ARE YOU READY FOR PENSIONS IN 2022?

KEY PENSIONS DEVELOPMENTS IN 2022 AND 2022 IN PENSIONS DATE PLANNER

DECEMBER 2021

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ARE YOU READY FOR PENSIONS IN 2022?

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The coming year promises to bring a host of new opportunities and challenges in the world of pensions. So many consultations, legislative changes and updated pieces of guidance, make it difficult to keep up. This Insight clarifies next year's range of developments by grouping them into seven themes.

We also set out a month by month year planner of key dates to help trustees, sponsors and pension professionals stay ahead of developments in 2022 (click here to go straight to the key date planner).

WHAT ARE THE KEY PENSION DEVELOPMENTS IN 2022?

1 EXTENDING TPR'S POWERS AND A SINGLE CODE TO GUIDE THEM ALL

1 October 2021 saw a material extension in The Pension Regulator's (TPR) powers when key provisions of The Pension Schemes Act 2021 came into force (click here for our Insight 'Pensions law is changing on 1 October 2021 - Are you ready? (29 September 2021)'). In the coming year, TPR will:

- gain additional powers (with an extension to its notifiable events regime to cover certain corporate transactions expected to come into force on 6 April 2022);
- complete its criminal sanctions and enforcement policies by issuing the final versions of policies covering:
  - what TPR will do if there are overlapping enforcement powers available to it;
  - the levying of 'high fines' (i.e. financial penalties of up to £1 million); and
  - the use of its broadened information gathering powers; and
- lay the final version of its single code of practice before Parliament (this is expected to happen in Spring 2022 with the code going into force in Summer 2022). The single code of practice will bring together 10 out of 15 of TPR's existing codes of practice (with the remaining five expected to be incorporated into the single code of practice in due course).

Of these, the extension of the notifiable events regime will be of greatest concern to scheme sponsors (click here for our Insight 'Will your corporate activity be captured by new pensions notification requirements (23 September 2021)'). Trustees are likely to be watching out for what is in the final version of TPR's single code of practice.

Click here for more detail on changes to TPR powers in 2022 and the single code of practice.

2 A NEW APPROACH TO FUNDING DEFINED BENEFIT SCHEMES TAKES FINAL SHAPE

In 2021, the DWP and TPR were expected to publish final regulations and guidance respectively on a new approach to funding defined benefit schemes. The Pension Schemes Act 2021 sets out the legal framework permitting a new scheme funding regime. The detail for the new regime will, however, be set out in:

- secondary legislation; and
- a revised code of practice on defined benefit scheme funding.

Both of these have now slipped into 2022. In addition, TPR published a blog post stating that it will need more time to develop its revised code of practice on DB funding. As a result, the second consultation on its revised code of practice will be published in late summer 2022 rather than in spring 2022.

This delay could have an impact on the timing of when the funding regime goes into force. It remains possible that the new regime will come into force at the end of 2022. It does, however, seem more likely that it will be early 2023 before the new funding regime applies. Under the new regime, trustees will need to:

- determine a scheme-specific funding and investment strategy (also referred to as the 'long term objective');
- have a written statement setting out their strategy; and
- submit a version of the statement of strategy signed by the chair of trustees to TPR.

Click here to read more on the new approach to funding defined benefit schemes.

3 ENVIRONMENTAL, SOCIAL AND GOVERNANCE POLICIES EXTEND THEIR REACH

On and from 1 October 2022, schemes with assets of more than £1 billion will be subject to the climate change governance and reporting regime. This will increase its reach from the current 100 schemes to approximately 340 schemes. The investments held by this bigger group will be more than double the current amount (increasing from £700 billion to £1.45 trillion). Climate risk monitoring and reporting will enter the mainstream in pensions.

In addition, these schemes will have an additional reporting metric. On and from 1 October 2022, schemes will have to measure and report on the extent to which their investments align with the Paris Agreement (i.e. the intention to limit the global average temperature increase to within 1.5°C above pre-industrial levels). Amended guidance sets out the detail of how trustees will need to comply with this additional requirement.

The DWP is also consulting on proposed guidance covering trustee stewardship and how stewardship policies are communicated via Implementation Statements and SIPs. The proposed guidance will come into force in 2022.

Click here to read more on ESG investment developments in 2022.

4 A RECORD BREAKING YEAR FOR RISK TRANSFER

In 2020, a record-breaking £55.8 billion of pension scheme liabilities were transferred. In 2022, this figure is likely to be exceeded. One major consultancy has predicted that up to £60 billion worth of pension scheme liabilities will be transferred in 2022.

The prediction is based on pent-up levels of demand to transact, improvements in DB scheme funding levels, moves to de-risk investments, improvements in data quality and clear plans to address GMP equalisation. And it isn't only the value of transactions that is increasing. Next year is also likely to see:

- a number of extremely large trades; and
- the more widespread use of a range of risk transfer solutions (with longevity swaps being highlighted as becoming increasingly popular).

These predictions align with the experience and expectations of our industry-leading Pensions Risk Transfer team. In the past few years, they have been involved in a number of firsts on risk transfer (click here for an overview of the range of risk transfer activity this encompasses).

In addition to traditional risk-transfer solutions, 2022 will see the development and perhaps even the launch of the UK's first collective defined contribution (CDC) scheme. Royal Mail has just completed a consultation with its unions and staff. Subject to:

- the outcome of that consultation;
- regulations being finalised and made (with the government targeting 1 August 2022 as the date that the legislation will come into force); and
- TPR authorisation

The Royal Mail Collective Pension Plan will be launched next year.

It is likely that 2022 will also be the year that we find out if the Royal Mail's scheme will be a one-off or a trail-blazer for an exciting new mode of pension provision.

Finally, 2022 is likely to be the year that we see the first superfund transaction. At the end of November, TPR issued its first authorisation for a superfund. In 2022, we could also see TPR authorise a second superfund. It could be that developments in this space open the door to more providers to offer superfund propositions.

Click here to read more on risk transfer in 2022.

5 GETTING READY FOR A REVOLUTION IN MEMBER COMMUNICATIONS

In 2022, there will be two key developments that will change member communications for certain schemes. The first is that schemes will be required to provide a 'stronger nudge' to pensions guidance. This is planned to come into force on and from:

- 6 April 2022 for schemes regulated by TPR; and
- 1 June 2022 for schemes regulated by the FCA.

The second is the roll out of simpler annual benefit statements from 1 October 2022. These will initially apply to defined contribution schemes that are used for automatic enrolment. It is possible that they will gain more widespread use if they are well received by members.

Perhaps the biggest change won't happen in 2022 but in 2023 with the launch of pensions dashboards. However, a huge amount of work will be carried out in 2022 to get ready for this launch. As part of this, we can expect:

- the DWP to consult on regulations;
- the Pensions Dashboards Programme to issue further calls for evidence, guidance and standards; and
- the Pensions Dashboards Programme to enter the alpha phase of testing and roll out.

Click here to read more on the stronger nudge to pensions guidance, simplified annual benefit statements and pensions dashboards.

6 CHANGING CHARGE CAPS IN DC-BASED AUTOMATIC ENROLMENT SCHEMES

In 2021, the DWP issued two consultations on changes to the default fund charge cap for DC-based automatic enrolment pension schemes in certain circumstances. The consultations:

- covered the introduction of a £100 *de minimis* threshold that will apply to flat fees paid in DC-based automatic enrolment schemes. From 1 April 2022, DC-based automatic enrolment schemes will no longer be able to charge a flat fee to all pension savers; and
- set out proposals to allow trustees of DC-based automatic enrolment schemes to exclude performance-based fees from the regulatory charge cap. This open consultation is part of Budget measures designed to facilitate more investment in illiquid asset classes. The government is proposing that trustees will be allowed to exclude 'well-designed' performance fees from the 0.75% charge cap. The consultation closes on 18 January 2022 and the government aims to issue a response in early 2022.

7 TAKE TWO FOR PUBLIC SECTOR PENSION REFORM

The Public Service Pensions Act 2013 provided for changes to be made to the benefit structure of public service pension schemes. The result was the introduction of new versions of public service pension schemes. A number of trades unions opposed the reforms and backed legal action against the government.

In two key cases (*McCloud* and *Sargeant*), the Court of Appeal held that transitional protections were discriminatory against younger members of the judicial and firefighters' pension schemes respectively. The government acknowledged that these judgments would impact other public service schemes. A consultation in 2020 was followed by a government response in 2021.

The result is that 2022 will see the introduction of reformed public service pension schemes. From 1 April 2022, all those who continue in service will do so as members of the reformed schemes.

WHAT ELSE IS ON THE CARDS FOR 2022?

Our seven key themes pack in a lot of developments which will keep the pensions industry busy throughout 2022. In addition, there are a few miscellaneous developments which are worth noting.

GMP Conversion Bill

Private Members' Bills are introduced by individual MPs rather than the government. They are usually given short shrift by the government and rarely make the statute books. Next year could see an exception to that general rule.

The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill (the Bill) is currently at committee stage in the House of Commons. Unusually for a Private Members' Bill, it seems to be getting support from the government (for example, the DWP drafted the Explanatory Note). If the Bill becomes law, it will simplify the GMP conversion process and should, therefore, be welcomed by many in the pensions industry.

Normal Minimum Pension Age increase legislation

The Finance (No. 2) Bill 2021 / 22 contains provisions to increase the Normal Minimum Pension Age (NMPA) from 55 to 57. The change will take effect on 6 April 2028.

Although the increase to NMPA is not for a number of years, the Bill will become law in 2022. In addition, it will create a new preservation right (the detailed mechanics of which are not yet clear) that members may seek to take advantage of well in advance of 2028.

Bringing the CMA Order into pensions law

The Competition and Markets Authority (CMA) carried out an investigation into investment consultancy and fund management services to pension schemes. This resulted in an Order which came into force on 10 December 2019. Trustees have until 7 January 2022 to confirm to the CMA that they have complied with the requirements of the Order.

In addition, the government promised to bring the effect of the Order into pensions legislation. To this end, the DWP consulted on regulations. It is likely that these regulations will come into force in 2022.

KEY DATES IN PENSIONS IN 2022

JANUARY TO MARCH (Q1 2022)

- **1 January 2022** – new pensions revaluation order applies for deferred members of final salary schemes who reach Normal Pension Age in 2022.
- **7 January 2022** – deadline for trustees to confirm compliance with the CMA's order on investment consultancy / fiduciary management.
- **Early Q1 2022** – TPR issues final versions of its criminal sanctions and enforcement policies.
- **Spring 2022** – TPR lays its single code of practice before Parliament.
- **Spring 2022** – DWP issues consultation on draft regulations on defined benefit scheme funding.
- **2 February 2022** – deadline for submissions to the House of Commons' Work and Pensions Committee's call for evidence on pension freedoms and protecting pension savers.
- **31 March 2022** – deadline for sending scheme returns and contingent asset certificates to TPR.
- **31 March 2022** – deadline for sending asset backed contribution certificates and special category applications to the PPF.
- **31 March 2022** - Closure of legacy public sector pension schemes to further accrual.
- **31 March 2022** – COVID-19 easements on scheme administrative processes end.

APRIL TO JUNE (Q2 2022)

- **1 April 2022** – opening of new public sector pensions schemes to accrual.
- **6 April 2022** – notifiable events regime extended to include certain corporate transactions.
- **6 April 2022** – legislation underpinning the 'stronger nudge' to pensions guidance is expected to come into force for occupational pension schemes.
- **6 April 2022** – legislation implementing the £100 *de minimis* level on the charging of flat fees for both active and deferred member pots comes into force.
- **11 April 2022** – increases to state pensions come into effect. This year's increases will be in line with increases to CPI in the year to September 2021. This follows the breaking of the triple lock for this year which would otherwise have seen an increase of c. 8% based on wage increases.
- **29 April 2022** – deadline for sending exempt transfer applications to the PPF.
- **1 June 2022** – FCA rules on the 'stronger nudge' to pensions guidance comes into force for FCA-regulated schemes.
- **30 June 2022** – deadline for certifying full block transfers with TPR.
- **July 2022** – Dun & Bradstreet will publish the final mean score for PPF levy payers.

JULY TO SEPTEMBER (Q3 2022)

- **1 August 2022** – target date for regulations underpinning the CDC regime to come into force.
- **Summer 2022** – TPR's single code of practice goes into force.
- **Late summer 2022** – TPR publishes its second consultation on its revised code of practice on DB scheme funding.
- **15 September 2022** – Pension Awareness Day

OCTOBER TO DECEMBER (Q4 2022)

- **1 October 2022** – extension of climate risk governance and reporting regime to schemes with assets >£1 billion.
- **1 October 2022** – introduction of a fourth metric for climate risk reporting (i.e. reviewing and reporting on how investments align with the Paris Agreement).
- **1 October 2022** – legislation implementing simpler annual benefit statements for defined contribution schemes used for auto-enrolment comes into force.
- **October 2022** – publication of September's CPI inflation figures which will be used for statutory revaluation and increases
- **December 2022** – TPR's target date for the final revised code of practice on defined benefit scheme funding to be in place (but this is likely to slip into 2023).
- **31 December 2022** – long stop date for publication of a TCFD report by schemes that were subject to climate change risk reporting requirements on and from 1 October 2021.

EXTENDING TPR'S POWERS AND A SINGLE CODE TO GUIDE THEM ALL

1 October 2021 saw a material extension in The Pension Regulator's (TPR) powers. In the coming year, TPR will:

- gain additional powers (with an extension to its notifiable events regime to cover certain corporate transactions expected to come into force on 6 April 2022);
- finalise its criminal sanctions and enforcement policies (expected early in 2022); and
- issue the final version of its Single Code of Practice (expected in Spring 2022 and to come into force in Summer 2022).

EXTENDING THE NOTIFIABLE EVENTS REGIME TO COVER CERTAIN CORPORATE TRANSACTIONS

A new notifiable events regime went into force on 1 October 2021. From this date, TPR was given additional powers to ensure compliance with the existing notifiable events regime. Next year will see an extension of the notifiable events regime that is likely to be of even greater consequence for those involved in defined benefit pension provision (especially scheme sponsors and their advisers).

New notifiable events in relation to certain corporate activities

On 6 April 2022, events in relation to certain corporate transactions will become notifiable to TPR. This broader notifiable events regime will require sponsoring employers to notify TPR when a 'decision in principle' is made in relation to certain key corporate transactions. These include:

- the sale of a material portion of the sponsor's business or assets;
- the granting security over assets above a certain value; and
- certain corporate restructuring (e.g. changes in who controls the sponsoring employer).

New 'notice and statement' obligations on scheme sponsors

There will be a new duty on employers to give notices and statements to TPR that set out:

- the implications for a DB scheme of certain corporate events; and
- how any risks to the scheme will be mitigated.

The notice and statement will be required at a later point in a corporate transaction than the notifiable event notification. It will apply when there is greater certainty as to:

- whether the transaction is going ahead;
- the nature of the transaction; and
- the implications of the transaction for the scheme.

Click here for more on the new notifiable events regime in our Insight 'Will your corporate activity be captured by new pensions notification requirements (23 September 2021)'.

FINALISATION OF TPR'S CRIMINAL SANCTIONS AND ENFORCEMENT POLICIES

In advance of the extension of TPR's powers on 1 October 2021, TPR published the finalised version of its overarching policy on its criminal sanctions powers (click here for 'TPR's Criminal offences policy (29 September 2021)'). This was followed by consultations on four more detailed policies covering different aspects of TPR's criminal sanctions and enforcement work:

- **overlapping powers policy** – TPR acknowledges that there may be occasions when its enforcement powers overlap. The overlapping powers policy provides more detailed guidance on how TPR will act when it has a choice of enforcement powers available to it.
- **monetary penalty powers policy: high fines (avoidance)** – under new legislation, TPR has the power to impose a penalty of up to £1 million for the offences of avoidance of employer debt and conduct risking accrued scheme benefits. TPR refers to these penalties as 'high fines'. TPR has discretion in deciding whether to impose such fines and how much to impose. The monetary penalty powers policy: high fines (avoidance) policy provides detail on how TPR will approach its discretionary powers. TPR proposes three bands, which are determined by:
    - the level of culpability; and/or
    - the level of harm done.

  The policy also sets out a range of mitigating and aggravating factors which would determine the level of a fine within those bands.
- **monetary penalty powers policy: high fines (information gathering)** – TPR is also given the power to issue a financial penalty not exceeding £1 million in relation to breaches of its information gathering powers. TPR proposes to follow the same approach as with high fines for the offences of avoidance of employer debt and conduct risking accrued scheme benefits outlined above.
- **information gathering powers policy** – TPR also sets out how it proposes to use its broader information gathering powers. Broadly, TPR will aim for voluntary disclosure and attendance at interviews. This may then escalate to compulsory statutory requests. In addition, TPR outlines cases in which voluntary requests are not appropriate (in which case, TPR will move straight to compulsory statutory requests).

It is expected that final versions of these policies will come into force in Q1 2022.

TPR'S SINGLE CODE OF PRACTICE COMES INTO FORCE

TPR currently has 15 codes of practice. The codes set out the Regulator's expectations of the conduct and practice trustees should meet to comply with their duties in pensions legislation. The existing codes of practice are in the process of being turned into a single code of practice. TPR believes this will makes its code of practice clearer, more accessible and easier to update. Once complete, the single code of practice promises to provide an up to date and consistent source of information on scheme governance and management.

Over summer 2021, TPR consulted on a draft single code of practice covering 10 of the 15 existing code of practice. It received a total of 10,000 answers from over 103 respondents. Since then, TPR has been working on a final draft that would be laid before Parliament. It is expected that this will happen in spring 2022. The single code of practice would then come into force in summer 2022. The remaining five existing codes of practice are expected to be incorporated into the single code of practice in due course.

A NEW APPROACH TO FUNDING DB SCHEMES TAKES FINAL SHAPE

In 2022, the DWP and TPR were expected to publish final regulations and guidance respectively on a new approach to funding defined benefit schemes. Recently, however, the DWP published a blog post stating that it will take time to develop its revised code of practice on DB funding. As a result, the second consultation on its revised code of practice will be published in late summer 2022 rather than in spring 2022.

This delay could have an impact on the timing of when the funding regime goes into force. It remains possible that the new regime will come into force at the end of 2022. It does now seem more likely that it will be early 2023 before the new funding regime applies.

The Pension Schemes Act 2021 set out the legal framework permitting a new scheme funding regime. The detail for the new regime will, however, be set out in:

- secondary legislation; and
- a revised code of practice on defined benefit scheme funding.

Under the new regime, trustees will need to:

- determine a scheme-specific funding and investment strategy (also referred to as the 'long term objective');
- have a written statement setting out their strategy; and
- submit a version of the statement of strategy signed by the chair of trustees to TPR.

What will the scheme-specific funding and investment strategy require?

The funding and investment strategy must state the funding levels the trustees intend to achieve by certain “relevant date(s)” and what investments the scheme will hold at those relevant dates. Regulations will set out:

- the principles the trustees must consider when determining the funding and investment strategy;
- the level of detail required in the funding and investment strategy; and
- the ‘relevant date(s)’ and how often the funding and investment strategy must be reviewed/revised.

Defined benefit schemes already have a Statutory Funding Objective, which requires the scheme to have sufficient and appropriate assets to meet its technical provisions as set by the scheme actuary. Once the trustees have adopted a funding and investment strategy, the technical provisions must be consistent with the funding and investment strategy (and should be amended if necessary to ensure consistency).

What is the statement of strategy?

Trustees will also be required to issue a 'statement of strategy' to TPR as soon as reasonably practicable after deciding the funding and investment strategy. TPR will have the power to direct trustees to amend the funding and investment strategy.

The statement of strategy will have to set out the funding and investment strategy and:

- an analysis of the extent to which the funding and investment strategy is being successfully implemented (along with any steps needed to remedy any unsuccessful areas);
- the main risks faced (and how these are being mitigated); and
- the trustees' impressions of any major decisions taken in relation to the funding and investment strategy.

Trustees will have to consult with sponsoring employers when preparing the statement, and regularly review it. The format, content and review periods for the statement and how often it must be sent to TPR (including the extent to which it must be included in scheme valuations and recovery plans when these are sent to TPR) will be set out in regulations.

The statement will need to come from the Chair of the trustees. If the trustees do not have a Chair they must appoint one for this purpose.

Failure to prepare a funding and investment strategy and statement could result in a fine of up to £50,000.

How is TPR's code of practice on DB funding changing?

TPR will produce a new code of practice on DB scheme funding. This is expected to focus on a long-term view when setting the scheme funding objective. TPR will include a description of how the Scheme Funding Objective should be set in the context of a long-term objective.

Trustees will be required to report in the triennial valuation process how they have used the long-term objective to inform the scheme's technical provisions and recovery plan. It is also expected that TPR will set out clearer funding standards that focus on 'prudence' and 'appropriateness'. These are intended to better balance employer commitments with risks to members and the PPF.

Click here for our Insight on the first of TPR's consultations on its new code of practice 'The defined benefit code is changing – what do TPR's proposals mean for trustees and employers? (24 March 2021)'.

ESG POLICIES EXTEND THEIR REACH

This year, climate change was a key focus for the pensions and wider investment industries. Glasgow hosted the 26th UN Climate Change Conference (COP26). In anticipation of its role as host, the UK government issued a range of initiatives on climate change and financial services (including pensions).

In 2022, climate change will remain central to developments. But, in addition, there will be a broader focus on the wider environmental, social and governance (ESG) investment issues. The key developments to watch out for in 2022 include:

- climate change risk governance and reporting obligations applying to schemes with more than £1 billion of relevant assets;
- introduction of a new requirement to report against their investment portfolios' alignment with the goals of the Paris Agreement (i.e. the intention to limit the global average temperature increase to within 1.5°C above pre-industrial levels);
- new statutory and non-statutory guidance on stewardship and reporting stewardship policies via Implementation Statements and Statements of Investment Principles.

CLIMATE CHANGE RISK AND OPPORTUNITY GOVERNANCE AND REPORTING OBLIGATIONS BECOME MAINSTREAM

The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 (the Climate Change Regulations) currently apply to:

- trustees or managers of an occupational pension scheme with relevant assets worth £5 billion or more on the first scheme year-end date which falls on or after 1 March 2020;
- authorised master trusts; and
- collective money purchase schemes (also known as collective defined contribution (CDC) schemes).

On 1 October 2022, the obligations in the Climate Change Regulations will also apply to trustees or managers of an occupational pension scheme with relevant assets worth £1 billion or more on the first scheme year-end date which falls on or after 1 March 2021.

This represents a massive extension of the reach of the Climate Change Regulations both in terms of number of schemes affected and the investments covered.

How many schemes will the Climate Change Regulations apply to?

At the moment, the Climate Change Regulations apply to roughly 100 schemes (c. 60 defined benefit schemes with assets above £5 billion plus 36 authorised master trusts). On and from 1 October 2022, this will be extended to a further 240 defined benefit schemes with assets above £1 billion.

What level of investments will be covered by the Climate Change Regulations?

Currently, schemes covered by the Climate Change Regulations hold investments worth roughly £700 billion. On and from 1 October 2022, this number will more than double to £1.45 trillion.

INTRODUCTION OF A NEW CLIMATE CHANGE PORTFOLIO ALIGNMENT METRIC

As well as the number of schemes covered being increased, the Climate Change Regulations will also be widened in scope. DWP is currently consulting on draft legislation and guidance that will require those schemes covered by the Climate Change Regulations to:

- measure; and
- report

on their investment portfolios' alignment with the goals of the Paris Agreement (i.e. the intention to limit the global average temperature increase to 1.5°C above pre-industrial levels) ('Climate and investment reporting: setting expectations and empowering savers (21 October 2021)' (the Climate Reporting Consultation)).

This is intended to bring those schemes in line with updated guidance issued by the Task Force on Climate-Related Financial Disclosures (TCFD).

What does the draft guidance say?

Much of the detail underpinning the new climate change reporting requirements is set out in amended guidance. The amended guidance:

- covers the types of portfolio alignment metrics trustees should calculate and report; and
- the level of granularity (portfolio, section, fund, asset class) at which the selected metrics should be calculated and reported.

IMPROVING AND CLARIFYING ESG STEWARDSHIP AND REPORTING

The DWP is consulting on ESG stewardship and reporting ('Reporting on stewardship and other topics through the Statement of Investment Principles and the Implementation Statement: statutory and non-statutory guidance (21 October 2021)' (the Stewardship Consultation)). The Stewardship Consultation sets out proposed guidance covering:

- understanding and consideration of financially material ESG factors;
- stewardship approaches in their investment decision-making;
- reporting requirements on:
  - exercising rights attaching to; and
  - undertaking engagement activities in respect of

  scheme investments. This includes reporting in Statements of Investment Principles (SIPs) and Implementation Statements.

What are the key objectives for the proposed guidance?

The proposed guidance aims to meet four objectives:

- improving the quality of SIP policies;
- developing best practice for the reporting of Implementation Statements;
- clarifying how schemes may use disclosures from other frameworks (e.g. the UK Stewardship Code); and
- improving consistency across schemes’ reporting and practice by:

- defining key terms;
- highlighting the information that the government feels will be of most use to members; and
- clarifying the target audience for the Implementation Statements.

What areas does the proposed guidance focus on?

The proposed guidance focuses on the areas where existing policies and reporting are believed by the government to be weakest:

- stewardship (specifically, voting and engagement); and,
- consideration of financially material ESG factors and non-financial factors.

Once finalised, the proposed guidance will be non-statutory guidance in respect of SIPs. This will set out best practice that trustees may wish to follow. The proposed guidance in relation to Implementation Statements will, however, be statutory guidance to which trustees must have regard.

What does the Stewardship Consultation say about Implementation Statements?

The Stewardship Consultation says that Implementation Statements:

- should be presented in such a way that would allow a reasonably engaged and informed member to be able to interpret and understand trustees' disclosures, and raise concerns or queries where appropriate;
- should explain how their stewardship activities are in scheme members' and beneficiaries' best interests;
- may want to consider both financial and non-financial matters in their stewardship activities;

What does the Stewardship Consultation say about SIPs?

The Stewardship Consultation suggests that SIPs should consider many of the factors relevant to producing Implementation Statements (e.g. considering the audience, setting out how stewardship decisions are in the members' best interests etc.).

Final guidance expected in 2022

The consultation closes on 6 January 2022. Final guidance is expected later in 2022 once the government has had time to digest responses.

A RECORD-BREAKING YEAR FOR RISK TRANSFER

WHAT HAS THE MARKET BEEN LIKE FOR RISK TRANSFER OVER THE PANDEMIC?

The last few years have seen pension scheme liabilities transferred in record-breaking numbers. Reports on the bulk annuity market highlighted trades totalling around £43 billion in 2019. Even the more subdued, COVID-19 impacted 2020 saw £32 billion worth of liabilities transferred. Even in this challenging year, reports on the wider UK risk transfer market declared record-breaking numbers. Risk totalling £55.8 billion was transferred, exceeding the previous non-pandemic year.

The total risk transfer market in 2021 is predicted by one consultancy to close at nearer to £45 billion, with the market reportedly dominated by comparatively smaller trades (without some of the mega-deals that had been seen in previous years). Nonetheless, market observers predict close to £30 billion of bulk annuity deals alone being completed this year.

This lower level is understandable given the existential threats being faced by some businesses. With additional constraints on management time, there has been less appetite for the limited remaining focus to deal with tomorrow's problems like pension schemes.

Trustee boards have also been focussed on more immediate concerns, like how to run a multi-million pound pension scheme out of the family shed, where the mute button is located, and how to ensure a market downturn didn't wipe-out any recent funding gains their scheme may have seen before the pandemic.

Nonetheless, the market remained strong in 2021.

With Trustee boards' time taken up on other matters in the latter part of 2020, fewer were ready to approach the market in early 2021. However, as the year progressed and the weather warmed-up, so too did the market, with most predicting that 2021 would see bulk annuity trading levels similar to 2020, driven by some highly competitive pricing in the year. Schemes that already had their funding in place and had done their homework in preparation for going to market ensured that demand remained strong.

WHAT ARE THE PROSPECTS FOR RISK TRANSFER IN 2022?

With Aon reporting that buying-out has moved ahead of self-sufficiency for the first time as the preferred solution in trustees' long-term planning, the market is poised to go from strength-to-strength, with many predicting that records set in previous years will soon be smashed.

Mercer has predicted that trustees will transfer £60 billion of risk in 2022 including bulk annuities and the longevity swap market.

And it isn't only the value of transactions that is increasing. Next year is likely to see a large number of extremely large trades and the more widespread use of a range of risk transfer solutions (with longevity swaps highlighted as becoming increasingly popular).

This aligns with the experience and expectations of our industry-leading Pensions Risk Transfer team. In the past few years, they have been involved in a number of firsts on risk transfer (click here for an overview of the range of risk transfer activity this encompasses).

Insurers too are reportedly responding to this expected growth by developing their own teams to expand capacity in the market.

Capacity could still be an issue, with our team's experience suggesting that schemes will need to be well-prepared to take advantage of arising opportunities, with some schemes likely to be squeezed out in favour of those deemed more ready to transact. We have seen the advantages that a well-prepared scheme has in going to market, as well as the problems that can arise for those whose due diligence has perhaps been lacking.

Data quality, funding, and clarity over the benefit structure are all key to effecting a smooth transaction, as are clarity and flexibility in trustees' expectations as to when they wish to transact. Schemes that are looking to take advantage of opportunities in the short-term should ensure that they are not held back by any hidden gremlins. Early engagement of legal advisers can materially help smooth schemes' path to de-risking.

MOVING BEYOND THE NORM

2022 will see the development and perhaps even the launch of the UK's first collective defined contribution (CDC) scheme. Royal Mail has just completed a consultation with its unions and staff. Subject to:

- the outcome of that consultation;
- regulations being finalised and made; and
- the Pension's Regulator's (TPR) authorisation

the Royal Mail Collective Pension Plan will be launched next year.

It is likely that 2022 will also be the year that we find out if the Royal Mail's CDC scheme will be a one-off or a trailblazer for an exciting new mode of pension provision.

Finally, 2022 is likely to be the year that we see the first superfund transaction. At the end of November, TPR issued its first authorisation for the Clara superfund. In 2022, we may see TPR authorise a second superfund. It could be that this opens the door to more providers to offer superfund propositions.

GETTING READY FOR A REVOLUTION IN MEMBER COMMUNICATIONS

In 2022, there will be two key developments that will change member communications for certain schemes. In addition, the pensions industry will continue to make preparations for the launch of pensions dashboards.

STRONGER NUDGE TO PENSIONS GUIDANCE

The first key development is that schemes will be required to provide a 'stronger nudge' to pensions guidance. This will apply:

- on and from 6 April 2022 for scheme regulated by TPR (i.e. trust-based occupational and personal pension schemes); and
- on and from 1 June 2022 for schemes regulated by the FCA (i.e. contract-based pension schemes).

What are the requirements for schemes regulated by TPR?

Under the draft regulations, the stronger nudge requirements will apply:

- on and from 6 April 2022;
- to the trustees or managers of a trust-based occupational or personal pension scheme that provide money purchase benefits;
- where a member aged 50 or over (or a survivor) with accrued rights to flexible benefits applies to:
    - transfer their accrued rights; or
    - start receiving scheme benefits.

If this applies, the trustees or managers must:

- refer the member to Pension Wise guidance; and
- offer to book a Pension Wise appointment for them.

Trustees and managers **must not** proceed with the application unless the member has:

- received appropriate pensions guidance; or
- opted out of receiving such guidance.

What are the requirements for schemes regulated by the FCA?

The FCA has set out the final revisions to its Conduct of Business Sourcebook which will implement the stronger nudge requirements for schemes regulated by the FCA (i.e. contract-based arrangements).

The FCA requirements are similar to those for TPR-regulated schemes. Pension providers will be required to ensure that consumers have either:

- received; or
- opted out of receiving

Pension Wise guidance when they apply to access or transfer their pension savings.

The FCA requirements will apply on and from 1 June 2022.

SIMPLER ANNUAL BENEFIT STATEMENTS

The second is the roll out of simpler annual benefit statements from 1 October 2022. These will initially apply to defined contribution schemes that are used for automatic enrolment, but this scope could be widened.

Trustees of DC automatic enrolment schemes will be obliged to provide annual statements that do not exceed one double-sided sheet of A4 paper when printed. An exception will apply when it is necessary to meet accessibility requirements under the Equality Act 2010 (e.g. a large print version).

Whilst the DWP has stated that its focus was on automatic enrolment schemes, it urged trustees of other schemes to "apply the same principles of brevity and simplicity" when designing annual benefit statements.

Finalised statutory guidance was published alongside the amending regulations. This covers the content, format and structure of simplified statements along with the design and language used for the statements. The guidance also includes an illustrative template of the two-page statement (click here for the DWP's 'How to provide simpler annual benefit statements (19 October 2021)'.

It is important to note that pension providers are not limited to sending just the simplified annual benefit statement. The statutory guidance covers 'layering', which states that other documents may be provided in addition to the simplified annual benefit statement.

If sent in a package of material, the simplified annual benefit statement should appear first (or immediately after a covering letter). Trustees or managers of schemes are advised to take a proportionate approach to the provision of any additional documentation and ensure that it is short, simple and accessible.

PENSIONS DASHBOARDS

But perhaps the biggest change will be the work going on in the background to get ready for the launch of pensions dashboards in 2023. As part of this, we can expect:

- the DWP to consult on regulations;
- the Pensions Dashboards Programme to issue further calls for evidence, guidance and standards; and
- the Pensions Dashboards Programme to enter the alpha phase of testing and roll out.

Draft regulations on pensions dashboards and guidance

Draft regulations are due to be made by the DWP under new sections 238A to 238G of the Pensions Act 2004. These were initially expected to be published for consultation late in 2021. This has now slipped, so we can expect a consultation in Q1 2022. This is necessary if the DWP wants to keep to its timetable of laying the regulations before Parliament in summer 2022.

It is also likely that there will be regulatory output on pensions dashboards in 2022. The FCA is expected to consult on proposals to amend its Handbook to include new rules on the provision-of-information requirements being enacted in new sections 137FAA to 137FAC of the Financial Services and Markets Act 2000.

In addition, the FCA are expected to consult on proposed new conduct rules for authorised providers regarding the new regulated activity of providing a pensions dashboard.

TPR is also preparing to provide education and guidance to scheme sponsors and trustees of occupational pension schemes on getting ready for pensions dashboards. This will fit in with TPR's long-standing focus on the quality of member data (i.e. how accurate and how up to date it is).

Pensions Dashboards Programme continues to develop standards and its procurement programme

Over the course of 2020 and 2021, the Pensions Dashboards Programme made progress on designing and creating the pensions dashboards ecosystem. This contains the digital architecture that will make pensions dashboards work.

The Pensions Dashboards Programme have also been developing the governance framework to support and enable the implementation and operation of pensions dashboards.

In 2022, the Pensions Dashboards Programme will continue to work on:

- design standards for pensions dashboards;
- its data protection impact assessment;
- a consumer-focused onboarding strategy; and
- a communication and education strategy to ensure that pension providers understand their obligations.

In addition, procurement will continue. In 2021, the Pensions Dashboards Programme's first major procurement exercise saw providers appointed to build the principal digital architecture.

The second major procurement exercise is underway and will see the appointment of a provider for the identity service.

Pensions Dashboards Programme rolls out alpha and beta testing phases

In 2022, the Pensions Dashboards Programme will work with the seven organisations that have signed up for its 'alpha' testing phase. This will give the Pensions Dashboards Programme the chance to test and refine the onboarding process during the first half of 2022.

Following successful completion of the alpha phase, the participants will transition to a 'beta' testing phase. The Pensions Dashboards Programme will look to expand the number of volunteer data providers engaged in testing at this stage. Alongside this, the second half of 2022 will see the launch of a voluntary onboarding and testing programme.

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