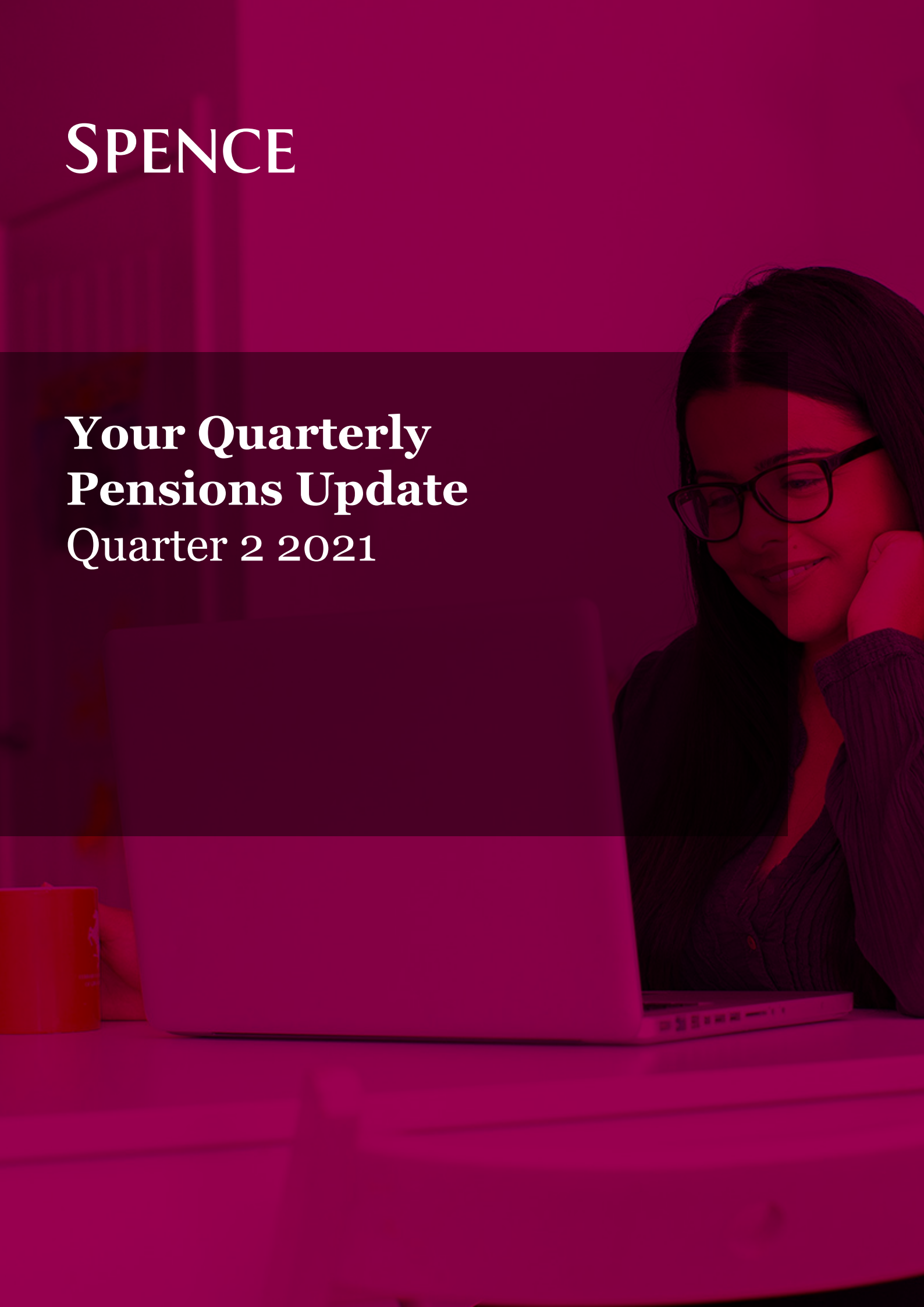
SPENCE

Your Quarterly Pensions Update

Quarter 2 2021



What's inside?

Welcome to your Quarterly Pensions Update

The purpose of this report is to update sponsors and trustees with recent pensions industry changes in the quarter.

For your convenience, Spence has summarised the key developments and highlighted the necessary actions sponsors and trustees may need to take.

The report combines brief written comment with links to any further relevant information and any deadlines to which you should be aware. We trust you will find the update useful and informative. If you require further information about how any of the topics covered might impact on your scheme specifically, please get in touch with hugh_nolan@spenceandpartners.co.uk or your usual Spence contact.

New Single Code of Practice

The Pensions Regulator (TPR) launched a consultation in spring 2021 on a new single Code of Practice (COP) to replace the 15 different COPs currently in force. The deadline for responding to the consultation passed on 26 May 2021. TPR is now considering the responses received and will respond in due course. A project to review TPR's guidance in line with the new COP is expected to start later in 2021.

The transition to the new single COP is planned to take place in two phases. The first phase will see 10 COPs – mainly those relating to pension scheme governance and administration – replaced with 51 new, and shorter, modules. This alone should reduce the number of pages by around a half. The second phase will see the remaining 5 COPs replaced, and will include the eagerly anticipated part on funding defined benefit pension schemes.

The new COP is expected to be more user friendly. It will highlight clearly which aspects are legal requirements and those which form part of TPR's expectations on how Trustees should be running their schemes.

There will be more details on several topics including cyber security. There will be brand new topics too, including on climate change, stewardship and changes introduced by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 relating to effective systems of governance and the own-risk assessment:

- Effective systems of governance: Under new regulations, trustees must have an effective system of governance proportionate to the size, nature, scale and complexity of their scheme.
- Own-risk assessment: Private sector schemes with at least 100 members will now need to carry out an own-risk assessment. TPR expects governing bodies to use this to assess how well their policies and procedures address the various risks, financial and operational, that their schemes face.

ACTION

While there are no immediate actions for trustees and employers, both parties should be mindful of the additional burdens relating to the own-risk assessment. Schemes will have just one year after the new COP comes into force to complete their initial own-risk assessment. Subsequent reviews will be required, at least on an annual basis, or whenever there is a material change to a scheme's risks and / or governance processes. TPR anticipates that the initial implementation could be a significant piece of work.

Helpful Links

Single code of practice consultation | The Pensions Regulator

Consultation document: The new code of practice

Annex 1: Full draft of the new code of practice

Annex 2: Where the new code of practice modules come from

Statutory Transfer

For over a quarter of a century, a withdrawing qualifying pension scheme member, who had accrued an entitlement to benefits in his employers' scheme, had an unerring right to transfer the cash equivalent value of their pension to another registered pension scheme.

As this was a statutory right prescribed in legislation, ceding pension schemes had little, or indeed no grounds, to deny a written transfer request from the member, unless the member decided to cancel the process.

Whilst at the time the Pension Schemes Act 1993 received Royal assent, the spirit of the statutory right was welcomed, over time it resulted in an unintended consequence, which has been the bane of pension scheme administrators and trustees ever since.

The problem lay in the granting of the statutory right. When the transfer request to a new provider/employer was received, as long as:

- The receiving scheme was a registered occupational pension scheme,
- It had a sponsoring employer who had been correctly registered with Companies House, and,
- The receiving scheme was "able and willing" to accept the transfer and the member could acquire credits or rights within that scheme (section 95(2) of the Pension Schemes Act),

the ceding scheme had no option but to make the transfer within six months of receipt of the request.

However, where a receiving scheme could not meet these conditions, whilst a statutory right may not exist, there were usually contractual rights contained within the body of the scheme rules which allowed a further permitted route out for an insistent member.

With the advent of pension scams and the plethora of falsehoods unleashed to elicit a member's pot, many pension funds started to see certain traits and patterns emerging that resulted in many transfer requests being actively refused. The members (usually at the behest of the "scammers") often complained and thus entered into dispute procedures that ultimately came to the attention of the Pension Ombudsman ("TPO") and/or other judicial bodies.

However, despite the ceding schemes demonstrating certain provenance that the receiving scheme was not what it purported to be, scheme managers and trustees were ordered by TPO or other courts that the transfers should proceed without delay, on the basis of the unassailability of the member's statutory right.

While the decisions of TPO and the courts were well-intended and attempts made to ascribe a standard industry code – through the 'Scorpion' campaign and latterly the 'ScamSmart' promotions – it was the "gatekeepers" (i.e. the insurance companies, pension funds and employers) who were ultimately penalised, as they had to observe a legislative "hornets' nest", that many felt benefited the scammers rather than the "scammees".

So, it is with much anticipation that we may now be able to put the "transfer boot on to the other foot", if the desirous intent of the Pension Schemes Act 2021 comes to fruition. We now have legislation that at last attempts to correct the past wrongs of previous iterations and put the legislative whip firmly in the hands of the "good guys" at long last.

Parliament has ascribed four conditions (or "flags") which, if not met, will remove a member's statutory right to a transfer value. The conditions (illustrated below) are ranked in an order of ascendancy, whereby if Condition 1 is not met, then you move to Condition 2, and so forth.

The overarching intent is not to overly frustrate the process, where it is evident that the transfer poses little risk of potential liberation or misuse. Hence Condition 1 is relatively relaxed in its prescription:

Condition 1

If the receiving scheme is:

- A Public Sector Pension Scheme (established under the PSPA 2013), or
- Authorised Master Trust, or
- Authorised Collective Money Purchase Scheme, or
- An authorised and FCA regulated Personal Pension Scheme,

then the transfer can proceed unfettered.

If you are unfortunate to run out of "ors" in relation to Condition 1, then Conditions 2 and 3 come in to play.

Where the transfer is not to one of the types of receiving scheme stipulated within Condition 1, then the statutory right to transfer can only take place to a UK occupational pension scheme or to a QROPS where the member has provided the evidence prescribed in regulations, and trustees and scheme managers have confirmed, based on that evidence, that the transfer meets certain conditions.

The specific requirement prescribed within Condition 2 is, that for statutory transfers to a UK occupational pension scheme, the member must demonstrate an 'employment link' with the receiving scheme. (Thus, hopefully consigning the earlier High Court decision of Hughes to the annuls of history!)

A member will have a statutory right to a transfer to a QROPS if the member can demonstrate either an 'employment link' (under Condition 2) for transfers to occupational schemes (where, for the same reason as with UK-based schemes, we would expect this to exist), or a 'residency link' (i.e. Condition 3).

This is because, for transfers overseas, the absence of either an employment or a residency link puts the member at an increased risk of a scam. The residency link must be demonstrated by evidence from the member that they have been resident in the same financial jurisdiction as the QROPS for at least six months.

It will be the responsibility of the member seeking to transfer to provide evidence of their employment or residency link.

If the box ticking exercise has failed to materialise at this point, then Condition 4 allows one further opportunity to halt a suspect transfer.

For all other transfers (i.e. those to which the Conditions 1, 2 and 3 do not apply), the regulations will require trustees and scheme managers to determine if the circumstances giving rise to the 'red flags' or 'amber flags' apply:

Red Flags	Amber Flags
An amber flag is present and the member has not provided evidence from MaPS that the member has taken MaPS guidance on pension scams. The member: — has failed or refused to provide information to the transferring scheme about the transfer — was cold-called — offered an incentive to transfer — pressured to make the transfer quickly — financial advice from an adviser without the necessary FCA regulatory permissions	The receiving scheme includes: — high-risk or unregulated investments — charging unclear or high fees — investment structures are unclear, complex or unorthodox. — overseas investments or an overseas adviser has advised the member on such investments. The ceding scheme is aware of: — volume of requests to a single receiving scheme — a high volume or requests involving a particular adviser / advisory firm

Where the flags are not present Condition 4 will be satisfied and the transfer will be able to proceed.

The DWP have asked pension professionals and interested parties for their views on the draft regulations: Pension scams: empowering trustees and protecting members consultation - GOV.UK (www.gov.uk). It is expected that the Pensions Act 2021 will come in to force in October 2021.

Comment

It is hoped that at long last, ceding schemes now have the upper hand to effectively block or delay a transfer request, where it is unclear whether the receiving scheme is an appropriate vehicle to place the transfer proceeds.

Changes in the Fraud Compensation Fund levy following pension scams test case

The Fraud Compensation Fund (FCF) was established under the Pensions Act 2004 to pay compensation where an occupational pension scheme has had its assets reduced due to dishonesty. The Board of the Pension Protection Fund is responsible for the operation and management of the FCF, which is otherwise a separate fund from the Pension Protection Fund (PPF) itself.

While the Board is not obliged to raise a levy each year to fund the FCF, in years when the FCF needs increased funding, the Secretary of State may impose a levy on occupational pension schemes.

In November 2020, a test case at the High Court (Board of the PPF v Dalriada) confirmed that occupational pension schemes defrauded by pension scams are, in principle, eligible to apply for compensation from the FCF. The legislation governing the FCF wasn't designed with this type of scam in mind, so it hadn't been clear that these schemes were eligible for compensation. The Board has estimated that compensation claims as a result of the ruling will be in the region of £350 million.

At the time of the High Court ruling, the FCF was reported to have assets of £26.2 million. Owing to the expected shortfall in the FCF's assets to meet the claims, the PPF has decided to raise a levy in 2021/22 of 75p per member and 30p per member for master trusts. This is the maximum levy allowed under current regulations. The levy will be collected by The Pension Regulator together with other fees and levies that all schemes must pay.

Even allowing for future levy income, the PPF expects claims on the FCF to be in the region of £200 million to £250 million higher than the funds available. As a result, a Bill by HM Treasury and the Department for Work and Pensions is progressing through parliament which, if enacted, will give the Secretary of State the power to make a loan to the Board to meet the compensation payments. The loan would be repaid by FCF levies over a period of 10 to 15 years. The levy rates and repayment period are subject to a public consultation which is expected later this year.

ACTION

Schemes to pay the FCF levy and other fees as requested by The Pensions Regulator and look out for further information on the Bill's progress through Parliament.

Helpful Links

Fraud Compensation Fund levy for 2021/22 confirmed | Pension Protection Fund (ppf.co.uk)

Have your say on the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill - UK Parliament

What's happening in DC? Part 1

Permitted charges for schemes used for automatic enrolment

The government's 'Review of the Default Fund Charge Cap and Standardised Costs Disclosure' was published in January. In it, the Department for Work and Pensions (DWP) set out an intention to introduce a threshold – or 'de minimis' – below which the flat fee element of the 'combination charge', used by pension providers, cannot be charged to members. The de minimis will be set at £100 and will only relate to the flat fee component of the combination charge. This means that a 'percentage of funds under management charge' can still be charged on all pots, irrespective of the pot size. (Information on different charges used by automatic enrolment schemes, with examples, can be found in the consultation.)

DWP is now consulting on the policy around the implementation of the de minimis and also on the Statutory Instrument required to bring about this change. This consultation seeks views on the broader direction DWP should take on the future structure of charges that are permitted within the 'charge cap' too (currently set at 0.75% of a member's funds under management). The consultation sets out the government's proposal to move to a single, permitted universal charging structure for use within the default fund of qualifying DC pension schemes used for automatic enrolment.

The rationale for permitting different charging structures was to support the expansion of pension provision under automatic enrolment by enabling the creation and growth of new schemes, such as master trusts. However, the government now wants to limit erosion of small pots and increase understanding of charges and drive member engagement. Against this backdrop, it is proposed that:

- to protect members with small pots, The Occupational Pension (Charges and Governance) Regulations 2015 be amended to introduce, from April 2022, the de minimis for the flat fee element of the combination charge (the de minimis will apply to all members and will initially be set at £100); and
- to increase understanding of charges, the current three permitted charging structures within the default fund arrangement should be rationalised down to a single charging structure. This single charging structure would allow charging of a single percentage annual management charge, based on the value of the member's pot within the default fund, and combination charging would no longer be permitted.

The consultation seeks views from respondents on the potential impacts of the proposals on members, employers and providers.

Nudging savers towards Pensions Wise

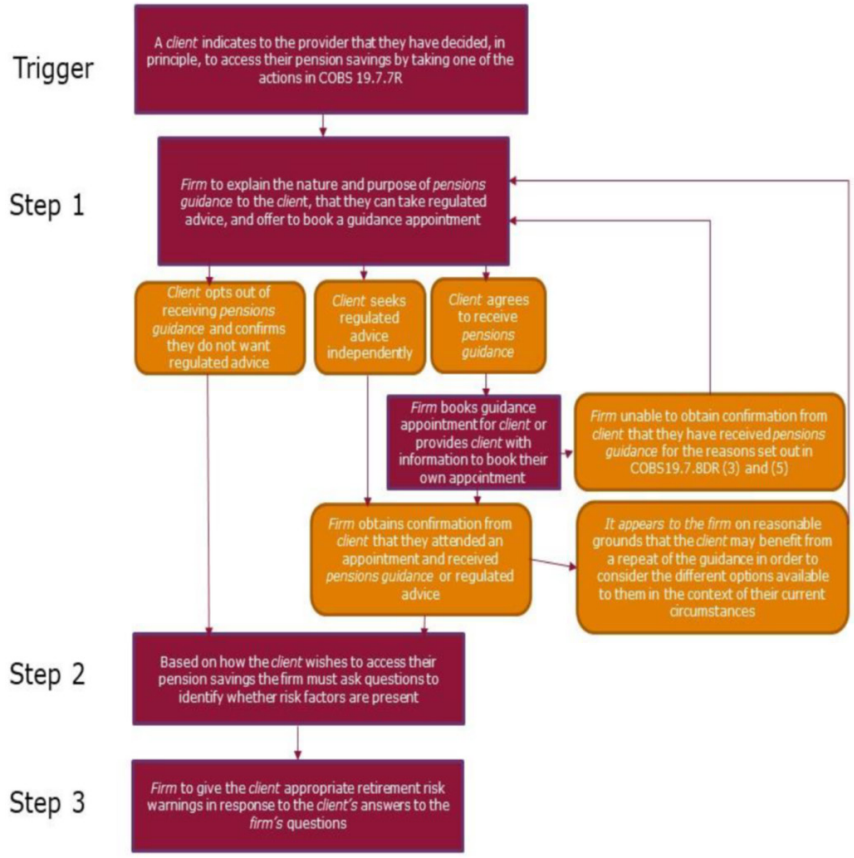
The Financial Conduct Authority (FCA) has proposed new rules requiring pension providers to "nudge" consumers towards Pension Wise before they access their DC pension savings. Pension Wise is one of several guidance services offered by the Money and Pension Service (MaPS). Note that from 30 June 2021 the new consumer-facing side of MaPS is known as 'Money Helper'.

Under the proposed rules, a provider must refer the saver to Pension Wise guidance, explain the nature and purpose of the guidance, offer to book an appointment, and, where the consumer accepts the offer, either book the appointment or provide the consumer with sufficient information to book their own appointment.

Parliament decided not to make these appointments mandatory, but it has set a requirement to encourage consumers to take Pension Wise guidance.

The proposed process is illustrated in a flowchart in the consultation.

Retirement risk warnings-steps to take



The consultation also asks for views on what more can be done to increase take-up of Pension Wise Guidance (e.g. earlier "nudges"), and how FCA might support consumers more widely and whether there is anything else FCA should consider that could help pensions savers make informed decisions.

The proposed changes apply to pension providers and so will directly affect members of group personal pensions. However, DWP is working on proposals to implement the mirroring provisions for occupational DC schemes in order to ensure consistent outcomes for consumers regardless of the legal form of their pension. The prospective requirement to book appointments for members is particularly worth noting.

Helpful Links

Permitted charges within Defined Contribution pension schemes - GOV.UK (www.gov.uk)

CP21/11: The stronger nudge to pensions guidance (fca.org.uk)

What's happening in DC? Part 2

Introduction

Following earlier consultations, the Government now intends to move forward with new measures, effective from October 2021, which will challenge some 1,800 smaller DC schemes to demonstrate that they continue to offer value for members. According to the Pensions Minister, Guy Opperman, "I have no doubt trustees will either rise to this challenge or act decisively in their member's best interests to wind up and move their members into a scheme that offers better value".

While the focus of the new measures is on schemes with assets of less than £100 million, the principle of ensuring value to members applies to all schemes. So, a call for evidence published alongside regulations and guidance is intended to begin the next conversation on what best value looks like for the millions of pension savers in medium and large schemes.

Key points

- Statutory guidance on the new Value for Members (VfM) assessment comes into force from 1 October 2021. Revisions to existing statutory guidance on reporting costs, charges and other information will be effective from the same date.
- The outcome from the new VfM assessment must be included in the annual Chair's Statement for the first scheme year ending after 31 December 2021.
- Information on net investment returns must also be included in the Chair's Statement for the first scheme year ending after 1 October 2021.
- Hybrid schemes, where the total assets (DC and DB together) are below £100 million, are in scope.
- Trustees are free to choose their own comparison schemes for the purpose of the VfM assessment, but may wish to make use of The Pensions Regulator's list of master trusts.

Helpful Links

Completing the Annual VfM Assessment and Reporting (Gov.uk)

Guidance on Reporting Costs and Charges (Gov.uk)

Incorporating Performance Fees within the Charge Cap (Gov.uk)

Future of the DC Market – The case for consolidation (Gov.uk)

Consumer Journey: Joint TPR and FCA Call for Input

The Pensions Regulator (TPR) and the Financial Conduct Authority (FCA) have launched a new call for input, asking the pensions industry how consumers make decisions about their pension at key points throughout their working lives.

The consultation is going in the right direction, but there are some big issues to navigate.

One fundamental point is the inability of many people, not just low earners, to afford pension savings. It is the primary barrier outside of behavioural issues and is likely to unseat all the good work in other areas.

Another area worthy of consideration is the fixation on driving down costs in the industry. Whilst well intentioned to deliver the best value for money, it has had the unintended consequence of removing the ability to deliver advice and "persuasion" as part of the mix.

From first principles it's important to remember that pension saving is generally a choice, and one that comes at the cost of something else.

The second issue is that even those close to, or at, retirement may not have a view of what they need financially, and how their pension plays a part.

Recognising these points, the pensions industry also lags badly in its use of technology as compared to retail and other customer facing sectors. There are two main reasons for this:

- A prevailing attitude amongst those who run schemes that they are serving "members" not customers; and
- The architecture of many pensions administration systems doesn't lend itself to delivering a modern retail experience.

TPR could usefully encourage technology solutions to address specific issues. The FCA has used a "sandbox" approach with tech start-ups that allows them to get direct feedback from the regulator on new ideas and concepts.

Making it easy for technology providers to access and engage with the regulators could speed up and encourage development. Key areas to address could include:

- Delivering more of a retail experience. Why should engaging with your pension be any different from managing an online bank account?
- Making it easy to access online services. Online identity verification has transformed access to services. Dashboards have a role to play here but, it can't be seen as a panacea. Also, dashboards will need to move from being purely for information to being transactable, thereby becoming a way to deliver a unified view of someone's finances, not just pension.
- Building on this "open money" style services, including pension, can bring someone's total financial position together enabling better decision-making at key life stages.
- Using technology to make a pension "tangible" in this context could well improve member engagement.

GDPR – three years on

It is now more than three years since GDPR became effective on 25 May 2018. The EU Regulation built on the Data Protection Act 1998 legislation and, following Brexit, we now operate under the DPA 2018 and UK GDPR.

GDPR made a number of key changes, including:

- Stronger rights for data subjects
- Mandatory requirement to report personal data breaches
- Significantly increased penalties up to a maximum of 20M euros
- Six data protection principles (as opposed to eight)

GDPR has had a significant impact on the pensions industry, almost all of which can be considered as positive. For those working within the industry, behaviours have changed. We are now far more vigilant. Most advisers now have GDPR champions and there is an overall greater level of awareness around how we are processing data. The increased occurrences of cyber security attacks in recent times has also focussed people's minds on how to handle and process data.

Failure to comply with GDPR now runs the risk of significant reputational damage to advisers, trustees and employers. Already there have been large fines handed down to, amongst others, Amazon (£43.2M) and British Airways (£20M) for serious data breaches.

Any new contracts that advisers enter into now will have specific GDPR sections in them, and trustees (as data controllers) now need to issue Privacy Notices to members detailing how they will be processing the personal data they hold. All advisers will have reviewed the way in which they process member data and should have re-engineered this to ensure GDPR compliance.

Following the ending of the Brexit transitionary period on 30 June 2021, the European Commission has now published its long awaited draft adequacy decision in respect of the UK. This is the first step in the approval process for enabling the free flow of personal data from the EU/EEA to the UK, and will be welcomed by organisations that transfer personal data between the EU/EEA and the UK. The Commission says that it has carefully reviewed the UK's law and practice in relation to the protection of personal data, including access by law enforcement and other public bodies. The Commission says that it considers that UK law provides an essentially equivalent level of protection under both GDPR and the Law Enforcement Directive (which deals with processing of personal data for law enforcement purposes). On that basis, the Commission concludes that UK GDPR and the DPA 2018 provide an essentially equivalent level of protection, and that interference for law enforcement and national security purposes is proportionate.

All trustees and employers should now be complying with GDPR, forming part of the regular governance reviews they undertake, as well as being on their risk register. Trustees should review their Privacy Notice to ensure that it is current and reflects any recent changes in advisers.

Helpful Links

Guide to the UK General Data Protection Regulation (UK GDPR) | ICO

TCFD – Time to take action

While many trustees work through their second round of Implementation Statements, the industry continues to get to grips with an ever-changing regulatory environment. There is a sense that we are being overwhelmed by the volume of material published in the area of responsible investment. It seems that there are new consultations to consider every day, and too many sets of guidance to follow.

However, while this may seem a difficult transition, it is a necessary one. The speed at which regulation and industry practice is changing shows the importance and urgency of the actions needed to combat climate change. While we enjoy a warm summer in the UK, intense heat waves and droughts are being suffered in North America. We are witnessing the effects of climate change in action.

Later this year we will see the next major regulatory change to come into play. There are new requirements to produce disclosures according to recommendations by the Task Force for Climate-related Financial Disclosures ("TCFD"), which are being brought in under the Pension Schemes Act 2021 and its attendant regulations and guidance. They start to apply from October 2021 for schemes with assets over £5bn. It is important at this stage that trustees understand the compliance requirements for their scheme and that they start working on the governance framework.

At the recent PLSA ESG conference, David Fairs, The Pensions Regulator's (TPR) Executive Director of Regulatory Policy and Advice, indicated that TPR will treat failures of governance more seriously than failures of reporting. At a high level, the intent of the regulations is for trustees to consider the impact of climate change and environmental issues on their scheme. It is clear that the intention behind the regulations will be considered by TPR in its enforcement. Regulators have been clear that, regardless of the upcoming requirements, considering these factors is part of trustees fiduciary duty. So if you have not yet done so, now is the time to take action.

ACTION
Ensure you understand compliance requirements for your scheme with regards to the upcoming TCFD reporting requirements. Ensure you have a good governance framework for considering ESG factors.

Investment Update

The gains made in the first quarter of 2021 in the global equity markets continued into the second quarter, driven by positive investor sentiment. The continued roll-out of COVID-19 vaccination programmes continued and the easing of lockdown restrictions caused economic growth to rebound.

US equity markets continued to perform well and hit all-time highs, led primarily by technology and energy stocks. President Biden also secured a $1 trillion infrastructure package to upgrade roads, bridges, and broadband networks over the next eight years, which will be supportive for economic growth going forward. However, US inflation did increase by 5.0% over the period. While the Federal Reserve continues to view this inflation increase as transitory, it is entirely possible that it may raise interest rates sooner than expected.

2021's second quarter saw positive returns for UK equities, as economic growth forecasts were upgraded. However, the retail and leisure sectors underperformed expectations, as the UK government extended lockdown restrictions in response to a rise in COVID-19 cases.

Emerging market equities also performed well, led by Brazil, due to favourable central bank intervention and an effective vaccination programme. Oil was up 18% over the quarter and continues to benefit from the re-opening of the global economy and reductions in supply. These higher crude oil prices were particularly beneficial to Russian and Saudi Arabian stocks.

Higher yielding bonds recorded a strong performance, as investors continue to search for yield in the current economic climate, with emerging market debt posting the strongest gains. The yield on Government bonds declined over the quarter, following a sharp rise in the last quarter. Long-term UK gilt yields materially decreased (i.e. prices increased) over the period, which (all else being equal), will increase the value placed on pension schemes' fixed liabilities.

The Pensions Regulator (TPR) Update
TPR publishes its Annual Funding Statement and Corporate Plan

"Trustees must stay alert to funding challenges as market uncertainties continue"

This is just one of the expectations that The Pensions Regulator (TPR) outlines in its Annual Funding Statement (AFS) 2021. The AFS is particularly relevant to schemes with valuation dates between 22 September 2020 and 21 September 2021 (Tranche 16, or T16 valuations) as well as schemes undergoing significant changes that require a review of their funding and risk strategies.

As the UK economy emerges from the pandemic, the AFS envisages trustees having to deal with employers in one of three broad categories:

- COVID-19 has had limited impact on the business.
- The initial impact of COVID-19 was material but trading has, or is, recovering strongly.
- The impact of COVID-19 continues to be material.

The AFS outlines how trustees should consider the long-term funding and investment of their scheme depending on the impact of COVID-19, Brexit, scheme maturity and the scheme's funding position relative to its long-term target. The statement includes guidance on addressing these issues and sets out actions TPR expects trustees to take. It is stated that a commitment to 'integrated risk management' (IRM) remains as important as ever.

Some key points from the AFS include:

- TPR does not expect its new funding code to come into force until late 2022 at the earliest. In the meantime, TPR will regulate all T16 valuations according to the requirements of the existing legislation and guidance that is currently in force.
- Regarding funding positions generally, over the three-year period to March 2021, funding levels for T16 schemes on their technical provisions basis have improved. However, the position for individual schemes will vary greatly compared with aggregate estimates. TPR expects each scheme to consider its position individually depending on its own circumstances.
- The AFS includes considerations for schemes currently undertaking a valuation, covering scenario analysis; inflation; mortality; recovery plans; investment; employer covenant (the AFS includes a checklist to reduce schemes' risk of employer distress); and deficit recovery contributions.
- Issues that should be on trustees' radars include climate change, long-term funding targets, scheme maturity and the prospective requirements in the new single code for 'Own Risk Assessments'.

The AFS also has information on what schemes can expect from TPR (including how TPR will use its powers) and, usefully, includes tables, consistent with those published last year (and with no material changes) on key risks trustees and employers should focus on and actions to take.

Corporate Plan

On a more general note, TPR has also published its new three-year Corporate Plan which sets out how it will deliver against all five priorities in its long-term Corporate Strategy - Security; Value for money; Scrutiny of decision-making; Embracing innovation; and Bold and effective regulation.

The Corporate Plan articulates the activity TPR will prioritise whilst recognising the continued impact of COVID-19 and the changes that will be coming to the pensions landscape through the Pension Schemes Act 2021.

TPR's finite resources are acknowledged too – "We therefore have to consider carefully where we deploy our budget and resources, as our funding is more constrained and that is likely to remain the case over the term of this Corporate Plan". That said, the Corporate Plan confirms that TPR's current focus on defined benefit (DB) funding in the wake of the pandemic will be maintained.

On the DC side, TPR highlights the risk that shorter-term volatility may impact savers through reactive investment

decisions, deciding to opt-out or becoming more susceptible to scams promising better returns. TPR expects trustees to review with their advisers what actions (if any) might be necessary to take for their schemes and savers.

Very helpfully, the Corporate Plan includes figures illustrating the main areas of focus under each strategic priority for the first year of the plan, and then how TPR will move forward across years two and three.

To help measure its performance and to track progress, TPR has four key outcomes that are measured annually and 14 key performance indicators (KPIs) for 2021-22. KPIs of note include:

- "We will complete our second phase of consulting on principles for a revised DB code with a view to finalising the code in 2022"; and
- "We have launched our climate change strategy and will develop a regulatory approach to the new climate change legislation, including sharing our expectations publicly".

The Corporate Plan also sets out how resources will be allocated across TPR and includes a financial summary for the organisation.

Helpful Links

Annual Funding Statement 2021 | The Pensions Regulator

Corporate Plan 2021-24 | The Pensions Regulator

Commencement of Pension Schemes Act provisions

In a written statement on 2 March 2021, the Minister for Pensions and Financial Inclusion, Guy Opperman, set out the next steps the Government would be taking to achieve the aims of the legislation in the latest Pension Schemes Act (PSA 2021).

Since that announcement, several milestones have been reached, including:

- The laying of Regulations aimed at making the UK's pension system "safer, better and greener" (e.g. measures which, when introduced later this year, will see the UK become the first G7 country in which trustees of pension schemes are statutorily required to consider, assess and report on the financial risks of climate change within their portfolios)
- Consultations on new TPR powers, due to come into force in autumn 2021.
- Consultations on regulations to combat pension scams, also effective from Autumn 2021.

One item that is still noticeable by its absence is the second consultation around the new funding regime for defined benefit schemes. This was expected in the summer but it now looks like it is unlikely to appear until nearer the end of the year and will only impact schemes with an actuarial valuation effective date of April 2022 (at the earliest).

Trustees should, nevertheless, have all the above issues on their knowledge and understanding (TKU) training programmes.

One specific PSA 2021 statutory instrument has now been passed. The Pension Schemes Act 2021 (Commencement No. 1) Regulations 2021 (SI 2021/620) bring into force, on 31 May 2021, the following provisions of the Act:

- Section 124 (climate change risk). These provisions create regulation-making powers allowing the government to impose governance and disclosure requirements on trustees of occupational pension schemes in relation to climate change risk.
- Section 126 (Pension Protection Fund). Modification of provisions relating to pensionable service, following the High Court decision in Beaton v Board of the Pension Protection Fund in relation to the aggregation of transferred-in benefits for PPF compensation cap purposes.
- Schedule 7 (Pensions Regulator: minor and consequential amendments). This provision amends section 90 of the Pensions Act 2004 to provide that the code of practice which the Regulator is obliged to publish concerning section 38 contribution notices must also cover the circumstances where the Regulator considers the new employer insolvency or employer resources tests are met.

Helpful Links

Government response: Taking action on climate risk: improving governance and reporting by occupational pension schemes - GOV.UK (www.gov.uk)

Consultation investigation prosecution criminal offences | The Pensions Regulator

Pension scams: empowering trustees and protecting members consultation - GOV.UK (www.gov.uk)

The Pension Schemes Act 2021 (Commencement No. 1) Regulations 2021 (legislation.gov.uk)

Finance Act 2021 - Freezing of LTA confirmed

The Finance Bill 2021, first published on 11 March 2021, received Royal Assent on 10 June 2021 and is now an Act. The key pension provisions are unchanged:

- Lifetime allowance: Clause 28. The lifetime allowance is frozen at 2020/2021 level of £1,073,100 for the five tax years running from 2021/22 to 2025/26. This is implemented by an amendment to sections 218(2C) and (2D) of the Finance Act 2004.

  So, more people could be impacted by the ceiling on tax relievable pension savings; especially those still lucky enough to have final salary pensions (previous research suggests that the impact of the LTA has increased from circa 200 savers / £5m paid in tax to over 2,000 savers and £100m paid in tax between 2006 and 2018).
- No changes are made to the Annual Allowance on pension 'inputs'. Also, the Finance Act does not make any other changes to pension tax relief (despite calls for fairer treatment of low earners in 'net pay' schemes).
- Collective money purchase schemes: Clause 29 and Schedule 5. Part 4 of FA 2004 is amended to include reference to collective money purchase schemes (with the regulatory framework for such schemes set out in the Pension Schemes Act 2021).

Pension scheme trustees and sponsors do not have to take any action in response to the enactment of the Finance Act. They may choose, however, to alert members to the freezing of the LTA (noting that some HMRC protections – Fixed and Individual Protection 2016 – are still available).

Pensions indexation still a scheme rules 'lottery' despite prospective RPI reform

In a recent Court of Appeal ruling which, depending on what their scheme rules say, may impact other pension scheme trustees and employers, a High Court decision on the calculation of pension increases has been unanimously overturned.

Background

In January 2020, the High Court was asked to interpret the pension increase rule for the Britvic Pension Plan. This gave Britvic plc a power to choose "any other rate" than the default rate under the Plan's rules. The relevant provision stated [emphasis added] -

"The part of a pension which exceeds any guaranteed minimum pension in payment is increased on 1 October in each year. The rate of increase is the percentage increase in the retail prices index during the year ending the previous 31 May but subject to a maximum of 5 per cent. [in relation to Pensionable Employment up to and including 30 June 2008 and a maximum of 2.5 per cent. in relation to Pensionable Employment on and from 1 July 2008] **(or any other rate decided by the Principal Employer)**."

In a decision that impacted increases to pensions in payment and deferred pensions too, the Judge construed the words "any other rate" as meaning only "any **higher** rate".

Britvic appealed.

The Court of Appeal decision

The Court of Appeal unanimously overturned the High Court ruling, holding that the words "any other rate" could mean "any other rate or rates". So, Britvic could decide on a different rate in relation to pension attributable to different periods of service. Further, subject to overriding requirements on pension increases:

- Britvic could use its power to decide a rate for more than one year or at any time before the implementation date of 1 October in any year. There was no limitation in the wording as to when the decision must be made nor a requirement that the discretion only be exercised once the relevant RPI for the year ending the previous 31 May was known.
- The rate of increase chosen could be 0%.
- It was open to Britvic to set a different rate of increase for deferred revaluation in the Plan.

Comment

The Court of Appeal decision could impact other pension schemes depending on their pension increase rules and any 'balance of powers' (whether the trustees and/or employer can decide a rate of increase). The case also demonstrates that pension increase rights under scheme rules continue to be a contentious issue and a rules lottery notwithstanding the government decision to align RPI with CPIH from

Helpful Links

Court of Appeal Judgment Template (bailii.org) : BRITVIC PLC v (1) BRITVIC PENSIONS LIMITED (2) SIMON MOHUN [2021] EWCA CIV 867

Coming up next...

While there will be many of you reading this who will be sick of football or had no interest in Euro 2020 to begin with, as a football fan, the past number of weeks have been a real joy for me personally. At the time of writing this introduction, the final has just been played and, despite a valiant effort by England in the final and wonderful campaign throughout the competition, on this occasion football is not "coming home". There is though another World Cup in 2022 …

Conscious of not alienating a significant proportion of the readership, I still do see wider themes that we can take from the competition that have emerged over the past weeks. As a "neutral observer", I have witnessed extreme highs, undeserved losses, unpredictable triumphs and even, literal life-or-death incidents. Favourites fall, underdogs usurp, and supporters scream and squirm.

Yet the one crucial theme that I have noticed from the competition is that team spirit, togetherness and preparation are common threads amongst the teams that have lasted the course. Working for each other, supporting each other, sharing past experiences and knowledge – these are the hallmarks of a successful team campaign.

There is no reason why we can't translate similar ideas across into our professional lives. Pension schemes might have a slightly longer time horizon than three or so weeks of a tournament, but they do involve a real, long-term team effort, built on cooperation, shared knowledge and trust. Learning from past experiences, preparing for future challenges and communicating at all times are crucial to delivering for pension scheme members. There may be no trophies– let alone scheme members cheering like fans – but there will still be a team success at the end of it all.

So, with those lessons in mind, here are some of the fixtures on the schedule that we believe are worth considering and will help sponsors and trustees alike in getting their tactics ready on what to do next.

- On 1 October 2021, the latest in the **climate change governance and reporting requirements** for pension schemes will come into force. The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 introduce new requirements for pension schemes with over £5 billion in assets (and authorised master trusts and CDC schemes) to publish their climate risk disclosures and put in place effective governance processes. The DWP has published draft guidance in regard to the regulations, which will also take effect from the same date.
- While recognising that deadlines in relation to the pandemic are far from set in stone, particularly when there are different policies set for England, Scotland, Wales and Northern Ireland, on 30 September 2021, the **Coronavirus Job Retention Scheme** is due to end. Affected employees will continue to receive 80% of their pay up until that date (for the hours that they have not been able to work), with the rate of employer contributions towards that cost increasing in July (10%) and August (20%). It is still unclear what will happen after that date, so it will be important for employers and trustees alike to remain engaged and vigilant, particularly in regard to the sponsor's financial situation post-furlough.
- TPR's **Trustee Knowledge and Understanding** ("TKU") Consultation – we expected to see the release of TPR's proposed updates to the Code of Practice on TKU in the first half of 2021. A focus of the changes is likely to be how professional trustees are meeting the TKU standards and how this can be demonstrated through ongoing learning. While there have been no movements in the first half of 2021, we would be surprised if an announcement from TPR doesn't come through in the coming months.

Trustees and sponsoring employers alike should also be aware of the following key dates in the coming months… particularly if they are partial to a consultation or two!

- **29 July 2021 –** Deadline for responses to the DWP consultation on barriers to DC scheme consolidation.
- **30 July 2021 –** Deadline for feedback on the FCA and TPR call for input on the pensions consumer saving journey.
- **31 July 2021 -** Deadline for requesting final GMP data cuts from HMRC.
- **31 August 2021 –** TPR consultation on climate risk governance and reporting closes for feedback.

- **Summer 2021 –** An independent review of the Human Rights Act 1998 is due to report its recommendations on possible reform.
- **3 September 2021 –** PLSA consultation on the proposed Responsible Investment Quality Mark (RQIM) due to close.
- **30 September 2021 –** The Coronavirus Job Retention Scheme is due to end, subject to any further extension by the Chancellor.
- **1 October 2021 -** Climate change risk governance and disclosure requirements start to apply.
- **1 October 2021 -** 'Long-stop' deadline for trustees to publish implementation statement online.
- **1 October 2021 -** New stronger powers (including information gathering powers) for TPR come into force.
- **5 October 2021 –** Various regulations come into force in respect of DC schemes, aiming to improve the outcomes for DC scheme members and better regulate illiquid asset investments.
- **Autumn 2021 -** Statutory transfers: additional requirements.

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