, The Pensions Regulator (TPR) and the Financial Conduct Authority (FCA) published a value for money discussion paper inviting views on developing a holistic framework and related metrics to assess value for money (VfM) in defined contribution (DC) pension schemes. In May 2022, the regulators published a feedback statement on the VfM discussion paper and confirmed that they will further develop common measurements which will allow industry professionals and pension savers to better compare DC pension schemes.

NB. This is separate from the new VfM requirements for Chair Statements which start this year.

Legal action taken against Uber over Sharia compliant pension arrangements

In May 2022, The App Drivers and Couriers Union (ADCU) launched legal action against Uber for its failure to make Sharia compliant pension arrangements. ADCU states legal action will ensure inclusion and access to suitable pension arrangements and argues that Uber is in breach of the Equality Act 2010. The outcome of this action will impact other workplace pensions. A reminder of the issues for pension schemes and trustee duties not to discriminate on grounds of religion or belief.

The consumer journey

The Pensions Regulator (TPR) and Financial Conduct (FCA) published their response to their 'consumer [member] journey' consultation. Some important points for trustees to be aware of in here are: the support for 'mid-life' MOTs; trials of 'side car' savings alongside pensions; the 2023 DWP 'year of the trustee initiative'; and TPR's review of DC communications materials. These subjects could be worth adding to a future trustee meeting agendas.

Decumulation options

Finally, the DWP has launched a call for evidence seeking views on how it can support pension scheme members make informed decisions on using their savings. The paper sets out member expectations, the current position in the trust-based market and plans for the future.

The consultation will have an impact on pension schemes and savers as it is likely it will lead to the introduction of measures to support trust-based scheme members, and the extension of collective defined contribution (CDC) schemes to multi-employer schemes and master trusts. The National Employment Savings Trust (NEST) may also be developed to offer further decumulation options.

Helpful Links

More savers to benefit from new pension provision - GOV.UK (www.gov.uk)

Communicating reporting DC pension schemes | The Pensions Regulator

Value for members | DC pension schemes | The Pensions Regulator

Feedback statement on driving Value for Money in defined contribution pensions | The Pensions Regulator

Pensions consumer journey feedback statement | The Pensions Regulator

11 Victim of pension scam in 2012 not 'time barred' from making claim (Giddens v Brian Frost)

In brief

In May 2022, the High Court published a preliminary ruling concerning the specific issue of whether a victim of a pension scam was barred from bringing a claim, due to the passage of time.

The claimant issued two claims in November 2019 (one based on fraud and the other upon defective advice) against three defendants who had allegedly advised her to transfer her pension in October 2012 into a small, self-administered pension scheme ("SSAS"). While the Court still has to decide on those substantive claims, it first had to rule on whether the claimant could even proceed with her claims, given the fact she issued proceedings almost seven years after the event occurred.

The outcome of the main claims will be of interest to victims of pension scams, but this preliminary ruling could be significant in itself for any victims who may have considered a claim but thought it was simply too late. Unfortunately, it is far from uncommon that the victims of these pension scams only uncover the loss of their hard-earned pensions until many years later. Indeed, for some members, it is the initial member announcement issued by Dalriada as the TPR-appointed independent trustee that first alerts members to the fraud that occurred.

So this decision will provide some hope for those victims, with the Court confirming that the test for eligibility should be based on the point when the claimant had (or, ought reasonably to have had) knowledge of the fraud. Not necessarily when the ill-fated transfer took place.

What were the arguments?

In 2012, the claimant transferred her pension benefits from the Royal Mail pension scheme to a SSAS, with the intention that it would be invested in what was described as a truffle plantation scheme. This 'opportunity' was packaged as a 15-year lease of trees that were to be inoculated with spores to promote truffle growth, with returns to flow from the fifth year onwards. Needless to say, this investment was a scam, which ensnared around 100 investors and became the subject of separate legal proceedings.

The fraud claim centred upon a conspiracy to injure, while the defective advice claim related to alleged breaches by the defendants of a common law duty of care, an implied contractual duty of care and a duty to comply with certain provisions of the FCA's Conduct of Business Sourcebook Rules. The defendants denied liability to the claimant, arguing that she was not one of their clients, that they never had advised her, and that they had referred her to a third party that had administered her SSAS.

However, the defendants first sought to argue that the claims should be thrown out for being time-barred, asserting that time started running for the claims from the date the claimant transferred into the SSAS. They were relying on the six-year limitation period that would apply as standard for such claims.

The claimant submitted to the Court that this limitation period should be postponed in her case, based on a special time limit afforded in legislation (Section 14A the Limitation Act 1980) for negligence actions where facts relevant to cause of action are not known by the claimant at the date the action occurs. They also argued that Section 32 of the same legislation would allow the claimant relief, by postponing the limitation period in the case of fraud, concealment or mistake.

What was the decision?

The crucial point for the Court to consider was whether the claimant knew – or could have discovered with "reasonable diligence" – before 22 November 2013 (i.e., six years prior to issuing the claims) that there had been a fraud/breach against her. If the claimant either had discovered matters that had justified her making preliminary inquiries with a view to bringing proceedings, or could have discovered them with reasonable diligence, then all her claims would be time-barred and not saved by section 32. Also, if the claimant had (or, was to be attributed with acquiring) knowledge of such matters in the period after that date but before November 2016, then her claim based upon negligent advice would be time-barred.

In the end, the Court held that the claimant had proved she had not discovered the alleged breaches and would not have discovered them though the exercise of reasonable diligence prior to 26 November 2016. Up until that date, she had also lacked constructive knowledge of those breaches by reference to facts

observable or ascertainable by her.

Therefore, the Court's ruling was that the claims were valid, not time-barred and the substantive case will now proceed.

Is this good news for pension scam victims?

It must be remembered that this preliminary decision does not deal with the substantive issue of the advice received by the claimant to transfer her pension to the SSAS and invest in the scam investment. Whether the Court ultimately finds the defendants to be negligent and or fraudulent in their actions remains to be seen. Indeed, the matter could well be appealed.

Nevertheless, the Court's preliminary decision will provide some hope to members who find themselves in the truly horrid position of discovering that the pension they had transferred years earlier has been subject to a scam. This decision keeps the door open and the limitation period running for victims, and at least reduces the chance of those responsible for lost pensions hiding behind a limitation period technicality.

12 Coming Up Next

A number of changes in pensions law and practice were expected in Q2, 2022. However, with government departments and regulators struggling with workloads and resources, like nearly every other organisation, they did not materialise.

Nevertheless, as our pension tracker, below, shows these developments have been delayed, not dropped. So, to use the well-known football commentator's cliché, 2022 is shaping up to be a real 'game of two halves'. The relative calm of the first six months will, in terms of codes, consultations and regulations, be followed by a storm of prospective changes to workplace pensions. The key ones to be aware of and the issues for trustees and employers include:

- **Final Pensions Dashboard Regulations**. Dashboards are coming! And schemes need to be ready to supply information. Amongst other things, this means that good data is no longer a 'nice to have'; it is a necessity.
- **Single Code.** Somewhat related to the above, The Pensions Regulator's new single code of practice will bring into full force the requirement for schemes to have an Effective System of Governance (ESoG) and carry out regular Own Risk Assessments (ORAs) of their governance and internal controls. Paying the right benefits, to the right people, at the right time (good data) is at the heart of effective governance.
- **New Scheme Funding Code.** Are you going 'Fast-Track' or 'Bespoke'? The new code will probably not take effect before October 2023 but trustees and employers need to consider the impact (more money going into the scheme more quickly?) and what their long-term objective is (self-sufficiency, buy-out, superfund?). Regulations requiring schemes to have a long-term funding strategy will be consulted on before the new Funding Code takes effect.

Date	Development	Notes
June / July	**Pensions Dashboard Programme**	Final regulations that will set out a timetable for mandatory provision of information
31 July	**Chair Statements**	For DC schemes with assets of less than £100m preparing Chair's Statements after this date (for year ends after 31 December 2021), new 'Value for Members' (VfM) information will need to be included
1 August	The Occupational Pension Schemes **(Collective Money Purchase Schemes)** Regulations 2021 effective	Legislation to enable single or connected employer collective money purchase schemes to apply to TPR for authorisation
Summer	**New Pensions Regulator Single Code of Practice**	Further draft of new Single Code, which will eventually replace 15 existing Codes of Practice
14 August	**HMRC migration and Accounting for Tax (AFT) return**	If a scheme needs to submit a return for the quarter 1 April 2022 to 31 June 2022, it needs to have migrated and must submit the return on the Managing Pension Schemes Service by the filing deadline of 14 August
Late summer	Second consultation on **new Scheme-Funding Regime**	Second part of TPR consultation on the revised DB funding code
1 October	**Extension of climate risk governance and reporting requirements for occupational pension schemes with £1 billion or more assets**	Requirements for large schemes to report on climate risk

1 October	**Simplified Benefit Statements –** Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2022, SI 2021/1150, come into force	Introduction of 'two page' benefit statement
October	**Investment in 'illiquids'**	DWP proposals, expected to take effect in October, will require DC pension schemes to disclose and explain their policies on illiquid investment and, for schemes with over £100m of assets, to disclose their current asset classes to members. Also, draft regulations remove certain employer-related restrictions that currently apply to large, authorised Master Trusts
October	Changes to **Notifiable Events regime** expected	Revisions to scheme and employer-related events that must be notified to The Pensions Regulator
31 October	**Stewardship Code**	Next deadline for applications to becoming signatory to 2020 UK Stewardship Code
Q4	**Collective DC schemes**	Consultation on multi-employer collective defined contribution (CDC) pensions expected
Q4	**Pensions Value for Money (VfM) consultation**	TPR and the FCA have published a feedback statement in relation to a joint consultation launched in September 2021, which invited views on how best to measure VfM in DC pension schemes. The feedback does not provide any policy views in response to the issues raised. TPR, the FCA and the DWP plan to publish a new consultation setting out proposals towards the end of 2022

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