

Taking stock of your obligations

Tips for SIPPs

The investment flexibility and tax benefits offered by Self-Invested Personal Pensions (SIPPs) makes them an attractive choice for many savers. With opportunity inevitably comes risk and SIPPs have seen a marked increase in regulatory interest in recent years.

With the market still awaiting with interest the outcome of Adams v Carey Pensions, it is an important time for SIPP operators to take stock on their legal and regulatory obligations.

In this article we explore five top tips to help SIPP providers navigate the ever-changing legal and regulatory regime.

1. SIPPs are still pension schemes

SIPPs are often viewed as savings accounts with a tax wrapper. However, from a regulatory perspective at least, they are much more than this and are subject to multiple, often overlapping, regimes.

First and foremost, as FCA regulated firms, SIPP operators are subject to FCA requirements, whether that be the over-reaching Principles for Business, FCA rules or the multiplicity of other communications that are issued by the FCA. This is often the area with which SIPP operators are most familiar.

However, they are also a pension scheme. So they must meet HMRC registration and reporting requirements, and pensions law requirements on, e.g., disclosure, death benefits, pensions on divorce, and tax.

The trust law regime is the area most often forgotten – this is particularly key for the role/liability of SIPP trustees. For FCA reasons, SIPP trustees are usually 'bare trustees'. i.e. they have a minimal role, with the administrator taking most decisions on the SIPP. However, they can still owe trust law duties to SIPP members, and managing this trustee exposure requires careful drafting of SIPP documents and a strong governance structure.

2. 'Self-invested' doesn't mean anything goes

Some SIPPs are 'execution only' – meaning members take no advice from the SIPP provider, and in many cases can choose to invest almost anywhere they choose.

The key word here is 'almost'. As the Berkeley Burke case shows, the Financial Ombudsman Service can, and frequently does, find that FCA Principles 2 and 6 mean that SIPP operators must still do base level due diligence on all investments. Ultimately, the FOS's views is that they must decline to proceed, or at least query the transaction, if the circumstances support this.

Introducers (typically unregulated) are often used by SIPPs as a great source of business, but can also bring risk. In order to mitigate that risk SIPP operators should do heightened due diligence of introducers and investments where their customers

invest in unusual/esoteric assets. Other triggers for heightened review may be: customer concentration in certain types of investment, changes to an investment's nature, or material concerns arising in publicly available information on it.

The law in this area is in flux. The Berkeley Burke case is being appealed, and we are still awaiting the Adams v Carey Pensions decision, so keeping up to date on the law in this area is key.

3. Third party agreements

Watertight agreements with third parties, particularly administrators, are essential. The day-to-day running of SIPPs is frequently outsourced to third party administrators. But the responsibility – for complying with the FCA's requirements and under general trust law – cannot be. So clear service level agreements and robust engagement terms are key to ensuring that everyone knows where they stand if things don't go to plan.

4. Governance is key

Given the raft of regulatory and legal considerations, and the frequent delegation of day-to-day administration to a third party, SIPP operators need a robust governance structure. This should also, so far as possible, be 'future proofed' – e.g. include triggers for future review – given the likely future changes discussed below.

5. Keep an eye on the horizon

The SIPPs landscape is changing – see, for example, the long awaited decision in Adams v Carey Pensions. This, coupled with various recent FCA publications, and general pensions developments (e.g. investment pathways, ESG, cost transparency etc) that may apply to SIPPs, mean it is essential for SIPP operators to keep on top of developments.

Your key contact



Charlotte Cartwright
Legal Director

T: +44 20 7919 0706
charlottecwright
@eversheds-sutherland.com