EVERSHEDS SUTHERLAND

Looking to the future
What to expect from pensions legislation over the next 12 months

The UK pensions industry stands at a real crossroads, and 2019 is likely to be a year of change in the way retirement benefits are structured, provided and developed.

Gone are the simple days of work, followed by retirement; salary followed by an automatic index-linked pension for life from an employer sponsored DB pension plan. Retirement now is a much more fluid concept, and this is reflected in pension provision which is likely to be a real mix, at least in the private sector. Even in the public sector, where DB remains the norm, the continued focus on the outsourcing of public functions to private contractors is likely to create a similar mix of pension provision over time.

This mix is increasingly likely to include DC provision (via an employer trust based plan, a master trust, or a personal arrangement) alongside any legacy defined benefit pension. Going forward, there might also be an element of collective DC benefits in the mix (depending on how the Government's consultation works out and if employers decide CDC is viable for them). And, as DC provision becomes increasingly important, the compliance and governance bar is going up - DC is no longer short (if it ever was) for "Don't Care".

In the DB space, benefits may increasingly be provided by a buy-out provider if their plan has gone through a risk transfer exercise, by the PPF if the sponsoring corporate has gone insolvent, or by one of the new breed of DB consolidators - if another Government consultation gets them off the ground. And in both the DB and DC world, environmental, social and governance themes are becoming increasingly important considerations for the way pension assets are invested.

These changes present both risks and opportunities for corporates sponsoring pension plans, and the trustees and fiduciaries who run them. Collective DC may provide new opportunities to share pensions risks with employees, and the DB consolidators may offer sponsors the chance to get their DB pension fund off the balance sheet at less than the buy out cost. Investing responsibly could present extra challenges as the market and thinking evolves (and so increase the risk of member challenge), but could also help to ensure that pension plan assets produce more sustainable returns over the longer term.

We can expect additional UK legislation and regulation on all these issues in 2019. Legislation is already in place to require additional disclosure and engagement by both DB and DC plans on their approach to ESG factors when investing. The UK Government has also laid the ground for a major slug of new pensions legislation - to regulate the DB consolidator sector, to legislate for collective DC and possibly to give The Pensions Regulator additional powers. And the Regulator - living its "clearer, quicker, tougher" mantra - will continue to push corporates and trustees to up their game, raise the governance bar on DC plans, and ensure that DB plan shortfalls are treated fairly as unsecured creditors. Watch out in particular for a new DB Funding Code in early 2019 which could change the game materially and might even give parts of the Code the force of law, making compliance mandatory rather than simply recommended best practice.

Nor is a changing future for pensions just a UK phenomenon. Many of the underlying themes - increasing longevity, the move from DB to DC provision, the inability of the state to provide, and the need to invest sustainably for the longer term - are international in their reach. The pension trends likely to impact on the UK in 2019 and beyond have roots - or echoes - in other jurisdictions, and there are likely to be lessons that can usefully be learned both ways. Germany is moving to pure DC pensions for the first time, and the Irish are looking closely at their own system of automatic enrolment and mastertrust regulation. Meanwhile Collective DC has its origins in the Dutch pension system, and the UK will almost certainly be able to benefit from the experiences of those jurisdictions which went DC earlier, notably the US and Australia.

All these elements are likely to make 2019 a seminal year in shaping the future of pensions - which is why the Eversheds Sutherland pensions team will be devoting considerable resource this year to leading the debate on this topic. Watch out for more monthly Mallowstreet columns by our team on the future of pensions - right across its various elements.

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