EVERSHEDS SUTHERLAND

An autumn to-do list

DC Agenda: October 2021

1.

Climate change – The first wave of schemes will be subject to the new climate change governance and reporting requirements from 1 October 2021. This will include authorised master trusts of any size and other DC schemes with assets of over £5bn. Schemes with assets in excess of £1bn will need to comply from 1 October 2022. Trustees of out of scope schemes should be aware that the Pensions Regulator still regards considering the impact of climate change on scheme investments to be good governance and should ensure that they have processes in place to consider the relevant issues.

Action: Trustees should already be aware of when their scheme is in scope for compliance with the statutory requirements. Where compliance is from 2022, work should be underway now to ensure that the deadline can be met. All trustees should have climate change on their radar.

2.

Value for members – **Regulations** require trustees of DC schemes with assets of less than £100m, that are at least 3 years old, to carry out a new value for members assessment. The first one will need to be included in the chair's statement for the scheme year ending after 31 December 2021 and published on a website. Trustees will need to consider if costs and charges and net investment returns provide value when compared with 3 larger DC schemes and have discussed the option of a transfer with one. They will also need to consider their administration and governance. Where the scheme does not provide value, they must consider winding it up and explain their decision to the Regulator.

Action: Trustees of smaller DC schemes will need to engage with this process significantly before the deadline. The DWP's **statutory guidance** says that trustees are at liberty to choose their own comparison schemes but notes that the Regulator publishes an up-to-date list of authorised master trusts – this is a clear steer towards trustees using a master trust as one of their comparator schemes. Trustees of larger DC schemes should be aware that the Government is interested in further consolidation of DC schemes so similar requirements may emerge for them in the future.

3.

Net investment reporting – Trustees of all schemes that have to prepare a chair's statement **will need to** report their net investment returns (returns minus all transaction costs and charges). This information will need to be included in the chair's statement for the first scheme year ending after 1 October 2021 and published on a publicly available website. **Statutory guidance** recommends that this information should cover at least the last 5 years if possible and provides examples of how to present the data.

Action: Trustees should be identifying if they have the necessary data and, if not, what data might be available. Reporting will need to address age related returns (e.g. lifestyle funds) and where different charges apply to different employers.

4.

Default fund charge cap – Numerous small changes are being made to the way that the charge cap operates in default funds used for auto-enrolment. From 1 October 2021, charges relating to physical assets are excluded and performance fees can be smoothed over a number of years. Other changes will introduce a minimum pot size of £100 below which flat fees cannot be charged. The Government is also considering how trustees are required to "look through" charges in some pooled investments.

Action: Trustees need to ensure that all default funds meet the charge cap requirements. They should have governance processes in place to check that this is the case.

5.

Normal minimum pension age – The Government has **confirmed** that the earliest age that most members can take their pension from tax efficiently (minimum pension age) will increase from age 55 to 57 in 2028. Where scheme rules currently give members an unconditional right to retire from age 55, there will be provisions that protect that right.

Action: Schemes will need to consider how to tell members about the change. Early notification might help with their retirement planning and some members may wish to change their target retirement age. They should also identify whether any members will have a protected pension age of 55 - this will depend on the specific drafting of the scheme rules.

6.

Illustration of effect of costs and charges over time – The chair's statement must include an illustration of the cumulative effect of costs and charges over time. This information also needs to be on a website and members should be signposted to it. Some changes have been made to the **statutory guidance** which sets out how illustrations should be prepared. In particular, trustees need to include technical detail on the assumptions underpinning the illustrations. There is clarification that illustrations do not need to be produced for every fund and schemes should identify all default funds.

Action: Those preparing chair's statements should make sure that they have regard to the updated version of the guidance. These changes and the new net investment reporting requirements mean that it is not safe to rely on older chair's statement templates without considering whether any updating is needed.

7.

Transfers – due diligence – New **draft legislation** will require schemes to do additional due diligence when members request a statutory transfer. The new rules apply to DC schemes as much as DB. Trustees will need to ensure that they have evidence that one of several new conditions are satisfied before a member can exercise their right to a transfer. In addition, it is **proposed** that from 6 April 2022, DC trustees will need to ask members over 50 if they have taken guidance from Pension Wise before taking benefits or making a transfer and offer to arrange an appointment for them.

Action: The new transfer regime will require additional due diligence by all schemes when their members are looking to transfer out. For more details about the draft transfer requirements, see our **speedbrief**. Transfer and decumulation processes will also need to be updated to deal with the stronger nudge requirements due to come into force next year.

8.

Transfers – GMP top-ups – The **Lloyds No. 3 decision** concluded that where GMPs were transferred out in the past on an unequalised basis, the transferring scheme has an obligation to top up the transfer payment. Many schemes are now starting to look at this requirement as part of their equalisation exercises and may prioritise post April 2015 transfers to DC schemes. Recent **PASA guidance** suggests that *"DC [schemes] aren't responsible for correcting any past inequalities in the original transfer payment"* which may mean that some DC schemes decide not to accept top-up transfer payments.

Action: Trustees need to consider whether they will accept top-up transfer payments and in what circumstances – for example what will be their position if the member has died or subsequently transferred out.

9.

Annual statements – From 6 April 2022, the **Government proposes** that annual statements sent to members of DC schemes used for auto-enrolment will need to be on two sides of A4 and comply with statutory guidance on format and content (as well as the existing provisions in the Disclosure Regulations). The intention is to ensure that benefit statements are simple and can be easily compared from scheme to scheme. It is also worth noting that work is ongoing to consider whether these statements should be sent out during a "statement season".

Action: There is a lot of information that needs to be included in an annual statement and the statutory guidance does not currently set out wording to achieve this. This means that trustees will need to give quite a lot of thought to how the information can be presented to members in a meaningful way whilst still complying with their statutory obligations.

10.

Productive finance investment – On 27 September 2021, the Bank of England's Productive Finance Working Group ("PFWG") published its **roadmap** for increasing productive finance investment. The roadmap looks at the barriers to investment in illiquid assets for DC default arrangements and ways of addressing these barriers, such as facilitating a new approach to liquidity management at a fund level; building scale through consolidation; reviewing the distribution rules for the long-term asset fund to facilitate wider distribution to appropriate retail clients; and proposing changes to the FCA's permitted links rules for investment in unit-linked funds.

Action: Please see our **DC Practical Notes** for more detail on the PFWG's recommendations to unlock DC investment in private markets.

Focus on master trusts

The new value for members test for small schemes is intended to lead to consolidation of DC schemes. This means that master trusts can expect conversations with smaller DC schemes about the possibility of a transfer as part of the assessment requirements. They may also see an increased number of schemes transferring to them. **Please see our DC Practical Notes for further detail**.

Master trusts should also be aware that under the proposed new transfer due diligence requirements, they will be considered a safe scheme and minimum due diligence will be required where schemes are transferring individual members to authorised master trusts.

Finally, it is worth noting that whilst much of the rest of the industry focuses on the requirements to have an effective system of own governance in place and to carry out an annual "own risk assessment" of governance systems in line with the Regulator's draft single code of practice, authorised master trusts are exempt – at least under the statutory regime. This is because there is already extensive monitoring of their governance policies as part of the authorisation and supervision processes. This of course does not mean that master trusts do not need to be equally rigorous around governance and review the processes they have in place at regular intervals.

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