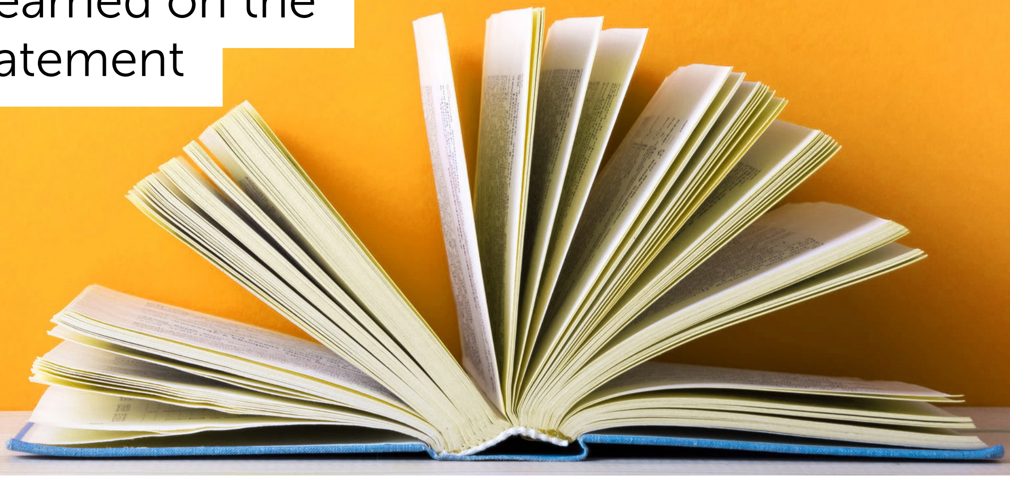
EVERSHEDS SUTHERLAND

Making the grade
Lessons learned on the Chair's statement



The DC Chair's Statement has rapidly evolved since its original conception as a source of key information for members about the way their pension scheme is run. Trustees must now wrestle with a growing number of onerous disclosure requirements, with the spectre of inflexible enforcement action from the Pensions Regulator (TPR) for those that fall short. Here, we discuss what trustees can do to ensure their scheme is compliant.

Evolution of the statement
DC schemes have been under an obligation to produce a Chair's Statement, setting out how the various governance standards are met, for a number of years. The list of information that must be included in the statement has increased steadily to encompass complicated financial facts and figures, trustee training records and detailed discussion of the scheme's investment strategy. The most recent changes introduced a need to include charges and transactions costs for each default arrangement and each fund, together with an illustrative example of the cumulative effect of the charges on the value of a member's benefits.

The stated aim of these changes is to increase transparency for members around the costs and charges incurred by their pension schemes. However, there is arguably a secondary objective in play of encouraging the consolidation of smaller DC schemes (which TPR has consistently criticised for low governance standards) by increasing the governance burden on them.

Enforcement by TPR
In line with its 'clearer, quicker, tougher' mantra, we have seen an increasingly strict approach to regulation of the Chair's Statement from TPR. Since 2015, over 500 fines have been issued, including for failure to:

- provide the full date of the last review of the default statement of investment principles; and
- adequately describe how trustee knowledge and understanding was met during the scheme year

Particular criticism has been levelled at professional trustees and master trusts which failed to ensure that their schemes were fully compliant.

It is important to note that fines are not discretionary – two recent tribunals (which upheld fines issued by TPR) held that penalties for inadequate Chair's Statements are mandatory. As such, trustees ought to be aware that where breaches occur, TPR will have to take action.

Where trustees receive a penalty notice, they can apply for it to be reviewed and the fine revoked (statistics show a significant proportion of appeals are successful). However, these are time-consuming and expensive hurdles to clear and, as the earlier cases demonstrate, a positive outcome is by no means guaranteed.

A careful, proactive approach
With this in mind, DC trustees should ensure that they focus on careful drafting when preparing the Chair's Statement, and proactively engage with their advisers when considering how to present the necessary information. In doing so, trustees should make allowance for the extra time and input needed to complete their updated Chair's Statement. It is now a weighty compliance document, and appropriate time and expertise will need to be dedicated accordingly.

To assist trustees, TPR provides a quick guide to the Chair's Statement, including a checklist for trustees to follow to ensure they have met all the requirements. There will be many scheme specific drafting considerations, and trustees will need to ensure all are dealt with correctly.

To achieve this, trustees should make the document 'their own'. For example, trustees should clarify what they mean by 'good value' and outline what they do to monitor the performance of the scheme administrator against any SLAs. For example, where there are a very large number of funds for which charges and costs information needs to be provided, it may be better to append this as a table rather than including it in the body of the document.

Ultimately, TPR's view is that the Chair's Statement is a key source of information for members about how their scheme is run. It believes that a "good" Chair's Statement will provide sufficient information to demonstrate the steps taken by trustees to ensure value for members. Cynics might suggest that these original aims have been lost amidst all the detailed compliance requirements.

Tom Meyrick
Senior Associate
T: +44 121 232 1529
tommeyrick@eversheds-sutherland.com

mallowstreet