EVERSHEDS SUTHERLAND

Thoughts for Winter days

DC Agenda

January 2023

1. Pensions dashboards

The final version of the **Pensions Dashboards Regulations 2022** came into force on 12 December 2022. Staging begins on 31 August 2023 for the largest master trusts and PASA has issued **guidance on dashboards** aimed specifically at master trusts. There is no date yet for dashboards to go live to members and the Government will need to give 6 months' notice of this. The Pensions Regulator has issued a **draft compliance and enforcement policy** setting out when it expects to use its powers in relation to dashboards. The Pensions Dashboard Programme has also issued final versions of the **technical dashboard standards** and is **consulting on the design standards** for how information will be displayed. **A new version of AS TM1** which sets out how DC illustrations should be prepared will come into force in October and schemes will need to ensure information provided to the dashboards is compliant with this.

Action – Schemes should identify their staging dates and have an action plan in place to ensure they will be dashboard-ready and that administrators or third party providers have sufficient capacity. They also need to ensure that illustrations are prepared in accordance with the new version of AS TM1 from October 2023.

2. Current economic climate

The Regulator issued a statement on **supporting DC savers in the current economic climate** in January 2023, which builds on an earlier statement about **managing liquidity risk in the current climate**. The statement sets out how schemes should communicate and support members, acknowledging that significant market volatility has affected members looking to access their pension savings. As headline points, TPR recommends trustees to: (i) check their investment advisers' remit to ensure they focus on delivering good outcomes for members; (ii) review members' retirement behaviour to ensure design and implementation of investment strategy remains suitable; (iii) review fund performance against objectives; (iv) check descriptions of funds are sensitive to changing market conditions; and (iv) encourage members to communicate their retirement plans and not to make hasty decisions.

Action – Trustees should consider whether communications to members should be updated in the light of the current economic climate and whether they need to review their investment strategy. Please see our accompanying [**DC Practical Notes**] for further thoughts.

3. Illiquid assets

The Regulator said in a **recent blog** that uncertainty around key data can make the valuation of illiquid investments impossible at the moment and it recognises this is problematic as trustees need to be able to allocate fees and returns to member accounts. In addition, where performance-related fees are involved and the valuations of illiquid assets lag, value for members concerns arise as fees can be based on an artificially high value. The Regulator says that these challenges should not be a barrier to investment in illiquid assets but should give rise to a pause for thought and trustees should have rigorous processes in place around the valuation of illiquid assets. The Productive Finance Working Group has **issued guidance** to help trustees investing in illiquid assets.

Action – When considering investment in less liquid assets, trustees should consider these issues as part of their due diligence processes and engage with their investment adviser and managers in relation to proposed solutions. They should also take into account the helpful guidance prepared by the Productive Finance Working Group. See our accompanying **DC Practical Notes** for further insight.

4. ESG

COP 15 on biodiversity was held in December 2022 at which **a plan was agreed** to halt the loss of biodiversity and safeguard 30% of the earth's land and water by 2030. The conference emphasised the importance of institutional investors such as pension schemes in helping to prevent the loss of biodiversity and meet the agreed targets so this is increasingly an issue that schemes will have to factor into their ESG policies. The Government **has also said** that it intends to review whether to extend the climate change reporting requirements to smaller schemes some time in 2023.

Action – ESG continues to be a developing issue and the investments and areas which it encapsulates continues to grow. Trustees need to ensure that they discuss with their investment advisers whether their investments continue to reflect current trends and their views on what constitutes a financial factor. We consider 2023 to be the year where nature-related considerations come firmly into the spotlight.

5. Regulatory approach

The Regulator and the FCA have updated their 2018 statement on their **joint approach to regulation**. In relation to ongoing work the statement says the regulators have a role to play in ensuring that there are no undue regulatory barriers that might prevent DC pension schemes from investing in less liquid assets for the long-term and they will work together to consider the **recommendations of the Productive Finance Working Group**. The regulators are also working with DWP to: develop a framework for assessing value for money; assess whether the stewardship code is creating a market for effective stewardship or if there is a need for further regulation; and to support members in making good decisions about taking their benefits.

Action – It is clear from the number of joint workstreams now in place between the FCA and the Regulator that there is likely to be additional legislation or regulations to support their joint aims and schemes should watch out for developments.

6. Trust registration

New, non-exempt trusts **have 90 days** to ensure that they register with HMRC's **trust registration service**. Registered pension schemes are exempt, as are insured life cover arrangements (provided any death benefits payable are distributed within 2 years from the date of death). However, unregistered pension schemes and any separate trusts holding death benefit lump sums beyond the 2-year window are not exempt and must register. In addition, it is worth a reminder that all trustees, including registered pension scheme trustees, are **required to keep records** in relation to the beneficial owners of their trust and to produce those records when requested by certain people.

Action – Trustees and providers need to identify whether they have any trusts which require registration and consider whether all anti-money laundering records are up to date. See our **speedbrief** for more information on how and when to register.

7. Member outcomes

The FCA has **issued new rules** on improving member outcomes in non-workplace pensions (NWP). NWP providers must offer a 'default' option to non-advised members which will be a ready-made, standardised investment solution which is available alongside other investments. Providers will have flexibility on what to call the default option. They must review their choice of default option at least every 3 years and transfer consumers to a new default option if necessary to prevent harm. They will also need to issue a "cash warning" to consumers with significant and sustained levels of cash in a NWP to warn them that their pension savings are at risk of being eroded by inflation.

Action – This is the latest development in the FCA's seeking to provide uniform standards and consumer protection across the workplace and non-workplace pension market. Providers should have regard to the new rules and ensure they embed them into their governance and communication processes. There is a 12-month implementation period. The remit of IGCs and GAAs and the charge cap does not extend to NWP default options.

8. Data protection and overseas transfers

The Information Commissioner's Office has issued final guidance on **overseas data transfers**. Where data is transferred to another country which has not formally been found to have adequate data protection laws (broadly, anywhere outside the European Economic Area), additional safeguards will need to be put in place to ensure that data will be kept secure. The ICO guidance confirms that this will be the responsibility of the party actually transferring the data, and **provides tools** on how to assess the risk of transfers. Where data is kept secure through the use of standard contractual terms, all new contracts will need to use the new terms adopted in 2022 and the guidance sets out the timeline for updating terms in existing contracts.

Action – Trustees, administrators and providers need to consider whether any overseas data transfers are made and what steps need to be taken to ensure that data is kept secure.

9. Value for members

The Regulator has issued a **blog** cautioning that the *"days of savers being left in small defined contribution schemes offering some benefits but little value are over"*. One of the mechanisms to support better member outcomes is the requirement for DC trustees to undertake a **detailed value for members (VFM) assessment** where the scheme has total assets of less than £100 million. Where they decide a scheme is not offering value, they must consider whether better member outcomes could be achieved by transferring benefits to another scheme and winding up. The Regulator expects around 1,100 DC schemes to produce a detailed VFM assessment and says even where trustees believe their scheme offers VFM, they should consider whether members might be better served by consolidation.

Action – The Regulator notes that consolidation in the DC market has already created opportunities for innovation in DC investment and clearly thinks that smaller DC schemes should be giving serious thought to consolidating into larger commercial schemes.

10. What's coming in 2023?

It seems likely that we will see the final version of the Regulator's **single code of practice** in the next few months - this will set out the internal controls and governance processes that the Regulator considers schemes should have and incorporate the provisions of the existing **DC code of practice**. We are also expecting the DWP to consult on the next stage of collective defined contribution (CDC) by the end of January and 2023 is also likely to see further progress on encouraging investments in illiquid assets and assessing value for members. The first schemes will start to onboard to the dashboards but as members may not be able to view data until 2024 or later this may not initially have much of an impact on member engagement. A review of the **statutory transfer conditions** is also due in May 2023 so it will be interesting to see if that results in any changes to the transfer due diligence that schemes are required to do and when members need to be referred for guidance.

Action – 2023 is likely to be a year of considerable change due to current market conditions and legislative and regulatory back-log as a result of the pandemic. Trustees, providers and administrators need to keep an eye on developments.

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See our accompanying DC Practical Notes

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