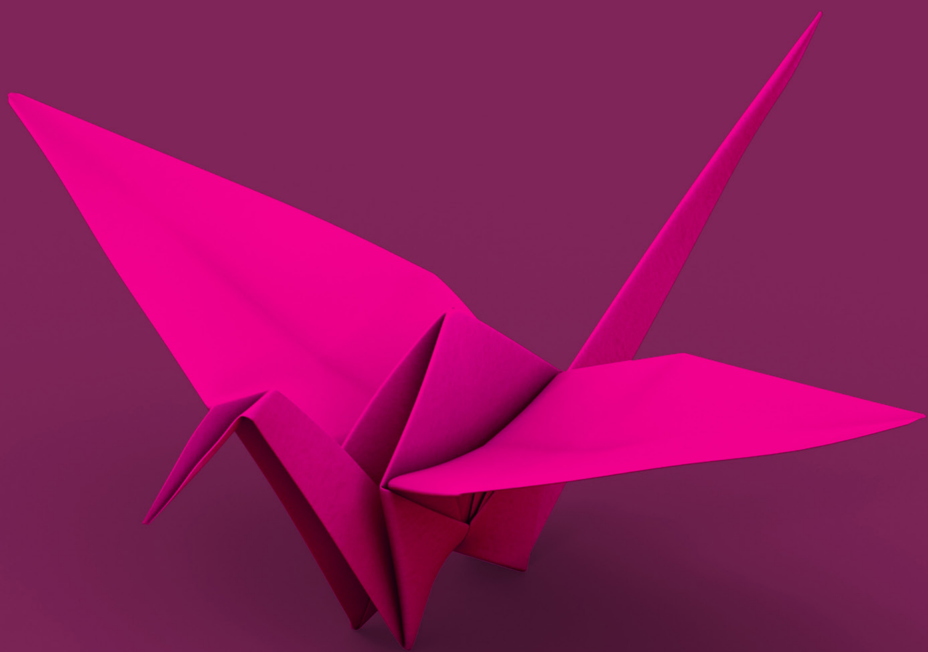
Your Quarterly Pensions Update

Dalriada Trustees – Industry Changes

Quarter Three 2023



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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 you should be aware of.

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 A Mansion House Update – the details and what happens next

Several important consultations and calls for evidence were published just as we went to press for Quarterly Update No.2, 2023. We were, therefore, only able to provide a summary of key points.

In this Update, we look at the issues in a bit more detail and, noting that the deadline for responses was 5 September, consider what the government will do next.

Pension trustee skills, capability, and culture: a call for evidence

DWP and HMT issued this call for evidence to deepen the evidence base around trustee capability and other barriers to trustees doing their job in a way which is effective and results in the best outcomes for savers. It focused on three areas:

- trustee skills and capability,
- the role of advice, and
- other barriers to trustee effectiveness.

Linked to the Chancellor's recent Mansion House Speech, there is particular interest in whether trustees have the right knowledge and skills to consider investment in the full breadth of investment opportunities.

Evidence was invited in respect of trustee capability for Defined Contribution (DC), Defined Benefit (DB), and Collective Defined Contribution (CDC) schemes, as well as hybrid schemes.

Responses to this call for evidence and other stakeholder engagement will inform DWP and HMT's understanding of the issues and, if necessary, help inform the development of future policies.

There are three substantive chapters in the Call for Evidence:

- **Trustee skills and capability**
  Seeking views on the current state of trustee capability as well as gathering evidence to inform potential policy options around trustee registration, accreditation requirements, and professionalism.
- **The role of advice**
  Trustees take advice to help them decide how to invest assets. Investment choices are complicated, and many trustees are not investment specialists. So, as well as ensuring that trustees can understand and, if necessary, challenge the advice they receive, the government is keen to ensure that advice is of good quality and enables trustees to make informed decisions. Chapter 2 therefore covers the role of investment consultants and others in advising trustees.
- **Barriers to trustee effectiveness, including duties**
  It is recognised that trustees may encounter other difficulties in fulfilling their role. The purpose of Chapter 3 is to seek evidence on whether the current framework and guidance on fiduciary duty is sufficient to help trustees make decisions in the best long-term interest of savers. It also covers whether trustees have sufficient time and support to fulfil their duties.

Defined Benefit (DB) pension scheme reforms

Following the Chancellor's Mansion House speech, two documents related to the reform of DB pension schemes were published:

- **Options for Defined Benefit schemes:** a call for evidence (a call for evidence to support the development of innovative policy options to increase protection for DB members while supporting wider economic initiatives); and
- **Defined benefit pension scheme consolidation** (seeking views on a new legislative framework for authorising and regulating defined benefit 'superfund' consolidation schemes).

Options for defined benefit (DB) schemes

The DWP call for evidence supports the development of innovative policy around how DB pension schemes could increase investment in productive asset classes.

This includes exploring the provision of more equity capital and finance for businesses in the UK (startups, infrastructure and private equity, as well as longer-term investments, typically in illiquid assets – termed 'productive finance').

The call for evidence covers increasing investments in productive assets, building surplus, the benefits and drawbacks of a public consolidator, and the Pension Protection Fund (PPF) acting as a public consolidator.

Superfunds

The Government's response to a DWP consultation on the consolidation of DB schemes states that the vast majority of respondents were supportive of the proposals and keen to see Superfunds up, running and regulated in the UK.

The Government believes that Superfunds are likely to invest more productively than many closed DB schemes, benefiting from the scale achieved through consolidation, the additional support delivered by the entry price paid by the employer, and a significant capital buffer provided by the investors.

Superfunds will be authorised and supervised by the Pensions Regulator (TPR) – with the interim regulatory regime reviewed and a permanent regime established.

Further background on the issues and proposals is provided in the call for evidence (see the Helpful Links, below).

DC and CDC

Other publications issued after the Mansion House speech concerned:

- Collective Defined Contribution (CDC)
- Value for Money (VfM)
- Helping DC savers with pension choices
- Deferred small pension pots.

These topics are covered in the DC update section.

What happens next?

As mentioned above, the deadline for responses to the consultations and calls for evidence was 5 September. The Government response is expected to be announced in the Autumn Statement on 22 November. Before then, there is also the King's Speech on 7 November. Will a new Pensions Bill be mentioned? Watch this space!

Helpful Links

Pension trustee skills, capability and culture: a call for evidence - GOV.UK (www.gov.uk)

Options for Defined Benefit schemes: a call for evidence - GOV.UK (www.gov.uk)

Defined benefit pension scheme consolidation - GOV.UK (www.gov.uk)

2 Pensions Dashboard update – new connection deadline

New 'dashboard connection' deadline

New Regulations have been laid which make amendments to the Pensions Dashboards Regulations 2022. They introduce a single "connection deadline" of **31 October 2026** for relevant pension schemes to connect to pensions dashboards, and remove the staging profile, staging deadlines, connection windows and the concept of 'early' connection.

Since the 2022 Regulations came into force on 12 December 2022, the Pensions Dashboards Programme has confirmed that the digital architecture will not be ready to facilitate the connection of pension schemes in time for the first connection deadline in the staging profile which was 31 August 2023.

The Minister for Pensions subsequently issued a Written Ministerial Statement in March 2023, which announced the delay and set out that the Pensions Dashboards Programme would be reset to get it onto a path for successful delivery, and the Department for Work and Pensions would legislate at the earliest possible opportunity to provide certainty to schemes.

The 2023 regulations use powers in the Pensions Act 2004 to amend the 2022 Regulations to deliver a single connection deadline of 31 October 2026 for all schemes in scope. This date has been informed by the ongoing work of the reset team to develop a new timeline for delivery.

Furthermore, the provision requiring trustees and managers of relevant pension schemes to have regard to guidance on connection has been expanded to also allow the Department for Work and Pensions to issue such guidance, solely, or alongside The Pensions Regulator and/or the Money and Pensions Service. This guidance will support schemes with the connection process.

The 2023 regulations retain time for testing of the service ahead of dashboards being launched to the public and curtails the period of uncertainty for trustees and managers of schemes in scope. To ensure pensions dashboards services can be launched to the public as soon as possible, the Money and Pensions Service and The Pensions Regulator will communicate with trustees and mangers of schemes in scope to encourage connection ahead of the single connection deadline, in line with the connection dates set out in guidance.

Guidance from the Pensions Regulator for trustees on preparing to connect to dashboards has been updated.

Helpful Links

The Pensions Dashboards (Amendment) Regulations 2023 (legislation.gov.uk)

Preparing to connect: checklist | The Pensions Regulator

3 Money and Pensions Service (MaPS) Review into Pension Scams

Summary

In June, the Money and Pensions Service (MaPS) published a Report based on the findings of its evidence review into various aspects of pension scams. The context of this Report is an increasing prevalence of pension scams being reported across the industry.

The Report introduces a definition of pension scams and provides evidence on the prevalence of scams, as well as the impact on those members affected and the UK as a whole. The Report also covers an overview of the types of scams and tactics adopted by scammers, while outlining the associated trends.

The Report recommends a number of actionable, evidence-based strategies and interventions that MaPS and other stakeholders can adopt to lower the risks of scams and better support those affected. These recommendations are based on industry observations of what we know about who is most likely to be targeted by scams.

The Report is founded on input from ten professionals working for pension providers and MaPS helplines, as well as dialogue with Government and Pensions Regulator teams. Crucially, the Report also had contributions from six individuals who had been personally impacted by scams. The following conclusions were made and expanded on in the Report:

- Evidence on the true scale of pension scams is limited.
- The financial and emotional costs of pension scams is high.
- Scammers adapt their techniques to the context.
- Scam tactics are subtle and seamless.
- Scams can happen to anyone.

The recommendations made by the Report aim to meet three main Objectives which, combined with existing approaches, can further combat pension scams. The Objectives laid out are:

- Preventing Scams.
- Encouraging those affected to seek support.
- Lower the risk of being affected by a pension scam more than once.

Of the twelve solutions proposed, a number include involving the relevant pension savers' social network. Under Objective 1 a recommendation is made to involve the pension savers' family and trusted friends to challenge their decision, either when the transfer request is made or when the individual comes closer to retirement age. Objective 2 and Objective 3 also recommend that the same network are encouraged to help refer the victims for support after a scam has occurred, and/or to help stop that individual becoming a "super target" (i.e. once an individual has been targeted by scammers once, there is a significant risk of re-targeting).

Other proposals include creating "teachable moments" through "spoof campaigns", considering the introduction of government-backed independent advice and reducing the stigma against scam victims.

Comments

The financial and emotional impact of pension scams is severe on those who fall victim to the scammers. Over the course of a person's lifetime, accrued pension savings are likely to represent their most valuable asset after the value of their home. The loss of that asset at the hands of "subtle and seamless" scammers can, to say the least, cause substantial financial difficulties.

Victims are likely to suffer a substantial loss of self-confidence, having possibly confided in a pension scammer over an extended period of time. Moreover, victims of scams often suffer severe mental health difficulties, and even marriage issues, as a result of the stress and anguish of possibly facing a retirement without their hard-earned pension.

Welcome steps have been taken in the industry to combat pension scams before they occur, such as the roll-out of new transfer value regulations. The Report's recommendations, whilst helpful in themselves, should form part of a package of actions to be put into practice by transferring schemes, to help reduce the occurrence of scams in the future. The requirement for proof of an employment link for certain occupation pension schemes is a particularly effective measure, and one that would have helped prevent many scams from happening in the first place.

It should be fully recognised that scammers have and will continue to adapt their techniques. As the Report states, pension administrators and trustees will be on the frontline in recognising new approaches taken by these criminals.

Scammers took advantage of the 2008 financial crash as well as the pension flexibility legislation in order to sell pension liberation scams to members of the public. The incoming increase to the minimal retirement age presents scammers with another opportunity to introduce fresh liberation scams to the public. So, trustees and administrators must continue to remain vigilant and review their processes in order to protect their members from falling victim to the crooks in the future.

4 DC Update

Our latest DC update covers the defined contribution (DC) centric aspects of the 'Mansion House reforms'. For further information on these reforms, along with details on the defined benefit (DB) issues, see the Mansion House reforms article.

Extending opportunities for collective defined contribution (CDC) pension schemes

Following the Chancellor's speech at Mansion House, the government issued a consultation response on how to extend the existing single-employer CDC regime to whole-life multi-employer schemes in the trust sector.

Through investment and longevity pooling, CDC has the potential to improve pensions adequacy for savers whose employers are unable to set up a standalone scheme. The proposed regime will reflect that already in place for single-employer schemes (e.g. Royal Mail Pension Scheme). Also, like the regime for DC master trusts, it sets a high bar for areas of authorisation including financial sustainability and management, and clear member and employer communications. However, certain flexibilities, for instance around start-up funding and transfer options during wind-up, will be included to avoid stifling an emerging market.

The consultation response covers other considerations too, including transfers, CDC charge cap and other charge control measures, scams, subsisting rights provisions, disclosure and publication requirements. A whole chapter is devoted to decumulation-only arrangements.

The government continue to believe that CDC will have an integral role in the future of pensions in this country and want to ensure as many savers as possible can take advantage of the benefits of CDC. The wider economy can also benefit from CDC by combining investment and longevity risk which allows trustees to remain invested in growth seeking assets such as public and private equities for longer, without a sudden need to divest to generate cash for retirement income. This can lead to greater investment in vital UK infrastructure and technologies of the future such as renewable energy in a way which is sustainable.

They therefore intend to consult on draft regulations to extend CDC provision to whole-life multi-employer schemes including Master Trusts in the Autumn of this year.

Also, the government are committed to moving forward with creating provision for CDC decumulation only products. Their view is that pension schemes should provide a solution, or set of solutions, that aims to deliver what the member wants to achieve from their later life income.

It is recognised that CDC decumulation could help provide members of traditional individual DC schemes with the option to turn their pension pot into an income in a more cost-effective way and which, on average, should provide a better outcome.

Value for Money(VFM): A framework on metrics, standards, and disclosures

The DWP has published its response to a consultation earlier this year on plans to establish a framework to compare the value DC default schemes offer, based on investment performance, costs and charges, and service.

Under the proposals, schemes would have to disclose standardised metrics to a central regulatory database. Where a scheme is assessed as poor value against peers, it will have a defined timeline to improve.

The Pensions Regulator will have new powers to enforce wind up and consolidation if it does not. Notably, there is increased emphasis on the ability of the VFM framework to increase scheme investments in illiquid and private market assets.

The consultation response highlights the key matters raised by the formal consultation responses and stakeholder engagement. It is a joint response by the DWP, TPR and the FCA and encompasses.

In more detail, the overall aim of the VFM framework is to drive improvements in the value DC pension schemes provide to savers to ensure they receive better retirement outcomes. Many schemes already conduct VFM assessments, and the government want to further build on that.

At present, there is not a consistent approach to measuring VFM, impacting a scheme's ability to compare its performance relative to others on the market. Costs continue to dominate decision-making and there is limited transparency on the performance of pension products throughout savers' pension journeys.

So, the VFM framework has been developed to support a consistent and more objective process for assessing VFM across DC schemes. It aims to provide a transparent, standardised way for schemes to holistically assess and evidence VFM outcomes and the actions they are taking to improve the value they provide to savers. Three components of the framework will cover: investment performance, costs and charges and quality of services. Their associated published metrics will enable comparisons as part of a scheme's VFM assessment. The response document includes an illustrative list of data points that may be required to be disclosed.

The framework aims to shift the focus from costs to value by requiring consideration of factors critical to longer term saver outcomes, including investment performance. This is considered important as too great a focus on lower-costs can preclude consideration of opportunities to invest in a broader range of investment opportunities (including, listed and unlisted asset classes), for diversification and better risk-adjusted returns over the longer term. Driving a long-term focus on VFM across the pension sector could encourage schemes to invest more in productive assets, with the potential for higher returns for savers and boosting economic growth, a key priority for this government.

Also, the VFM proposals have been designed to support and accelerate the consolidation of underperforming and poorly run schemes in the UK pension sector with better run schemes. It is acknowledged that consolidation can help improve governance standards and scheme efficiencies and provide greater investment opportunities resulting from economies of scale that have the potential to deliver better outcomes.

The government will implement the VFM framework in phases and will continue to work with industry to ensure that schemes, providers, and employers are as prepared as possible. The framework will require primary legislation and the intention is to consult on draft regulations and FCA rules for the detailed requirements.

Helping savers with pension choices

Two documents have been issued in connection with this consultation on a policy framework.

Helping savers understand their pension choices

Understanding the views of both pension savers and providers is key to DWP's assessment of what support may be needed by members of trust-based pension schemes to allow them to make informed decisions about their pension savings and ultimately achieve their desired outcomes. The questions posed in this call for evidence aim to gather insight into the perspective of both of these groups.

In addition, the government will also be seeking further direct engagement with members. This will give more insight into their views on what support they need to help make informed decisions and achieve their desired pension outcomes. Government will consider this alongside the formal responses to this call for evidence, as they develop policy thinking.

DWP will publish a response to this call for evidence, in which they will outline the direction that they will be taking.

Supporting savers at point of access

The intention is to place a duty on trustees to offer decumulation services, which are suitable for their members and consistent with pension freedoms. Trustees must establish a service offering that meets the generality of their members. At decumulation members will have the option to either choose this default service offered by the scheme or access the products and services available under the pension freedoms if they choose to opt for these instead.

As part of these duties, trustees would either need to offer these services inhouse, or partner with another supplier who could provide these services.

It is accepted that an in-house offer of products and services may not be the optimal outcome for every member. However, government believe the work they are exploring on communications, which they will set out later this year, and the potential for pensions in decumulation to be included in the Value for Money framework in the future, will enable savers to better understand the value to them of different services and products available in the decumulation market. While the framework data is for providers to assess and improve the VFM that they offer, savers will be able to compare VFM assessments.

The government view is that, in the case of decumulation, the pension scheme must provide a solution, or set of solutions, that aims to deliver what the member wants to achieve from their later life income. This will ensure every member of an occupational pension scheme has access to a decumulation solution should they not want to make the often complex decisions, such as investment strategies or levels of sustainable drawdown, when accessing, whilst retaining the freedom to use their pension pot as they wish.

The intention is to introduce duties on trustees to consider the needs of their members when they want to access their pension pot and develop ways to deliver those needs.

Although government intend to legislate, when parliamentary time allows, they see value in individuals being offered the type of support outlined in Chapter 2 of the consultation sooner rather than later. So, government intend to work with TPR to issue guidance to show how the objectives of these policies can be met without legislation being in place.

'Small pots'

The government has issued a response to the call for evidence and a further consultation on addressing the challenge of deferred small pension pots.

The response document sets out a summary of feedback received to the January 2023 call for evidence on addressing the challenge of deferred small pension pots and includes the response to the call for evidence and a further consultation on the proposed automated consolidation solution to address the growth of deferred small pots. The call for evidence focused on two large-scale automated consolidation solutions—a 'default consolidator' model and a 'pot follows member' model—while recognising the potential positive impact of other actions, including member exchange and enabling greater member engagement.

The government has now concluded that the multiple default consolidator model is the optimum approach to addressing the deferred small pots challenge and has the potential to provide greater net benefits to members, ensuring that members' eligible deferred pots are consolidated into one scheme. While recognising that this approach will not eliminate the future flow of deferred small pots, the DWP believes that this approach will result in a significant reduction in the current stock of deferred small pots, while also enabling the consolidation of future deferred small pots created.

Consequently, the further consultation document sets out the DWP's proposed framework for the multiple default consolidator model, which will ensure that a member's deferred small pots are brought together into one pot and enable a small number of authorised schemes to act as consolidators for deferred small pots. The government's key aim when designing the framework to support the default consolidator approach is to maximise the number of members who can benefit from the consolidation of their deferred small pots while minimising the administrative burden on pension schemes.

The DWP intends to continue its collaboration with industry as it further develops this framework, looking to work with interested parties to develop a viable and cost-effective automatic consolidation transfer process for sending and receiving schemes. The DWP is keen to build member choice into this approach where possible, to support engaged members to make active decisions about their retirement savings. Therefore, as part of the multiple consolidator approach, the DWP proposes that members will be given the option to choose their designated consolidator, alongside the option to opt out of consolidation if they believe that it is not in their best interest.

The DWP will look to take forward primary legislation to implement a statutory framework for the multiple default consolidator model as soon as parliamentary time allows, with further detail underpinning this to be covered in secondary legislation, which will be subject to formal consultation.

In the interim, the government will look to form a delivery group to ensure that the outstanding design questions are tackled and ultimately an automated default consolidator system is implemented that is cost effective and successfully delivers its objective of ensuring members achieve greater value for money from their pensions.

Longer-term, a simpler system of workplace pension saving could emerge to deal with the fundamental issue that new pension pots are created each time someone starts a new job, e.g. a lifetime provider model with each saver stapled to a 'pot for life', which may go further to solving this for existing and future pots.

Helpful Links

Extending opportunities for collective defined contribution pension schemes - GOV.UK (www.gov.uk)

Value for Money: A framework on metrics, standards, and disclosures - GOV.UK (www.gov.uk)

Helping savers understand their pension choices - GOV.UK (www.gov.uk)

Helping savers understand their pension choices: supporting individuals at the point of access - GOV.UK (www.gov.uk)

Addressing the challenge of deferred small pots - GOV.UK (www.gov.uk)

Ending the proliferation of deferred small pension pots - GOV.UK (www.gov.uk)

5 Case Law Round-Up

BBC loses application to limit future benefits of £20bn pension plan

In this case - British Broadcasting Association v (1) BBC Pension Trust Limited (2) Christina Burns - the High Court ruled, on 28 July, that the British Broadcasting Corporation cannot modify its £19.8bn pension scheme to cut future benefits for members of the plan. The Corporation can, however, make other valid changes without employee consent.

This landmark decision is now only the second case (after Lloyds Bank Pension Trust Corporation v Lloyds Bank plc [1996] PLR 263) in which a domestic court has found that a fetter on a pension scheme's amendment power protects future service benefits. The provision in question provided that no alteration or modification shall take effect as regards active members "whose interests are certified by the Actuary to be affected thereby".

Stop Press: The BBC has now initiated an appeal against this ruling. Its request for permission to appeal has been granted, and the decision will be reviewed by a panel of three judges in the Court of Appeal. The BBC has announced that there will be no reduction in existing pension benefits and no changes until at least the second half of 2024.

Decision of Court of Session on distribution of surplus after buy-out

In this case - Petition of abrdn (SLSPS) Pension Trustee Company Limited - a petition for directions from the Court of Session in Scotland, the court had to consider the application of surplus on the winding-up of a defined benefit pension scheme. Although a decision of a Scottish court, the principles would be equally applicable to English law and the case is a helpful illustration of how surplus should be distributed following a buy out of pension liabilities.

The Court was asked 3 questions:

- whether the trustee's agreement to the proposed use of the surplus was in accordance with the current scheme rules and its fiduciary duties;
- whether the remaining assets were the subject of a resulting trust as a matter of law; and
- if so, whether the resulting trust operated in favour of the employers participating in the scheme immediately before the date when no members remained in pensionable service under the scheme, and whether the resulting trust operated as a matter of law only when the buy-out transactions had been completed, sufficient provision had been made for any remaining liabilities, and sufficient provision had been made for the expenses of completing the winding-up of the scheme.

The decision of the Court of Session, Inner House, on those questions was as follows.

- The trustee was entitled to enter into the proposed application of surplus for the benefit of the members following the buy-in and buy-out stages of the process. Although there was no express power to enter into a buy-in, that fell within the scope of the trustee's duty to hold and administer the fund; and entry into the buy-out stage was permitted by rules of the scheme which permitted, on a winding-up of the scheme, the securing of benefits by the purchase of individual policies or annuity bonds. The Court noted the limited extent to which it could review the exercise of the trustee's discretion.
- A resulting trust did arise. The purpose of the trust had been fulfilled, leaving a surplus of funds in the hands of the trustee which was not required for the trust purposes.
- The resulting trust operated only in favour of the participating employers immediately before the date when no members remained in pensionable service under the scheme. Also, no formerly participating employer, whose participation had terminated, retained any entitlement to share in the surplus and that no resulting trust operated in favour of those members who made contributions to the fund. Finally, the Court agreed that a surplus could not be said to have emerged until all of the scheme benefits had been secured by the issue of the individual contracts to members as part of the buy-out, and any other liabilities and the costs of the winding up had been met or provided for.

Virgin Media case appealed

We reported on this case in our last Quarterly Update. It has now been confirmed that leave to appeal has been granted. The case, concerning alterations to 'section 9(2B) rights' where actuarial confirmation was required but not obtained, could have significant consequences for defined benefit schemes that contracted out of the state pension between 6 April 1997 and 5 April 2016 (after which schemes can no longer contract out).

Permission to appeal the case has been granted. Depending on the circumstances and activities of their schemes (e.g. whether they are in the process of buying-out benefit), trustees and sponsoring employers may wish to await the outcome of this appeal before taking further action in response to the first instance decision. The appeal may be heard by the end of the year. There is also the possibility amending regulations as a result of an industry-wide initiative requesting that the Department for Work and Pensions make retrospective regulations under the Pension Schemes Act 1993. A DWP response to this request is awaited.

Helpful Links
High Court Judgment Template (bailii.org)
2023csih31.pdf (scotcourts.gov.uk)

6 Pensions Ombudsman Decisions

Factsheet on provision of incorrect information

Incorrect information can take many forms, including:

- An incorrect benefit statement
- An incorrect retirement quotation
- Incorrect information about joining, leaving or becoming entitled to benefits under a scheme.

A failure to provide information within a set time can also result in a maladministration claim.

The common thread is that information provided is either late, not supplied at all or contains some detail that is wrong.

The provision of incorrect information often leads to a dispute which, if not resolved to a member's satisfaction, can escalate into a complaint to the Pensions Ombudsman.

As such complaints about this are common for TPO to deal with, a factsheet on the topic has been issued covering the following:

What should happen if incorrect information is received?
Receiving incorrect information does not mean that a scheme must honour that information. Entitlement to benefits from a scheme is set out in the scheme rules and, generally, a member will only be entitled to the benefits set out in the rules. This should be the case even if this would be lower than the incorrect information provided. One exception to this could be where a member made, in good faith, a decision based on the incorrect information that resulted in a financial loss.

What should be done to raise a complaint?
The matter must be first be raised with the scheme trustees for them to consider the relevant facts and circumstances as outlined in the Factsheet 'Complaining to the party/parties at fault'. Should a member be unhappy with the response then it is possible for them to make a complaint to TPO.

What will TPO do?
TPO will consider each application on a case-by-case basis. This analysis will help establish if the information was incorrect, if it was reasonable for the member to rely on the information and whether any financial injustice (loss) was suffered as a result. One example provided is where a member reasonably chose to retire early or reduce their working hours based on incorrect information received. There are further examples in the factsheet.

What could TPO decide?
If a member reasonably relied on incorrect information and suffered a financial loss because of it, TPO can direct that the scheme takes action to make good the loss or makes a commitment to pay the higher level of incorrect benefits. TPO can also choose to set an amount to recognise any distress and inconvenience that may have been suffered as outlined in the Factsheet on 'Redress for non-financial injustice'.

Not reasonable for member to rely on incorrect lifetime allowance (LTA) information

The Facts
Mr N was a member of the UBS (UK) Pension and Life Assurance Scheme. He had Individual Protection under Finance Act 2004, which meant his LTA was £1.25 million. In addition to benefits under the Scheme, he has pensions with other schemes too (including guaranteed minimum pension).

In August 2018, the Scheme administrator gave Mr N a retirement quotation for taking a pension or taking tax-free cash with a reduced pension. The administrator stated both options would use 85.10% of Mr N's LTA. This was incorrect as the lump sum option would have meant a higher percentage of 98.29%.

The member, with assistance from his financial adviser, chose the lump sum with reduced pension option. In January 2019, the administrator acknowledged receipt of Mr N's option choice and informed him that this would use up 98.29% of his LTA (i.e. correcting the previous oversight). Mr N queried this figure, but the lump sum was still paid despite a request not to progress settlement while the difference in the figures was investigated.

Mr N complained to the Ombudsman, contending that he would suffer adverse tax consequences due to the incorrect information provided in 2018 upon which he based his retirement options. In particular he complained that he could not now take his benefits in the most tax efficient way (noting that his GMP pension could not be used to pay any LTA charge).

Decision
The Ombudsman partially upheld the complaint. Moreover, the Ombudsman found against Mr N on the incorrect LTA usage issue.

Incorrect information had been provided but, before the complaint could be upheld, it also had to be reasonable for the member to rely on that information. The formula ascertaining LTA usage was available and the 2018 quotation contained all the requisite information to carry out a calculation. Mr N, together with his adviser, could have identified that the LTA used by the lump sum option was much higher than the 85.10% that had been stated. So, it was not reasonable for Mr N to rely on the incorrect information when making a decision about his retirement options.

Mr N had though suffered significant distress and inconvenience for which he was awarded £500 compensation.

The determination is a reminder that it must be reasonable to rely on incorrect information in order to succeed in a negligent mis-statement case.

Member failed to show financial detriment after receiving incorrect statement

The facts
Mr D, a member of the Stantec Pension Plan, received various incorrect benefit statements that overstated his retirement benefits (mainly due to the wrong definition of final pensionable salary being used in calculations). The error was eventually spotted and Mr D informed. He then complained to the Pensions Ombudsman, contending that the Scheme should honour the previous overstated, but incorrect, benefit statements.

The Ombudsman's decision
The Pensions Ombudsman rejected the complaint holding that –

- The Scheme could only pay benefits in accordance with its Rules.
- Mr D's benefits were now being correctly calculated.
- In an incorrect statement case, the Pensions Ombudsman's role was not to put the member in the position as if the incorrect statement was correct.
- Redress could, however, be provided by way of estoppel or negligent misstatement provided that the member acted, reasonably, to his financial detriment in reliance on the statement.
- In this case, Mr D was not entitled to either remedy as he had not provided evidence that he had relied to his financial detriment on the incorrect statements.

This determination is another reminder that, even if a member can prove that he relied on the statements, he must also produce evidence that he has reasonably acted to his financial detriment in reliance on the statements.

Helpful Links

Common topics factsheet - Incorrect information.pdf (pensions-ombudsman.org.uk)

UBS (UK) Pension and Life Assurance Scheme (CAS-52923-Q2C8) | The Pensions Ombudsman (pensions-ombudsman.org.uk)

Stantec Pension Plan (UK) (CAS-52752-B9K8) | The Pensions Ombudsman (pensions-ombudsman.org.uk)

7 Finance (No.2) Act 2023 – Changes To Lifetime Allowance (LTA)

Lifetime Allowance (LTA) Changes

Some of us remember when the LTA first came along. It was born as part of the "pension simplification" measures in 2006, introduced by the then government to create a single tax regime for pensions.

The LTA was defined as the maximum amount a person could save into pensions over their lifetime without incurring a tax charge. The original figure was £1.5 million which increased, at its peak, to £1.8m in the 2010/11 tax year. However, since that time, it gradually reduced to its present figure of £1,073,000. This meant that those with savings above this threshold, who did not have any 'LTA protections', suffered a tax charge of up to 55%.

When the LTA was introduced – and each time it was reduced – protection was brought in for savers who had built up significant pension savings that were likely to be greater than the LTA, affording those savers a higher level of tax relievable pension savings. These protections included Primary Protection, Enhanced Protection, Fixed Protection and Individual Protection. Each protection had its own rules and conditions.

As part of the Finance (No.2) Act 2023, the law was changed to stop people becoming liable for a LTA charge from 6 April 2023 onwards. The government is now consulting to change the law further, so that, with effect from 6 April 2024, the LTA will cease to exist altogether. This means that a pension saver who has funds greater than their LTA can be paid a lifetime allowance excess lump sum without incurring additional tax charges.

In place of the LTA, all tax-free lump sums will instead be measured against a pension saver's "lump sum and death benefit allowance", which is a lifetime limit that will be set at the current LTA figure of £1,073,000. Pensioners will be taxed at the appropriate marginal rate of income tax in respect of any amount over that limit.

This simplification is welcome. However, the proposal presents challenges not only for the saver but the trustees of pension schemes and their administrators.

- The change affects other benefits which were previously outside the tax net. Included in the "lump sum and death benefit allowance" will be a tax-free limit, known as the "lump sum allowance", which will initially be £268,275 (or any higher protection amount that may be applicable). Benefits that will be measured against that lump sum allowance include:
  - Pension commencement lump sums
  - Serious Ill Health Lump sums
  - Uncrystallised funds pension lump sums
  - Trivial commutation lump sums
  - Winding up lump sums

  It is important to note that the intention of the proposed change is that the taxation of pension income will be within existing income tax structure for pension income. For example, Part 9 of the Income tax (Earnings and Pensions) Act 2003 (ITEPA) taxes the trivial commutation lump sum death benefit as pension income.
- For trustees, the challenge is how to communicate and explain this significant change to members, as the removal of the LTA still leaves levels of complexity in the taxation of pension savings. Trustees and their administrators are already working through the complexity of GMP Equalisation and the many other ongoing projects, so these LTA changes will add further complication to the administration lifecycle.
- Trustees and administrators are spending significant resources to update systems to cope with the pensions dashboard project. They will now be required to add these prospective LTA changes to their dashboard planning and implementation.
- The government proposals seem to change fundamentally the way pension schemes can pay out benefits to members, so there is a risk that trustees will not have sufficient time to understand and consider the policy proposals, and then to implement same into their scheme's administration processes.

On 18 July 2023 the government released the draft legislation for these changes, alongside a consultation requesting feedback from the industry (which closed on 12 September 2023). The hope is that responses to the consultation will enable the government to achieve a final version of the legislation that is fit for purpose and serves the interests of pension scheme members.

8 Investment update

As was referenced last quarter, the economic road to recovery looks to have a number of bumps to it, with asset classes across the board experiencing a difficult quarter.

Following a positive first half of the year, developed market equities fell over the period in local currency terms. However, in sterling terms returns would have been marginally positive. Whilst year-to-date returns remain, on the face of it positive, the quarter delivered a reality check to investors.

At the same time global bond markets sold off, following less than positive messaging from central banks and concerns over global markets.

With both stocks and bonds suffering, commodities rebounded from a sluggish first half of the year, this pattern of returns reminiscent of market experience during 2022.

Whilst inflation control measures appeared to have had some impact on controlling inflationary increases, inflation remains stubbornly high and the likelihood of any reduction in rates appears some way off as the "higher for longer" mantra appears to be the rhetoric from central banks.

Global markets

Following a period of positive returns developed market equities fell over the period, although due to the weakness of sterling, the unhedged UK investor would have seen a positive return.

Japan continued to the strongest regional performer on the back of sustained weakness in the Yen. Local currency returns were negative in all other developed market regions, whilst emerging markets continued their trend of lagging, particularly impacted by concerns over the Chinese real estate sector.

In global fixed income markets, government bond returns were negative across all developed regions, as yields rose. The performance of UK gilts remained negative, although only marginally so over the period.

Commodities (driven by oil price increases) delivered a positive return, reversing the recent trend.

UK

UK equities rose over the quarter despite continued recessionary concerns.

Efforts by the Bank of England appeared to have some effect with the published inflation rate for August falling over the period. The Bank left rates unchanged in September at 5.25%, halting 14 previous rate hikes since 2021, although the Bank suggested inflation control measures could well be bought back into play.

Over the quarter gilt yields had been volatile but moderated to some degree ending the quarter only marginally up.

US

Following a rebound in Q2, US equities fell in Q3. Q2 optimism was driven by an expectation of the US Federal Reserve (Fed) lowering rates. However, on the back of noises from the Fed, that its focus remains on controlling inflation (which whilst on a downward trend remains high), the hopes of imminent interest rate cuts were dashed.

Indeed suggestions were made of a further rate hike before the end of the year, damping the likelihood of a proverbial soft landing being achieved in the near term.

Euro

Eurozone shares fell in Q3 amid continued concerns over the effects of interest rate rises on economic growth. The four largest Eurozone countries all flirting with recession over the period.

The ECB again raised rates by 0.25% to 4% in September and whilst suggesting on the back of growth concerns that further rises may be limited, the likelihood of elevated rates remaining in force for a longer period remains high. Such measures appear to have had some effect with inflation falling to 4.3% in September.

Japan

Japan was the best performing equity market over the quarter. The region continued to benefit from a weak Yen, as a result of relatively low interest rates in Japan compared to other countries. However the suggestion from the Bank of Japan that we might shortly see the end of negative interest rates impacted performance to some degree.

Ongoing political tensions between China and Japan remain, impacting future growth prospects.

Asia (ex Japan)

Asia (ex Japan) equities recorded negative returns during the third quarter. Most regions ended the quarter down, as fears over global economic growth impacted performance. Hong Kong, Taiwan, and South Korea were the largest detractors whilst India achieved a modest upside.

Weak demand for exports following interest rate rises in the US and Europe dampened returns.

Emerging markets

EM equities generally lagged developed markets. Chinese stocks experienced declines in August with concerns over Beijing's ability to deliver growth.

Issues surrounding Chinese real estate again raised their heads in September, leading to further investor concerns over debt issues impacting Chinese property companies and stocks fell.

Concerns that the US will keep interest rates higher for longer had a negative impact on growth in the region.

Fixed Income

Within fixed income, credit assets delivered further muted returns. Corporate bonds outperformed government bonds, with credit spreads narrowing suggesting reduced fears of a sustained recession.

Yields appeared to have peaked in September before slightly falling back by the end of the quarter.

Whilst both the Fed and ECB raised rates in July and the ECB again doing so in September, prior raises and slowing inflation allowed the BoE to keep rates unchanged in September. This helped UK gilts outperform other markets, although still delivering a negative return.

Note: Returns in local currency unless otherwise stated.

9 Coming Up Next

This writer is always taken aback when it comes to sitting down and drafting this particular article. Firstly, it never feels like three months have passed by. Perhaps that feeling of time passing quicker is testament to our modern, busy lives. Or perhaps it speaks more to the aging of this writer, or both! Yet what is more disconcerting is exactly how much can change in those three ever-shorter months.

It does feel like for the past number of years, each quarter has brought its own financial drama, its own moment of political shift, its own record-breaking event, or indeed, its own international crisis. These are fast-moving times in which we live. Recent events in the Middle East serve to show us, in the most chastening way, that we simply cannot fully predict nor prepare for the curve balls that the future might throw at us.

Yet, I remind myself that this Coming Up Next article – and indeed this entire report – does not aim to predict with accuracy. It does not profess to prophesise what will happen in our industry over the coming months, quarters, years, to the nth degree. Its purpose is to offer a degree of foresight. To encourage a level of general readiness, that will stand us in good stead to deal with those curve balls when they do swerve on to our trajectory.

"Foresight does not seek to predict, but to drive imagination to inform decision-making and the actions required today in light of the potential futures ahead.
Foresight prepares you for the swerves."

I was drawn to the above quote from Roger Spitz, who is a best-selling author and "futurist", who advises on what is referred to as "anticipatory leadership" and decision-making in unpredictable situations, to some of the leading financial institutions. These words sum up exactly what I feel this article and this report are meant to do. To prompt thought, preparedness and imagination. To better enable us to make calm, thoughtful, professional decisions when the unforeseen moments occur.

So, to that end, we offer up a brief summary of those future events that we have some degree of foresight about, which will stand us in good stead for those unforeseen events that will inevitably come our way in the coming weeks, months and years.

TPR's General Code of Practice

- This is the quarter. It has to be. It will be. I prom---.
- Well, I can't promise – given all that we discussed above! – but all signs suggest that the General Code is to be laid before Parliament imminently and will be in force 40 days thereafter.
- We have had some explanation for the delay to the General Code, which does give us some confidence that it will now proceed. The DWP Deputy Director explained recently that the delay was to ensure that the release of the General Code did not conflict with the Mansion House Reforms. As the latter has been set loose, we are confident the former will be released too!
- Trustees should have been preparing for the General Code (previously the Single Code) for some time but, if not, now is definitely the time to review the requirements and get an effective system of governance (ESOG) in place. Preparations for an initial own-risk assessment (ORA) should also be underway, as this will need to be completed within a year of the General Code coming into force.

New DB Scheme Funding Regulations

- While being very conscious of the delays we saw to the General Code, we do expect to see the final legislative drafts for the DB funding code of practice to be before Parliament before the season is out. However, the application will be 'tweaked'.
- More latitude for open schemes is expected and the requirements, originally expective to apply for schemes with valuations effective dates from April 2024, will now come into force in 'summer 2024'.
- Trustees and their actuarial advisers should make sure they are prepared for the changes outlined in the draft legislation and consultations, so that they can hit the ground running when the Code comes into effect.

New Pensions Bill?

- November will bring us the King's Speech (it still feels strange to write that) and the Chancellor's Autumn Statement. It is expected that a new Pensions Bill will be announced and Mr Hunt will set out the government's plans and next steps on his Mansion House reforms.

Building on those selected topics, here are some key dates to keep in your diary as we tear through 2023:

- **1 October 2023** – New 'AS TM1' assumptions for money-purchase illustrations.
- **1 October 2023** – Requirement to disclose and explain policies on illiquid investments in the first default SIP published after this date came into force. The first Chair Statement after 1 October 2023 must also include details of the asset class allocation for default arrangements.
- **30 October 2023** – Closing date for responses to the PPF's consultation on the levy rules for 2024/25.
- **October 2023** – General Code laid before Parliament.
- **November 2023** – The government's response to the Work and Pensions Committee inquiry into DB schemes with LDI investments is expected.
- **Autumn 2023** – the new DB scheme funding regulations should be available with new requirements coming into force for schemes with valuation effective dates from summer 2024.
- **Autumn/Winter 2023** – revisions to scheme and employer-related events notifiable events, we well as the introduction of new declarations of intent.
- **Autumn/Winter 2023** – Royal assent for the Data Protection Bill is expected, which will replace the EU's data protection laws following Brexit.
- **6 April 2024** – the Lifetime Allowance will be abolished.
- **Summer 2024** – Requirement for schemes, with more than 100 members, to undertake their first Own Risk Assessment (ORA) and publish it by April 2025.

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