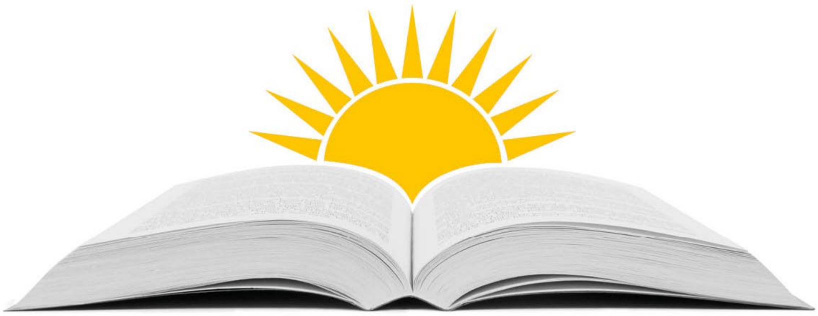
EVERSHEDS SUTHERLAND



Summertime blues?

DC Agenda

July 2022

1. Statements of investment principles

Guidance issued by DWP helpfully confirms that the intended audience of the SIP is the Pensions Regulator (we await the same confirmation for Chair's Statements ...). It also considers what information should be included in the SIP around stewardship and engagement and how trustees should formulate a policy on these issues. Trustees are encouraged to consider key elements of the **Stewardship Code** and to summarise the stewardship priorities which will inform their engagement activities and explain why they have selected these priorities in the SIP. The guidance applies from 17 June 2022.

Action – Trustees need to consider the guidance and the extent to which existing stewardship activities comply with it. Where they consider that more is needed, they should engage with asset managers and determine how to update the SIP. For more information, see our **speedbrief**.

2. Implementation statements

Statutory guidance applies to implementation statements for scheme years ending on or after 1 October 2022 and confirms the intended audience for them is also the Pension Regulator. It sets out how trustees should determine "*significant votes*" for the purposes of disclosure in statements and the information that is required in relation to them (including company name, size of holding, summary of resolution, explanation for vote, voting outcome and next steps). It also sets out what information trustees need to provide on compliance with the policies in their SIP over the year.

Action – The information required in future implementation statements is considerable and trustees will need to plan ahead to ensure it is available in time. Remember that implementation statements are backwards looking so the task of putting governance in place and assembling the detailed information for next year's statement should start now. For more information, see our **speedbrief**.

3. New climate change reporting requirements

Occupational pension schemes with assets in excess of £1 billion and authorised DC master trusts will need to calculate and report an additional "*portfolio alignment*" metric from 1 October 2022. The metric will measure the extent to which a scheme's investments are aligned with the Paris Agreement goal of limiting the global average temperature increase to 1.5°C above pre-industrial levels. Several schemes used this metric in their first TCFD report and they will now need to select an additional metric to report against. The **revised statutory guidance on climate change governance and reporting** sets out additional information about climate change metrics.

Action – Trustees of in-scope schemes should consider what additional disclosures will be required in their next TCFD report and discuss with asset managers what data will be required.

4. Green nudge trials

The **"*Green Nudge*" trial** will test the impact of behavioural nudges and messages on increasing member engagement with the sustainability of pension investments and how this could translate into "*greener pension decision-making*". The DWP is working with Aviva, Smart Pension and Hargreaves Lansdown to deliver "*nudges*" to members to encourage them to invest in more sustainable pensions or learn more about the sustainability of their pension.

Action – There is an increasing drive to providing more information to members in both the accumulation and decumulation phase of their pension. Trustees should keep an eye on this trial to see if it becomes law.

5. Decumulation options

The Regulator and the FCA issued a **Call for Input** in 2021 seeking views on improving member engagement and helping them to make better decisions. This **response** concludes that the journey to retirement is "*highly personalised*" and members need tailored support throughout their lifetime. The Government has issued a **call for evidence** to explore what support members need. It will also seek to understand what support and decumulation options are currently offered to members, and what could be offered in the future.

Action – There is clearly concern at both regulator and Government level that existing decumulation options and communications may not enable members to make the best choices at retirement. As such, it seems likely that more will be required of schemes in the future. Trustees should watch out for developments in this area.

6. Dashboards

The Government has **responded to its consultation** on the **draft dashboard regulations** and confirmed that it intends to proceed largely as originally intended with only minor changes (including short delays to the staging dates of the first cohorts). A **second consultation** has been issued which looks at how the industry will be notified about when the dashboards will go live to members and how regulators will share information. There is also a **consultation** from the Pensions Dashboard Programme on the dashboard standards which provide the rules and controls that facilitate connection to the dashboard ecosystem. Finally, the Pensions Regulator has **issued guidance** which provides an overview of what the dashboards will require schemes to do and highlights the need to determine what data will be needed and ensure that it is available and can be accessed digitally.

Action – Trustees and administrators should identify now what their dashboard staging date is likely to be and what information they will need to match members with benefits. They should also ensure that the information will be searchable in a digital format and that they will be able to provide members with required benefit information. For more detail on the changes that the Government plans to make to the draft dashboard regulations, see our **speedbrief**.

7. Value for money

Legislation requires DC trustees to carry out an annual assessment of the extent to which costs and charges represent value for members and report on this in the chair's statement. In September 2021, the Regulator and the FCA published a **discussion paper** inviting views on a framework to assess value for money. **A response** has been issued which says that the regulators will engage further with industry and consult on proposals by the end of 2022. It focuses on a number of key areas: investment performance and the need for consistent disclosures; customer service and scheme oversight and how they can be consistently measured between schemes; and costs and charges information and how it should be presented.

Action – Trustees should already be familiar with value for money assessments and the need to disclose the outcome in the chair's statement. Trustees of schemes with assets of less than £100 million already need to carry out **more detailed assessments** and it looks like more may in future be required from all trustees.

8. Fiduciary managers and investment consultants

The Competition and Markets Authority **issued an order** which came into force on 10 December 2019 and required trustees to competitively tender fiduciary management mandates where they accounted for more than 20% of scheme assets, set objectives for investment consultants and submit an annual compliance statement to the CMA. **Regulations** will come into force on 1 October 2022 which will replace the order and the need to complete compliance statements. Trustees in future need to provide information on compliance through their scheme return.

Action – The regulations largely replicate the order but contain some small differences. Trustees should ensure that they are aware of the requirements in relation to fiduciary management arrangements and setting objectives for investment consultants.

9. Pension Regulator

The Regulator has issued draft **enforcement** and **prosecution** policies setting out when and how it will look to use its powers. It has also **recently emphasised** the need for trustees and administrators to report suspicions in relation to scams, ensure members are aware of the dangers and consider signing up to its **scams pledge**. In addition it has **issued guidance** on when and how scam reports should be made. Finally, the single code of practice which will include new governance requirements and replace the existing DC code of practice is still expected to come into force sometime later this year.

Action – Trustees should look out for the final version of the single code and consider what new governance and risk management processes might be required as a result. They should also consider whether members are getting sufficient warnings about scams and whether to sign up to the Regulator's scams pledge.

10. Social risks

The Government was concerned that insufficient attention was being paid by trustees to the social element of the requirement to have a policy setting out how they take financially material considerations (including environmental, social and governance issues) into account when investing scheme assets. As a result, it issued a **call for evidence** in March 2021 on the effectiveness of policies on social factors. The Government has now issued **its response** and confirmed that in its view social risks and opportunities can have a financially material impact on the value of schemes' financial assets and the long-term performance of investments. DWP proposes to set up a taskforce on social risks and opportunities which will look at how trustees can identify reliable data sources on social risks.

Action – Where existing statements of investment principles do not explicitly address social risk, trustees need to consider which social risks might be financially material and how to incorporate a reference to them in their SIP. Social risks for these purposes have a wide meaning and include things such as human rights in business practices (e.g. modern slavery within supply chains) and equality.

11. Employer-related investment

Existing legislation generally restricts occupational pension schemes from investing more than 5% of scheme assets in investments relating to an employer. Earlier this year, the **Government proposed** changing this restriction for authorised master trusts with 500 or more active employers to apply it in relation to investment in the scheme funder, the scheme strategist, or a person connected or associated with either rather than participating employers. It has now **confirmed that** it will proceed with these proposals and **regulations** have been issued which will bring the changes into force from 1 October 2022.

Action – This change recognises that the original rationale for the employer-related investment restrictions is not relevant to commercial master trusts and it creates unnecessary costs for them. It is understood that 13 master trusts will be in-scope of the new provisions.

12. Data transfers

On 21 March 2022, the UK **updated the safeguards** which can be used for transferring personal data outside of the UK and Europe. From 21 September 2022, new contracts involving overseas data transfers will need to use the updated safeguards. They will also be required for transfers under existing contracts that change (e.g. new data fields or recipients are added). Where processing remains unchanged, existing contracts can generally continue until 21 March 2024 before the new safeguards need to be incorporated (or 27 December 2022 if it covers transfers of EU data under EU GDPR rules).

Action – Identify whether there are any existing contracts which provide for transfer of member data outside of the UK and European Economic Area and consider when they will need to be updated (remember this is likely to catch cloud server and IT service providers based overseas). Ensure that terms for new contracts are updated before 21 September 2022.

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See our accompanying DC Practical Notes