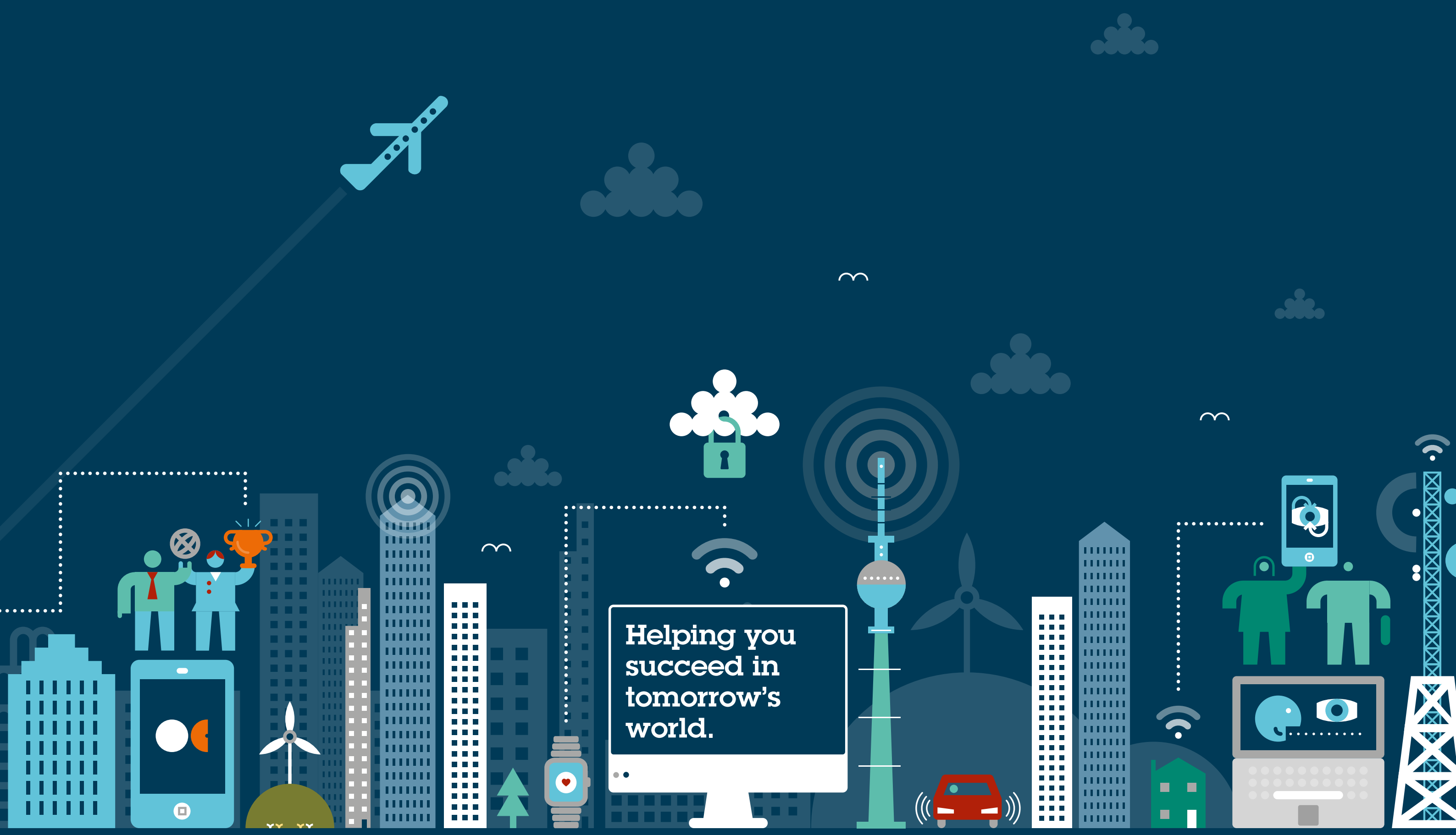
Pensions Action Plan
Q4 2017



This action plan is a summary of changes and proposals in pensions law and regulation over the last quarter, which employers and trustees need to respond to now or in the coming year.

How to use the action plan

The action plan is divided into different subjects:

Changes requiring immediate action are identified in **red**.
Changes requiring action in the next 6 to 12 months are identified in **blue**.
Changes to note are identified in **green**.

The column on the left hand side of the table shows whether the issue applies to defined benefit schemes or sections (DB), defined contribution schemes or sections (DC) or both (All).

To read the full report with links go to
Pensions Action Plan – Q4 2017

You can access the In Focus briefings, papers and articles that are named in **orange** by clicking on them.

If would like advice on any of the points raised in this action plan, please contact your usual Osborne Clarke contact, **Jonathan Hazlett** or **Jennifer Cave**.

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Administration

All

Distress and inconvenience: £500 to £1,000 is not enough

The High Court has upheld a complaint by a member that an award, by the Deputy Pensions Ombudsman, of £500 compensation for distress and inconvenience was "an error of principle" *(Mrs Angela Smith v Sheffield Teaching Hospitals NHS Foundation Trust, [2017] EWHC 2545 (Ch))*. Mrs Smith had been provided with incorrect information about her pension on a number of occasions. She complained that she suffered financial and non-financial loss (distress and inconvenience) as a result. The Deputy Pensions Ombudsman did not uphold the complaint of financial loss, but did award £500 compensation for distress and inconvenience. Mrs Smith appealed to the High Court. The High Court dismissed the appeal on financial loss. However, it allowed the appeal on distress and inconvenience. The judge replaced the Deputy Pensions Ombudsman's award of £500 with one of £2,750. At the same time, he confirmed that "*the top end of the 'normal band'*" for compensation for distress and inconvenience "*may be taken to be £1,600*".

Actions/Osborne Clarke comment: In our **Q2 2017 pensions action plan**, we reported the case of *Baugniet v Capita Employee Benefits Ltd (t/a Teachers' Pensions) and another*. The Pensions Ombudsman's guidance note on compensation for distress and inconvenience says that, where a member has suffered significant distress and inconvenience, it may be appropriate to pay compensation. In most cases, awards are *"likely to range from £500 to £1,000"* but, in exceptional cases, *"higher awards are necessary"*. In the *Baugniet* case, the High Court directed the Pensions Ombudsman to reconsider the appropriate award of compensation for distress and inconvenience on the grounds that an upper limit of £1,000 was *"out of touch with the value of money"*. The judge urged the Pensions Ombudsman to reset the upper limit at £1,600. The judgment in *Mrs Smith's* case seems to confirm that the 'normal' range of compensation for distress and inconvenience should now be seen as £500 to £1,600. The decision that a higher award should be made to Mrs Smith because of the particular circumstances of her case (*"the number of opportunities there were to correct the misinformation given…, the relative ease with which the true position could be ascertained…, and the period through which the maladministration persisted"*) is also interesting. Trustees who are considering an IDRP complaint, or responding to a complaint which has gone to the Pensions Ombudsman, may wish to take legal advice on the appropriate level of compensation (if any) to offer for distress and inconvenience.

DB

Incorrect transfer value: scheme to pay financial advice costs

The Pensions Ombudsman has partially upheld a complaint by a member who took financial advice in relation to transferring his DB benefits on the understanding the transfer value was more than £30,000, but was later informed there had been an error and the correct transfer value was less than £30,000 (***Mr K, PO-13094***).

The member argued that the scheme should honour the original transfer value (£30,500) because this was provided as a guaranteed figure and he relied upon it in making financial decisions, including the decision to take financial advice.

The Pensions Ombudsman ruled that the scheme was only obliged to pay the correct transfer value (£25,000). However, he accepted that the member would not have taken independent financial advice if he had been provided with the correct transfer value. He was financially astute and would have transferred to a SIPP whose provider did not require evidence that financial advice had been taken. The scheme had already offered £250 compensation for distress and inconvenience. The Pensions Ombudsman directed it to pay the £950 IFA fees the member incurred in taking advice.

Actions/Osborne Clarke Comment: This decision highlights one difficulty that can arise in connection with the legal requirement for trustees to check that a member has taken independent financial advice before transferring DB benefits worth more than £30,000. In this case, the original transfer value quoted was over the £30,000 threshold, but the corrected value was below it. Like many others, this scheme followed the good practice of recommending that members take financial advice even where the transfer value is less than £30,000. However, the member was able to show both that he would not have taken advice and that he could have selected a SIPP provider that did not require evidence of financial advice. Trustees should consider taking legal advice if they discover that a transfer value has been over-quoted.

Automatic enrolment

DC

Minimum contributions

The minimum contribution rates for DC schemes or sections used for automatic enrolment will increase on 6 April 2018. The minimum rates for employer and member contributions that will apply from April depend upon which of the four permitted definitions of pensionable pay a scheme or section uses to calculate contributions.

Actions/Osborne Clarke Comment: Employers and trustees of DC schemes or sections used for automatic enrolment should consider taking consultancy and or legal advice on whether they need to make any change to employer or member contribution rates from 6 April 2018, whether it is necessary to consult on any change and whether it is necessary to amend the scheme's contribution rule and/or payment schedule.

Brexit

All

Autumn Budget provision

The Chancellor delivered the Autumn Budget on 22 November 2017. We consider the pensions related announcements in the 'Pensions Tax' section of this action plan. However, the Budget also makes significant provision for Brexit. HM Treasury's **paper** confirms that nearly £700 million of additional funding has already been provided to support preparations for exit and that the Budget sets aside a further £3 billion (£1.5 billion in each of 2018 – 2019 and 2019 – 2020) *"to ensure the government can continue to prepare effectively for EU exit".*

Actions/Osborne Clarke Comment: All trustees and employers will need to stay informed on the potential impact of Brexit. Our dedicated Brexit **insights** page has more analysis on the challenges and opportunities posed by Brexit, including in relation to **pensions**.

Contracting-out

All

Amending/removing protected rights rules

Before April 2012, schemes could contract out of the state second pension on the 'protected rights' (money purchase) basis. If they did this then a series of statutory requirements, designed to make special provision for members' protected rights, applied.

Contracting-out on the protected rights basis was abolished with effect from 6 April 2012. At the same time, the statutory requirements were largely removed. However, for some schemes the requirements were written into (or referred to in) the scheme rules. This raised questions as to whether they were 'hard coded' and, if so, whether (given section 67 of the Pensions Act 1995, which protects accrued rights, and the terms of the scheme amendment power) trustees could do anything to remove them.

To help, the government introduced a statutory power for trustees to amend their rules by resolution to remove all or part of any rule that makes special provision for protected rights. Trustees can still use this statutory power. However, critically, any resolution must be passed before 6 April 2018.

Actions/Osborne Clarke Comment: The power to pass a resolution to remove or amend protected rights provisions must be exercised before 6 April 2018. The trustees and employers of schemes which were contracted out on the protected rights basis before 6 April 2012 should discuss this point with their legal adviser without delay.

Charges

DC

Disclosure of transaction costs

The FCA has published a policy statement and new rules requiring asset managers to provide trustees with information about administration charges and transaction costs. The new rules will apply from January 2018.

These rules will help the trustees of DC schemes and schemes with DC sections to comply with the existing requirement to include information about transaction costs in their annual chair's statement. However, they also pave the way for new disclosure requirements contained in **draft regulations** currently being **consulted on** by the DWP. The new regulations, which would apply to some schemes with effect from 6 April 2018, focus on giving members access to information about charges and transaction costs in a meaningful way. The draft regulations would, for example, require trustees to include more information about charges in their chair's statement and publish information about charges and transaction costs free of charge on a website or in hard copy form.

Actions/Osborne Clarke Comment: Trustees may wish to discuss the FCA's policy statement and the DWP's consultation with their pensions consultant and or legal advisers.

DC

Member-borne commission charges

In our **Q3 2017 pensions action plan** we reported that, with effect from 1 October 2017, the current ban on member-borne commission will be extended to agreements that were in place before 6 April 2016 and have not been varied or renewed since that date. We discussed the ban, and the schemes to which it applies, in more detail in our **Q2 2017 pensions action plan**.

Actions/Osborne Clarke comment: Trustees of schemes which provide DC benefits, or benefits which include DC benefits, should discuss this change with their consultant or legal adviser. If it applies to the scheme, the trustees will need to make sure that they obtain a written confirmation from their provider(s) that the ban is being complied with. The starting point is that providers have until 1 April 2018 to comply with the ban and until 30 April 2018 to write to trustees to confirm that it is being complied with.

Data protection

All

General Data Protection Regulation

In our **Q3 2017 pensions action plan** we reported the announcement, in the Queen's speech, that there would be a new Data Protection Bill. The Bill was introduced into the House of Lords on 13 September 2017 and is now following the legislative process. It is designed to be read with, and to work alongside, the EU General Data Protection Regulation (GDPR).

Actions/Osborne Clarke comment: The GDPR will take direct effect in the UK in May 2018. It will make significant changes to data protection law and to the penalties for non-compliance. There is no transitional period and trustees and employers will need to make a number of changes before May to achieve compliance. They will also need to be able to demonstrate their compliance. For more information about the changes, and about how we can help you to achieve compliance with the GDPR through our 'Pensions Secure' product, please contact us. For more information about the Data Protection Bill, please read our **insight**.

DC

Bulk transfers without member consent

In our **Q1 2017 pensions action plan** we reported that the DWP had issued a call for evidence on how the current legal requirements relating to DC bulk transfers without member consent could be improved. The DWP has now issued a **consultation** seeking views on policy proposals and draft regulations that would change the law, with effect from April 2018, to :

- remove the requirement to obtain an actuarial certificate for bulk transfers between DC schemes where the pension rights are 'pure' DC (that is, the members do not have any potentially valuable guarantees or options);
- replace the requirement for an actuarial certificate with an alternative test and new member protections more suited to the DC environment (for example, a requirement to seek written advice from a 'suitably qualified professional' who is independent of the receiving scheme);
- remove the scheme relationship (employer link) condition; and
- ensure members who were protected by the automatic enrolment charge cap before transfer are still protected after the transfer.

Actions/Osborne Clarke Comment: The consultation closed on 30 November 2017 and, if adopted, the draft regulations will come into force on 6 April 2018. Employers and trustees who are considering a bulk transfer of DC benefits, for example as part of an exercise to consolidate pension schemes, may wish to discuss the draft regulations with their legal adviser.

DC

Guide to preparing a Chair's statement

The Pensions Regulator has published a **report** following two surveys of DB and DC schemes it completed in the spring.

For DC schemes, the report notes *"some improvements in DC governance and administration"*, but says that many small and medium DC schemes *"are not meeting standards around administration (eg ensuring prompt and accurate transactions), investments (setting appropriate investment strategy for the default fund) and value for members (assessing quality of services provided to members)"*.

The report sets out the action the Pensions Regulator will take where schemes are not meeting the required standards. It also says that, to help (all) trustees, the Pensions Regulator will prepare a guide on what a good chair's statement looks like. The Pensions Regulator has now published this **guide** to preparing a chair's statement. The guide gives examples of good and poor practice. It also includes a checklist and notes to help trustees to write each section.

Actions/Osborne Clarke Comment: Trustees may like to read the Pensions Regulator's guide to preparing a chair's statement and refer to it when they next prepare or review a statement. More generally, the report underlines the importance for trustees of following the Pensions Regulator's **code of practice** on the governance and administration of schemes providing DC benefits. The response to the survey of DB schemes is discussed in the 'Scheme funding' section of this action plan.

Discrimination

All

Equalisation

The Court of Appeal has handed down its judgment in the case of *Safeway Ltd v Newton and another [2017] EWCA Civ 1482*. The case relates to the steps taken to amend the Safeway pension scheme to introduce a common retirement age of 65 for men and women. An announcement was sent to members in 1991, but the scheme rules were not amended by deed until 1996. The Court of Appeal confirmed that, where a scheme power of amendment requires amendments to be made by deed, there must be a deed. An announcement to members is not enough. However, if there is a deed, and if this says that the change to normal retirement ages takes retrospective effect from the date given in an earlier announcement, this may be enough. We discuss the Court of Appeal's judgment and, in broad terms, the question that has been referred to the CJEU, in our **insight**.

Actions/Osborne Clarke Comment: If the CJEU decides that the equal treatment requirements of EU law are not overriding, this could be a light at the end of the tunnel for the Safeway scheme and for other schemes which did not manage to 'tick all of the boxes' when they amended their rules to equalise retirement ages. In the Safeway case, it would mean that, as intended, the scheme could apply a common retirement age of 65 from 1 December 1991 (the date in the announcement to members) instead of having to continue to apply a common retirement age of 60 until May 1996 (the date of the amending deed). For other schemes, it could have a similar effect. However, the position would depend on a number of factors, including the terms of the scheme's power of amendment, the date the original changes were made and the nature of any changes made in more recent years. Trustees and employers may wish to discuss this case with their legal advisers. We will report any developments in a future edition.

Pensions tax

All

Money Laundering Regulations 2017: new requirements for trustees

New Money Laundering Regulations (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017) came into force on 26 June 2017. The new regulations impose record keeping and information requirements on the trustees of 'relevant trusts', and HMRC registration and reporting requirements on the trustees of 'taxable relevant trusts'. They also impose additional record keeping and compliance requirements on 'trust or company service providers'.

There has been some uncertainty as to how the new regulations apply. However, HMRC has now published a **Frequently Asked Questions** document, from which it is clear that:

- all pension scheme trustees need to set up a record of 'beneficial owners', maintain this and comply with certain information requirements;
- if the pension scheme has incurred (or incurs) a 'UK tax', the trustees need to register it with HMRC as a 'taxable relevant trust' and comply with related requirements;
- in some cases, the trustees will need to take immediate action to register their scheme with HMRC as a 'taxable relevant trust';
- 'trust or company service providers' are subject to additional requirements.

Actions/Osborne Clarke Comment: The new regulations have applied since 26 June. Now that HMRC has confirmed how they apply, all trustees need to consider how the new regulations apply to them and what actions they need to take in order to comply. Trustees who are not sure how the new regulations apply to them should consider taking legal advice without delay.

All

Autumn Budget

The Chancellor delivered the Autumn Budget on 22 November 2017. HM Treasury's **paper** contained relatively few announcements in relation to pensions:

– as expected, the lifetime allowance will increase in line with CPI to £1,030,000 for the 2018-2019 tax year;

– there is no change to the annual allowance;

– the basic state pension and the new state pension will both increase by the triple lock (3% this year) in April 2018. This will give an increase of £3.65 a week for someone receiving the full basic state pension and of £4.80 a week for someone receiving the full new state pension;

– from April 2019, tax relief for employer premiums paid into life assurance products or certain overseas pension schemes will be modernised to cover policies where an employee nominates an individual or registered charity to be their beneficiary. No more detail was given about this change.

Finally, the paper confirms that the government will take a number of steps to support long-term investment in innovative firms by *"giving pension funds confidence that they can invest in assets supporting innovative firms as part of a diverse portfolio"*.

This proposal is linked to a **consultation response** on measures the government can take to *"strengthen the UK as a place where high-growth innovative firms can obtain the long-term 'patient' finance that they need to scale up"*. The backdrop to this is a wider policy intention to help create an economy that is *"driven by innovation that will see the UK becoming a world leader in new technology"*. The consultation response refers to an action plan, set out in the Budget itself, to unlock over £20 billion in order to finance growth in innovative firms over 10 years. It also says that the government will take a series of steps to support long term (patient) investment in these firms. One of these steps is giving pension funds confidence to invest: *"Some pension investors perceive the current interpretation of regulations to act as a barrier to investment. To respond, the Pensions Regulator will clarify guidance on how trustees can invest in assets with long-term investment horizons, such as venture capital, infrastructure, market-returning investments that have a social side benefit and other illiquid assets in a diverse portfolio. This will give pension funds confidence that they can invest in assets supporting innovative firms as part of a diverse portfolio."* With specific regard to DC schemes, *"HM Treasury will establish a working group of institutional investors and fund managers to unlock further supply of patient capital, including tackling continuing barriers holding back Defined Contribution pension savers from investing in illiquid assets"*.

Actions/Osborne Clarke Comment: Trustees and employers should note the Autumn Budget announcements and may like to confirm to members that the lifetime allowance will be increasing to £1,030,000 with effect from 6 April 2018. We will report any developments in relation to pension fund investment in assets supporting innovative firms in a future edition.

All

Pension scams

In our **Q1 2017 pensions action plan** we reported that the government had published a consultation on three sets of proposals for dealing more effectively with pension scams. These included a proposal to ban cold calling in relation to pensions, a proposal to limit the statutory right to transfer pension benefits and a proposal to make it harder to open fraudulent schemes.

The consultation response was delayed by the general election, but **published** in August. The response confirms that the government intends to work on the details of a ban on cold calling in relation to pensions this year and then bring forward legislation *"when Parliamentary time allows"*. The ban would cover telephone calls and all electronic communications (for example, e-mail and text) and be enforced by the Information Commissioner's Office. The response considers how the ban, and the message that no legitimate firm will ever cold call about a pension, can best be communicated to members. Since the response was published, the Financial Guidance and Claims Bill has been amended to require the new single financial guidance body created by the Bill to advise the Secretary of State to introduce a ban on cold-calling if it *"considers that there are products or services where a ban on cold-calling would be conducive"*. The Bill then gives the Secretary of State the power to make regulations introducing a ban. However, the government has **confirmed** that it intends to publish draft legislation introducing a ban *"in early 2018 [and …] then legislate on a ban as soon as Parliamentary time allows"*.

In terms of the proposal to limit the statutory right to transfer benefits, the consultation response confirmed that the government intends to legislate to limit the statutory right to transfer so that members may only transfer to: a personal pension scheme operated by a firm authorised by the Financial Conduct Authority; a master trust authorised under the new master trust authorisation regime; an occupational pension scheme where there is evidence of a genuine employment link between the member and the receiving scheme; or (in some circumstances) a QROPs.

In terms of the proposal to make it harder to open fraudulent schemes, the consultation response confirmed that the government will legislate to require all pension schemes to be registered with an active (as opposed to dormant) company as sponsoring employer. However, HMRC will have a discretion to agree to register a scheme (or not to de-register a scheme) if the employer is dormant but there are legitimate reasons for this. **Draft provisions** for inclusion in a Winter 2017 Finance Bill were published on 13 September. These amend the Finance Act 2004 to allow HMRC to refuse to register a scheme (or use its powers to de-register a scheme) if *"a sponsoring employer …is a body corporate that has been dormant during a continuous period of one month"* in the year before the decision is made *"or … the pension scheme is an unauthorised Master Trust"*. The 'dormant employer' provision would apply from 6 April 2018, and the master trust provisions apply from the date the requirement for master trusts to be authorised by the Pensions Regulator takes effect.

Actions/Osborne Clarke Comment: The response to consultation and developments since then are helpful. However, the government is still working on the proposed ban on cold-calling. For the time being, trustees should continue to monitor developments. They should also consider seeking legal advice in any case where a member is transferring their benefits out of the scheme and the administrators have flagged concerns about the transfer or receiving scheme. (There is more information about the Financial Guidance and Claims Bill and new single financial guidance body in our **Q3 2017 pensions action plan**).

All

Money purchase annual allowance and employer arranged financial advice

In our **Q3 2017 pensions action plan** we reported that a new Finance Bill would be introduced to legislate for two changes which were removed from the Finance (No 2) Bill 2016/17 in the rush to finalise it before the general election. The first was a provision reducing the money purchase annual allowance from £10,000 to £4,000 with effect from 6 April 2017. The second was a provision changing the income tax exemption for employer-arranged financial advice (increasing it to £500 per employee per tax year and making it available for advice on the employee's pension arrangements and use of them), again with effect from April 2017. A new Act, the Finance (No 2) Act 2017, received Royal assent in November. The Act makes both of these changes.

Actions/Osborne Clarke Comment: Trustees and employers should note that these changes are now law.

Scheme Funding

DB

Focus on: code of practice on DB funding

The Pensions Regulator has published a **report** following two surveys of DB and DC schemes it completed in the spring.

For DB schemes, the report sets out four steps that trustees should be taking to make sure that the scheme is being treated fairly by the employer, and five actions that trustees should be taking in connection with integrated risk management. It says that there are *"significant issues"* in both areas and that the Pensions Regulator will *"be undertaking more proactive casework and developing [its] approach and interactions with smaller schemes, focusing on funding and governance issues. [It will] consider opening a DB scheme investigation where unfair treatment [of the scheme] is apparent, particularly if recovery plan end dates are being extended unnecessarily or where the employer covenant is constrained and total payments to shareholders are being prioritised"*.

The report also confirms that the Pensions Regulator is already taking a tougher approach if schemes do not submit their valuation on time. This is reflected in the Pensions Regulator's **compliance and enforcement** bulletin for July to September 2017. The bulletin reports that, between July and September, the Pensions Regulator issued improvement notices and third party notices requiring three sets of trustees and employers who failed complete their valuation and send it to the Pensions Regulator on time to submit an appropriate valuation within a reasonable period.

Actions/Osborne Clarke Comment: This report underlines the importance for trustees and employers of following the Pensions Regulator's **code of practice on DB funding** and making sure that valuations are completed within the 15 month statutory deadline. The response to the survey of DC schemes is discussed in the 'DC' section of this action plan.

The Pension Protection Fund

All

Draft levy determination and consultation on contingent assets

In our **Q2 2017 pensions action plan** we reported that the Pension Protection Fund had published a consultation on the levy rules to apply for the three years 2018 to 2021. The Pension Protection Fund has since **published** a combined draft levy determination for 2018/19 and policy statement for the years 2018 to 2021. The consultation on the draft levy determination ran until 1 November and final levy rules are expected this month. Separately, in October, the Pension Protection Fund also **published** a consultation on possible changes to rules on contingent assets, with a view to publishing new standard forms for contingent assets in January 2018.

Actions/Osborne Clarke Comment: Trustees may wish to discuss the draft levy determination with the scheme actuary and the consultation on contingent assets with the scheme actuary or their legal advisers.

All

Changes to compensation for members entitled to a bridging pension

A bridging pension is a pension paid to a member who retires before state pension age. A 'bridging element' is paid between retirement and state pension age. At state pension age, the scheme stops paying the bridging element and it is replaced by state pension. At the moment, Pension Protection Fund compensation rules do not allow the Pension Protection Fund to reduce a member's pension at state pension age to remove the bridging element. In August, the DWP issued a **consultation** on draft regulations and possible methods for reducing a pension in order to address this. Having considered the responses it received, the DWP has issued a second **consultation** on draft regulations providing for the reduction method that respondents preferred. The consultation will close on 3 December 2017 and the regulations are expected to be adopted in February 2018.

Actions/Osborne Clarke Comment: The trustees of schemes that provide a bridging pension may wish to discuss this further with their legal advisers.

The Pensions Regulator

All

Scheme return – new questions on member data

The Pensions Regulator has published a checklist for **DB and hybrid schemes**, setting out new information trustees will need to include in their scheme return for the year 2017/18. This confirms that the scheme return will contain a number of new questions, including about member data. In particular, trustees will be asked to say when they last measured their 'common' and 'conditional' data, and what percentage of that data is *"accurate and present"*. More information about the questions, and why the Pensions Regulator is asking for this information, is set out in an annex. An **example scheme return form**, which includes the new questions, is also available.

Actions/Osborne Clarke Comment: The Pensions Regulator's **record keeping guidance** has been in place since 2010 and the checklist explains that the Pensions Regulator is including these questions in the scheme return so that it can *"measure the quality of record-keeping in the pensions industry and track the progress of individual schemes*". The Trustees of DB and hybrid schemes might wish to read the checklist and discuss the new questions about member data with their scheme administrators. We understand that similar questions will be included in the scheme returns for DC schemes from 2018.

Trustees

All

21st century trusteeship

In our **Q1 2017 pensions action plan** we reported that the Pensions Regulator had published a response to its discussion paper *"21st century trusteeship and governance"*. As part of its continuing work in this area, the Pensions Regulator has launched a new campaign called *"21st century trusteeship – raising the standards of governance"*. The Pensions Regulator has **said** that it will be sending targeted e-mails to trustees, employers and others directing them to a dedicated page on its website, but that it would like all trustees to visit this page and check they are meeting the expected governance standard.

Actions/Osborne Clarke Comment: This campaign confirms the increasing focus of the Pensions Regulator on good governance. Trustees might like to read the **dedicated webpage** and the materials on it. They might also like to record the fact that they have done this in their training log and discuss any actions they think it would be helpful to take as a result at their next trustees' meeting.

All

Final policy for monetary penalties and description of professional trustee

In our **Q2 2017 pensions action plan**, we reported that the Pensions Regulator was consulting on a draft policy for monetary penalties and a revised description of a professional trustee to use in its activities. A **consultation response** and final **monetary penalties policy** and **description of a professional trustee** have now been published. The monetary penalties policy sets out how the Pensions Regulator will use its power to impose monetary penalties on trustees where there have been scheme governance and administration failings. The description of a professional trustee will be used, amongst other things, to decide whether a higher penalty should be imposed on a trustee because they are a professional and so expected to meet higher standards.

Actions/Osborne Clarke Comment: The monetary penalties policy and description of a professional trustee form part of the Pensions Regulator's good governance campaign, discussed immediately above. All trustees might find it helpful to read the monetary penalties policy. Trustees who are paid, or (even if unpaid) might be said to *"act as a trustee … in the course of the business of being a trustee"* (for example, because they act or have offered to act for more than one scheme, or because they have been appointed to a scheme on account of certain skills or experience) might wish to review the description of a professional trustee.

VAT

All

VAT transitional period comes to an end

There have been a number of recent developments relating to the treatment of VAT on pension scheme services. In our **briefing**, we look at what has changed and what those changes mean for the employers and trustees of occupational pension schemes.

Actions/Osborne Clarke Comment: Many trustees and employers have been waiting for confirmation of what will happen when the transitional period set by HMRC comes to an end this month. It is particularly helpful that HMRC has confirmed that employers can continue to rely on current practice to recover VAT on administration fees and/or recover 30% of the VAT on an invoice that blends administration and investment management fees. This means that employers and trustees only need to take action if the employer wishes to recover VAT on investment management fees (as well as administration costs), or the scheme could be affected by HMRC's separate announcement in relation to SIFs. Employers and trustees may wish to take advice on these points.

Notes

Osborne Clarke in numbers

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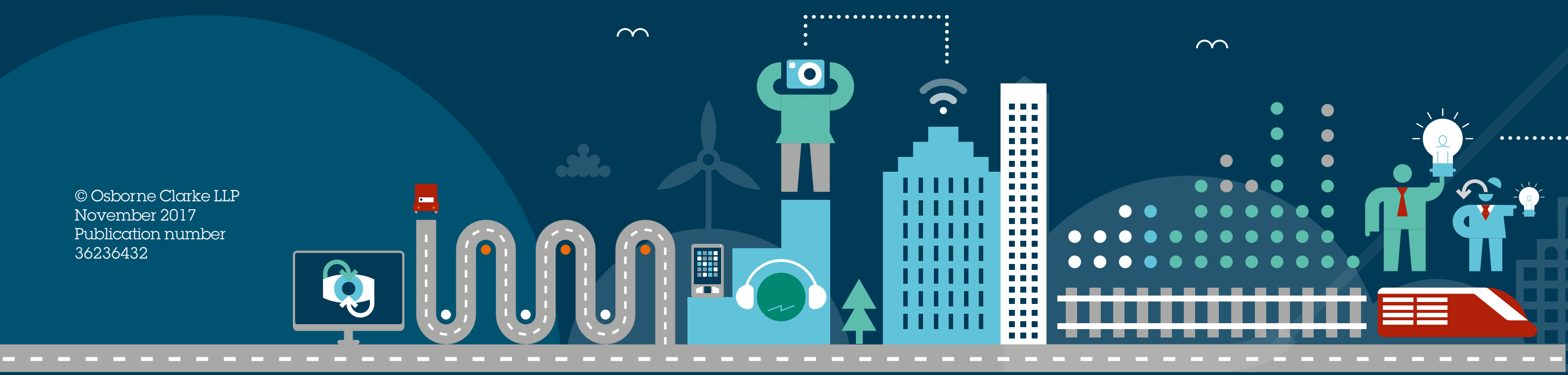

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