TRUSTEE KNOWLEDGE UPDATE

May - July 2022

CONSULTATIONS AND DRAFT LEGISLATION

Reporting on Paris Alignment

(17 June 2022)

The Government has published its response to consultation proposals on Paris alignment reporting and the regulations implementing them. Schemes which are in scope of the Climate Change Reporting and Governance Regulations will be required to calculate and report a metric setting out the extent to which their investments are aligned with the Paris Agreement goal of pursuing efforts to limit the global average temperature increase to 1.5˚C above pre-industrial levels. Trustees who are subject to the requirements (broadly schemes with £1bn+ relevant assets and authorised master trusts) must, on or after 1 October 2022, select, calculate and report on a portfolio-alignment metric and publish the findings in their TCFD report in the same way as for other metrics. The statutory guidance for trustees on governance and reporting of climate change risk has been updated to reflect the changes.

Pensions Dashboards (Prohibition of Indemnification) Bill

(21 June 2022, updated 27 July 2022)

This Private Member's Bill, which is being supported by the Government, makes provision prohibiting trustees from being indemnified in respect of penalties imposed under the pensions dashboards regulations.

Pensions dashboards: further consultation

(28 June 2022)

The DWP has published a second consultation on pensions dashboards seeking views on the Dashboards Available Point (DAP) - the point at which members of the public can access the dashboard. It proposes that the Secretary of State must give 90 days notice of the DAP once satisfied "*that the dashboards ecosystem is ready to support widespread use of qualifying pensions dashboard services by the general public*". The consultation also concerns provisions allowing MaPS and TPR to share information in relation to their respective dashboards functions. The consultation closed on 19 July 2022.

Pensions dashboards: Government response

(14 July 2022)

The Government's response to its January 2022 consultation on draft pensions dashboards regulations confirms that a number of changes have been made which will be included in the final regulations. The response document also includes comments on feedback received and information on other dashboards developments. Key points include:

- There are some modest changes to the staging timetable. The deadlines for the first two staging cohorts are extended by two months. This affects master trusts with 20,000 or more relevant members (whose staging deadline will change from 30 June to 31 August 2023) and money purchase schemes used for automatic enrolment with 20,000 or more relevant members (whose staging deadline will change from 31 July to 30 September 2023).
- Hybrid schemes should count the total the relevant members across both DC and DB sections and treat the scheme as DB to determine the staging deadline. Hybrid master trusts are to be treated the same as other hybrid schemes.
- Schemes in PPF assessment at staging date will not have to connect and will have six months from leaving assessment to do so. Schemes which have connected and then go into PPF assessment will only have to provide administrative data and messaging confirming the scheme's status – on exiting PPF

assessment they will have 3 months' grace before having to provide full data again.

- Schemes in winding up are not exempt, but only have to provide value data if they consider it appropriate.
- Simplified reporting of DB deferred benefits may be used for a two year period from the date of connection.
- For hybrid benefits, trustees will be able to exercise discretion on which methodology they should apply, based on what they consider to best represent the value of the member's benefits under the scheme.
- The immediate/3/10 day response times will remain. TPR may use its discretion when enforcing breaches and will be consulting on an enforcement policy shortly.
- References to "normal pension age" will be changed to "retirement date" as provided for in the Disclosure Regulations.
- Trustees should, according to the ICO, actively consider the benefits of producing or reviewing their DPIAs to demonstrate compliance. The ICO's response to the consultation sets out their concerns about data security and minimisation.

Comment

The Government is forging ahead with pensions dashboards broadly as set out in the original consultation. The aim is to have schemes connecting from April 2023, although the date on which they will go live to the public is still the subject of consultation. It is essential that trustees engage with their administrators in order to prepare. The promised MaPS consultation on technical standards will provide even more detail on the expectations for schemes.

Consultation on DB funding rules

(26 July 2022)

The Government has launched consultation on draft regulations setting out the framework for the new DB funding and investment strategy requirements introduced by the Pension Schemes Act 2021.

Trustees of DB schemes will be required to have a funding and investment strategy in place and to submit a statement of strategy, signed by the chair, to TPR. This must be done at least every three years, in line with the current valuation timetable. The first funding and investment strategy must be finalised not later than 15 months after the effective date of the first actuarial valuation of the scheme after the draft regulations come into force.

The draft regulations provide that a key principle trustees must follow when determining or revising their scheme's funding and investment strategy is a requirement for schemes to be in, at least, a state of 'low dependency' on their sponsoring employer by the time they are 'significantly mature'. That means, broadly, that the assets of the scheme should be invested in such a way that no further employer contributions will be expected to be required to meet accrued benefits once the scheme reaches significant maturity. Cashflow from investments should also broadly match the payment of benefits and be highly resilient to short term market changes. The level of risk should be dependent on the strength of the employer covenant and the place the scheme is in its journey plan. More detail for setting the 'relevant date' when the scheme will reach significant maturity will be set out in TPR's Code (on which we expect consultation later this year).

The consultation closes on **17 October 2022**.

GOVERNMENT AND PARLIAMENT

Reporting on Stewardship Guidance

(17 June 2022)

The Government has published guidance for trustees on its expectations in relation to Implementation Statements (ISs) and Statements of Investment Principles (SIPs).

Sections in the guidance which are statutory are marked "SG" and trustees must have regard to them when complying with (IS) requirements. Other sections are non-statutory and are intended to encourage good practice, but trustees are not obliged to take them into account.

Points to note in the guidance include:

- TPR is the "primary audience" for the SIP and IS. Despite this, they should both be written in plain English as far as possible, such that a reasonably engaged and informed member could interpret and understand them. Trustees are encouraged to produce a member-facing summary version of the IS and could also consider doing so for the SIP.
- Trustees are encouraged to keep under review non-financial factors that may not immediately present as financially material but have the potential to become so, particularly for schemes with a long-term horizon. Trustees are not expected to take non-financial factors into account but may wish to do so. However, trustees are encouraged to have a mechanism by which members may express views about non-financial matters. This is particularly the case where members directly bear the financial risk.
- Trustees are encouraged to explain in the SIP how their stewardship policies are in members' best interests.
- Trustees can include material from voluntary disclosures, such as Stewardship Code reports, in the IS but must not simply cross-refer to or annex existing disclosures and trustees must ensure that the IS can be read and understood as a standalone document.
- The guidance includes a case study of an effective voting policy.
- The IS must describe "the most significant votes". The IS should include a narrative explaining why each vote is significant, what the vote was, and why the scheme voted in the way it did. The guidance includes a list of examples of significant votes. What constitutes a most significant vote will vary from scheme to scheme.

HMRC

Newsletter 140

(30 June 2022)

This newsletter includes guidance on the payment of arrears and interest, including when equalising for GMPs. It confirms that:

- Where pension arrears are paid in connection with GMPe, and interest is provided at 1% above base, or at an interest rate specified in scheme rules, the interest will be arms' length and treated as an authorised scheme administration member payment (SAMP).
- Interest payments made alongside arrears, and that qualify as SAMPs, are taxable as income in the tax year in which they are paid.
- There will usually be no obligation on the payer to deduct income tax at source, unless payment is made to a person who usually lives outside the UK.

- The interest is "savings income" and should, where appropriate, be included by the member in their self-assessment return.

THE PENSIONS REGULATOR

Enforcement and prosecution policies consultation

(4 May 2022)

TPR is consulting on a revised enforcement policy that will replace existing policies for DB, DC and hybrid schemes and an updated prosecution policy. The consultation closed on 24 June 2022.

Draft Scheme Management Enforcement policy

The draft Scheme Management Enforcement policy includes the Overlapping Powers and Information Gathering Policies which were the subject of consultation in the autumn of 2021 and has links to other relevant policies including the Monetary Penalties Policy (last revised in December 2021) and the Case Procedures Policy. It does not cover enforcement activity in relation to automatic enrolment, authorised master trusts or authorised CDC schemes.

TPR states that it will only investigate when it is "reasonable, appropriate and proportionate" to do so. The draft policy sets out the relevant factors TPR will consider when identifying cases which justify the use of its enforcement powers.

Draft Prosecution Policy

The draft Prosecution Policy explains how TPR will approach the prosecution of workplace pension criminal offences and other types of offences related to its functions. It is separate to the Criminal Offences Policy which deals with avoidance offences introduced by the Pension Schemes Act 2021.

TPR states that criminal proceedings are reserved for only the most serious types of conduct or behaviour and it will select cases for prosecution in light of:

- any applicable code, guidance and/or policy approach to the subject matter or the offence in question;
- statutory objectives and the outcomes that might be achieved;
- whether prosecution could deter future acts of the kind; and
- whether the matter satisfies the applicable tests for prosecutors. This requires TPR to be satisfied that a conviction is likely on the criminal standard of proof (the "evidential test"), and that pursuit of conviction is in the public interest (the "public interest test").

High fines policy – avoidance

(4 May 2022)

This policy provides guidance on TPR's approach to imposing fines of up to £1m in relation to its anti-avoidance powers and for failure to pay sums due under a contribution notice (CN).

In relation to non-payment of a CN, the penalty will generally be fixed at 20% of the value of the CN capped at £1m. If payment of the CN is received before the commencement of the Determinations Panel's hearing, the amount of any penalty will be reduced to 10% of the CN value, capped at £0.5m.

In relation to avoidance of employer debt (s58C PA 2004) and material detriment to scheme benefits (s58D PA 2004), the calculation of the penalty will depend on an assessment of the applicable band level (which depends on culpability and harm) and an assessment of any aggravating and mitigating features. The minimum banding for low culpability/low harm is £100,000-£400,000 and the maximum for high culpability/high harm is £400,000-£1m. The policy gives examples of the features of culpability and harm as well as aggravating and mitigating factors.

High fines policy – information powers

(4 May 2022)

This policy provides guidance on TPR's approach to imposing fines of up to £1m for knowingly providing false or misleading information to TPR or the trustees and for breaches of the notifiable events regime.

The level of the penalty will depend on an assessment of the applicable band level (which depends on culpability and harm) and an assessment of any aggravating and mitigating features. The lowest band, for a breach of a regulatory requirement with minimal harm to the scheme, is 0-£100,000. The highest band is £400,000-£1m.

Examples of culpability include deliberate acts or failures, knowledge of (or recklessness or negligence as to) the adverse consequences on TPR's ability to regulate, significant decision-making power, responsibilities or influence and holding a position of trust or being subject to professional duties. Examples of aggravating factors include evidence of dishonesty, receipt of an incentive, evidence of multiple breaches and the reason for acting as they did was to prevent TPR's intervention. Mitigating features include co-operation with TPR, evidence of suitable mitigation to the scheme and (for notifiable events) whether TPR had advanced notice of the event from the target by other means.

Updated DB transfer letter

(10 May 2022)

TPR has updated the template letter, originally issued in May 2020, to be sent to all DB members requesting a CETV quotation as part of enhanced anti-scam measures in response to Covid-19. Covid-19-related references have been removed from the letter but TPR has confirmed that it still expects the letter to be sent to DB members in response to a transfer request.

Feedback statement on driving VFM in DC pensions

(24 May 2022)

TPR and the FCA have published a joint feedback statement confirming plans to develop common measurements for investment performance, costs and charges and service standards to enable better comparison of value for money across schemes. At this stage, they are focussing on value for members (VFM) in the accumulation stage, and in particular default arrangements. They are now starting a programme of further work to examine the options. The Government has expressed its willingness to legislate to introduce a VFM framework for schemes regulated by TPR and TPR aims to consult on its proposals towards the end of 2022.

Guidance on the Stronger Nudge

(31 May 2022)

TPR has further updated its guidance on DC communicating and reporting to assist trustees in complying with the "stronger nudge" requirements which came into effect on 1 June 2022. The guidance broadly tracks the requirements of the regulations, suggesting practical ways in which trustees might comply. Recent changes include adding a link an online tool allowing trustees to book a PensionWise appointment and reinforcing its statement that (notwithstanding the wording of the regulations) the nudge requirements do not apply to communications sent on or after 1 June 2022 where the application was being processed before 1 June.

Reporting pension scams guide

(15 June 2022)

TPR, the FCA and Action Fraud have published a new guide on reporting suspected pension scams. The guide suggests that a report should be made where:

- it is believed that a scam has already happened;

- a red flag is raised on a transfer;
- it is suspected that a scam could be taking place or there are suspicions of those involved: this may be because of other risks such as amber flags in a transfer request.

The report should be made to Action Fraud (details are provided) and to TPR or the FCA as appropriate.

Pensions dashboards: initial guidance

(22 June 2022)

TPR has published initial guidance for trustees on their duties in relation to pensions dashboards. The guidance will be updated later this year to reflect the final regulations. Under current proposals, trustees of schemes in scope will be required to:

- register with MaPS and connect to dashboards by a specific deadline;
- receive personal information on members, and search and match members to their pensions ('find requests');
- provide members with information about their pension through the dashboard of their choosing upon request ('view requests');
- co-operate with MaPS when preparing to connect, maintain records and report certain information to TPR and MaPS.

The guidance includes a checklist on preparing to connect.

Comment:

Although the regulations setting out the obligations for trustees in relation to dashboards are yet to be finalised, it is clear that most registered pension schemes will be required to connect to the dashboards infrastructure. TPR says it will contact schemes at least 12 months before their proposed connection deadline. This guidance provides a useful, high-level, summary of what trustees need to consider. We expect further detail in the coming months from the DWP and the Pensions Dashboard Programme.

Statement on transfer conditions

(5 July 2022)

Following concerns raised both directly and in the press, the DWP and TPR have issued a joint statement (and TPR has amended its guidance) on the application of the transfer conditions regulations which came into force in November 2021. The changes relate in particular to concerns about incentives and overseas investments.

The main theme of the statement is that the regulations are not intended to impose additional burdens on schemes or impact on standard business practices and "*should have no impact on the process for transfers that, prior to the introduction of the regulations, would have caused no concerns*". It suggests that where trustees have no cause for concern about a scam then they should proceed with the transfer, using discretionary powers in scheme rules to make a non-statutory transfer where the regulations indicate that the statutory right has been lost. See this CMS LawNow for more detail.

CDC Code of Practice

(18 July 2022)

The final version of the CDC Code of Practice is in place, reflecting the regulations for CDC schemes which come into force on 1 August 2022 and TPR's earlier response to consultation. The Code sets out how trustees can apply for authorisation and how TPR will assess schemes against the statutory authorisation criteria at the initial application stage and throughout ongoing supervision.