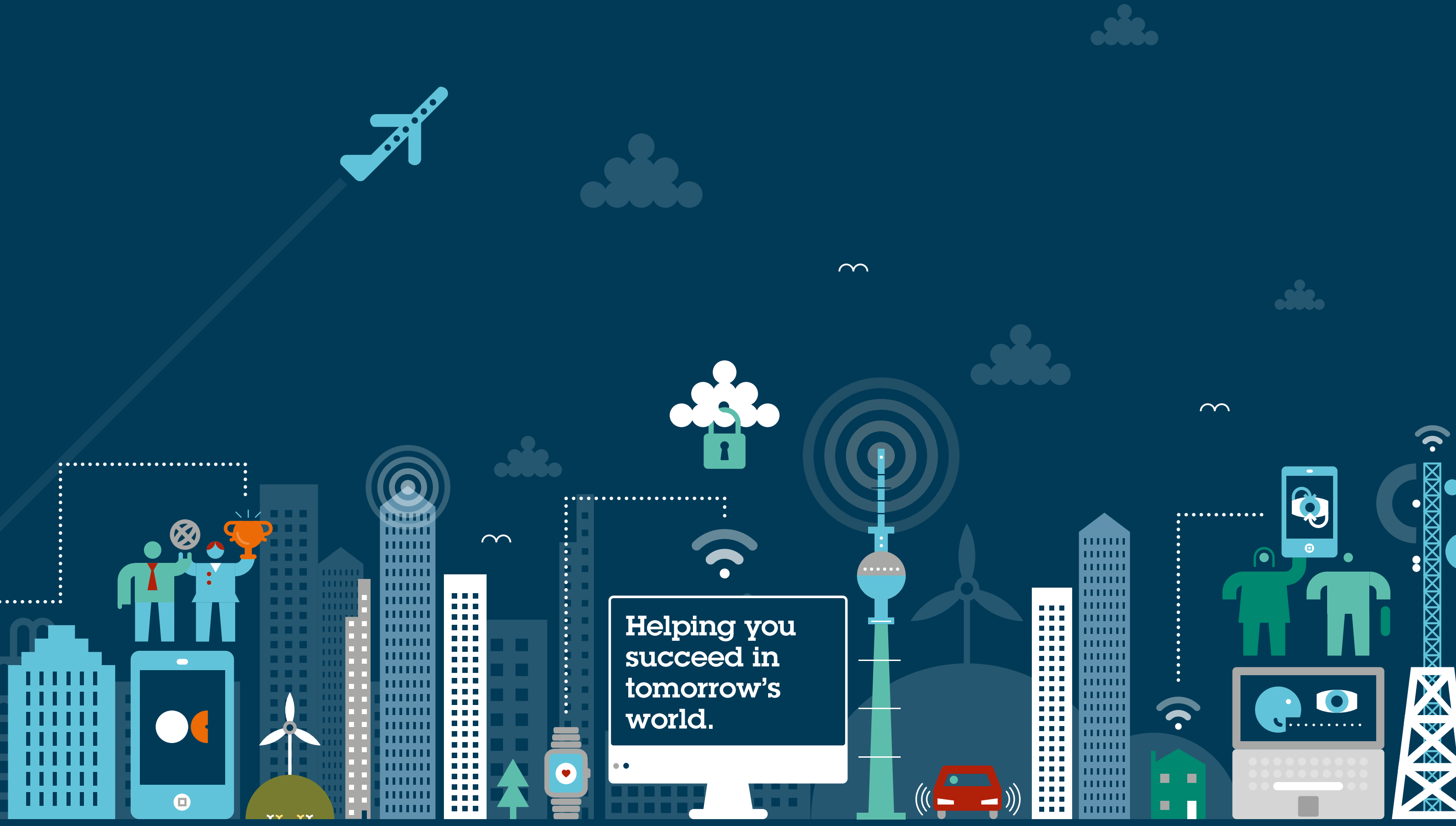
Pensions Action Plan
Q3 2021



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**).

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

If you would like advice on any of the points raised in this action plan, please contact your usual Osborne Clarke contact,
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Administration

All | Pension scams: Mr R (PO-28256) and an update

The Pensions Ombudsman has rejected a complaint by a member that his pension plan provider did not carry out sufficient due diligence or provide him with adequate warnings before processing his request to transfer to another scheme (**Mr R, PO-28256**). Both the transferring scheme and the administrator of the receiving scheme (which was a small self-administered scheme, or SSAS) sent the Pensions Regulator's Scorpion leaflet to the member. The member also: signed a form in which he confirmed that he was aware of pensions liberation issues and had carefully considered his decision to transfer; received a letter from the transferring scheme setting out concerns about the investment advice he had received and pointing out the risks of overseas investment; and signed a discharge confirming that he was aware of the risks.

After transfer, the monies were invested in hotel accommodation in Cape Verde. The member later became concerned that he might have been the victim of a scam and, with the help of a claims management company, made a complaint to the transferring scheme. The Pensions Ombudsman confirmed he was satisfied with the level of due diligence conducted by the transferring scheme, stating that "*sufficient warnings were provided … and he (the member) chose to disregard them*". The ombudsman also found that it was more likely than not that the member would have proceeded with the transfer, even if the transferring scheme had telephoned him to reiterate the risks involved.

Actions/Osborne Clarke Comment:

This member might be able to get redress from a different party, by pursuing a complaint in relation to the financial advice to make the Cape Verde investment. For trustees, the decision confirms the importance of following the best practice guidance on combatting pension scams and warning members about cold calls. Trustees should also consider taking legal advice if they are not sure whether they should pay a transfer value.

There have been a number of other developments in this area and Trustees should discuss the following with their administrators:

- The Pension Scams Industry Group (PSIG) has published a **new version** of its code of good practice on combatting pension scams, which includes a summary of the changes made since the last version;
- The Pensions Regulator has released a **webinar** for trustees explaining why it is asking trustees to sign up to its pledge to combat pension scams (discussed in our **Q2 2021 Pensions Action Plan**) and what this involves. It has also **urged schemes** to make sure they report suspected scams. The webinar confirms when and how to make a report;
- Guy Opperman has **called** on schemes to share scam data with the PSIG to help with the fight; and
- The Work and Pensions Committee has published its **report**, "Protecting pension savers—five years on from the pension freedoms: Pension scams" (summary of findings and recommendations **here**).

All | Providing support without advising and final guidance on DB transfers

The Financial Conduct Authority (FCA) and the Pensions Regulator have published an **updated version** of their guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation. The guide was released alongside the FCA's **finalised guidance** on advising on DB transfers.

Actions/Osborne Clarke Comment:

Employers and trustees might like to read the updated guide on providing support with financial matters without needing to be subject to FCA regulation. The section relating to identifying/providing a list of Independent Financial Advisers (IFAs) should be read with the factsheet highlighted in the **Pensions Ombudsman** section of this action plan. DB trustees might like to review the section on giving information in relation to transfers (including transfer values) with their advisers to see whether it affects anything they currently do.

All | Consultation response: increase in the general levy from April 2021

In our **Q2 2021 Pensions Action Plan**, we reported that the Department for Work and Pensions (DWP) had **consulted** on changes to the general levy (which funds the Pensions Regulator, the Pensions Ombudsman and, in part, the Money and Pensions Service) *"to bring levy income into balance with levy expenditure,"* and recover a deficit.

The consultation suggested three options for increasing the levy rates for the 3 years starting from April 2021. The government has now **confirmed** that it has chosen the first option (increasing levy rates and introducing separate rates for DB and hybrid, DC, master trust and personal pension schemes to reflect the different levels of supervisory activity for each type of scheme) and made **regulations** to implement the levy changes.

Actions/Osborne Clarke Comment:

Trustees should take note of this decision. There are significant general levy increases for DB and hybrid schemes, and sizeable increases for DC schemes other than master trusts.

Automatic enrolment

All | Call for evidence: alternative quality requirements for DB and hybrid schemes

In our **Q1 2021 Pensions Action Plan**, we reported that the Department for Work and Pensions (DWP) had held a call for evidence on the "cost of accruals" and "money purchase" tests for scheme quality which were introduced as alternatives to the "test scheme standard" for employers who use a DB or hybrid pension scheme to meet their automatic enrolment duties.

The DWP has now published its **consultation response**. This concludes that the "*overall objective of the alternative quality requirements to act as simplified quality tests for relevant pension schemes is being met*" and that they "*should continue in place without changes at the current time*". The DWP will, though, "*seek opportunities to work with those organisations which have made suggestions on technical changes to the statutory guidance that supports the tests … to understand what scope there might be for proportionate easements in the future*". The next review will be in 2023.

Actions/Osborne Clarke Comment:

The trustees and employers of DB or hybrid schemes which use one of these tests should take note of this consultation response.

DC

DC Consolidation, performance fees and charge cap

In the Budget 2021 (discussed in the **Pensions tax** section of this action plan), the chancellor announced that, to make it easier for DC pension schemes to consider higher risk illiquid investments such as venture capital and growth equity (and in line with **the September 2020 proposals** to encourage consolidation of DC schemes from October 2021 and remove barriers to illiquid investment), the government would consult on: (i) "*whether certain costs within the charge cap affect pension schemes' ability to invest in a broader range of assets*"; and (ii) draft regulations "*to make it easier for schemes to take up such opportunities within the charge cap by smoothing certain performance fees over a multi-year period*".

The government has **now** published a response to the "performance fees and charge cap" section of its **September 2020 proposals**, consulted on draft regulations which will allow schemes to smooth performance fees payable on illiquid investments over five years, and asked for views on the impact of "look through" (to underlying investment costs) on investment in venture capital and growth equity-pooled investment vehicles. The government intends to publish a response to this latest consultation, together with a response to the rest of the September 2020 consultation, and final draft regulations and statutory guidance, in June 2021. The regulations would then come into force in October 2021.

Actions/Osborne Clarke Comment:

The trustees of DC schemes and sections should urgently discuss the **October 2021 value for money/scheme consolidation changes** with their advisers. They might also like to discuss this latest consultation with their DC consultant.

DC Next steps: small pots

In our **Q2 2021 Pensions Action Plan**, we reported that the cross-industry working group tasked with reporting and making recommendations in the difficult area of "small pots" in the automatic enrolment market had **delivered its report**. The report made a series of recommendations around "*enabling automatic and automated large-scale low- cost transfers and consolidation for the AE mass-market*", and called on the pensions industry to take these forward with the government and regulators, with deliverables from summer 2021.

The Pensions and Lifetime Savings Association and the Association of British Insurers have now **convened** a Small Pots Co-ordination Group to take the recommendations forward. The group plans to publish a progress report in the summer.

Actions/Osborne Clarke Comment:

Trustees (particularly of DC master trusts, who might in due course be asked to help with small-scale trials) should take note of this new group and continue to follow developments. Small pots are created when members change jobs and do not transfer their pension savings to the scheme of their new employer.

Discrimination

All | Further guidance: equalising benefits for the unequal effect of GMPs

In previous editions of the Pensions Action Plan, we have reported on the **High Court's decision** in *Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank PLC and others* that schemes must equalise benefits to address the unequal effect of Guaranteed Minimum Pensions (GMP). We have also reported developments since the judgment was handed down.

There has been one development in the last quarter: the industry working group has published **guidance** on pensions tax issues. This new note (which includes two template member communications) is intended to be read and used with the two tax guidance notes already published by HMRC (in **February** and **July** 2020). At the moment, the guidance does not address the tax issues connected with using the GMP conversion equalisation method, or with equalising past transfers, because HMRC has not published any guidance in these areas. However, it does contain some thoughts in relation to GMP conversion. The working group also plans to publish separate notes on GMP conversion and on equalising past transfers.

Actions/Osborne Clarke Comment:

Trustees and employers should take note of this new guidance note as they continue with, or with the preparatory work for, their GMP equalisation project.

Indexation/revaluation

All | Judicial review of decision to reform the RPI

In our **Q2 2021 Pensions Action Plan**, we reported that HM Treasury and the UK Statistics Authority (HMT and the UKSI) had published a **consultation response** confirming that the Retail Prices Index will be aligned with the Consumer Prices Index including owner-occupiers' housing costs (CPIH) from February 2030 and that the government will not offer compensation to the holders of index-linked gilts.

This February, the trustees of the BT, Ford, and Marks and Spencer pension schemes announced that, following a joint application, the court had granted an extension of time for them to consider making an application for a judicial review of this decision. Judicial review is a procedure under which the courts consider the lawfulness of decisions made by public bodies.

The trustees of these schemes have now **confirmed** that they are seeking a judicial review and explained the reasons why.

Actions/Osborne Clarke Comment:

Trustees should take note of this development and follow the application. We discuss other actions that DB trustees and employers might like to take in our **Insight** (which was written after the February announcement).

DB | GMP indexation: does this decision affect your scheme?

In our **Q1 2021 Pensions Action Plan**, we reported that HM Treasury was consulting on three options for ensuring that public service pension scheme members reaching state pension age continue to have their pension payments fully indexed and equalised. The consultation was also relevant to private sector schemes whose rules provide for pensions in payment to increase on the same basis as public service pensions.

HM Treasury has now published its **consultation response**. Option three (making full GMP indexation the permanent solution for public service pension schemes) has been chosen, with the result that public service pension schemes will provide full indexation to people with a GMP who reach state pension age after 5 April 2021.

Actions/Osborne Clarke Comment:

The trustees and employers of private sector schemes whose rules provide for pensions in payment to increase on the same basis as public service pensions should take legal advice on whether and how this decision affects them.

Investment

All | Regulations delayed: CMA's order still applies with 10 June deadline

In previous editions, we have reported on the Competition and Markets Authority's (CMA) **Final Order** and **explanatory note** in its investigation into competition in the investment consultancy and fiduciary management markets.

We have also reported that the DWP has consulted on draft regulations that will amend pensions legislation to: (i) integrate two of the key remedies in the CMA's final order (mandatory competitive tendering of fiduciary management appointments and setting strategic objectives for investment consultants); and (ii) give the Pensions Regulator power to oversee compliance with these new requirements, with trustees reporting on compliance in their scheme return.

The DWP has now **confirmed** that "*publication of the consultation response and the final regulations is delayed. We expect to be able to publish these in the first half of 2022*". This means that, for the time being, trustees need to continue to comply with the terms of the CMA's order and the Pensions Regulator's guidance. These include requirements to:

- complete a competitive tender within 5 years of the start date of the first fiduciary management agreement if, on 10 June 2019, 20% or more of the scheme's assets were already subject to fiduciary management but the fiduciary manager(s) were not appointed following a competitive tender meeting the CMA's requirements;
- complete a competitive tender **by 10 June 2021** where that five-year period had already expired on 10 June 2019, or will expire before 10 June 2021;
- complete a competitive tender in relation to any new appointment or increase in the level of assets under management which will result in 20% or more of the scheme's assets (in total) being subject to fiduciary management; and
- submit a second **annual compliance report** to the CMA later this year (the first annual report should have been submitted between 10 December 2020 and 7 January 2021).

Trustees also need to take advice on whether it is necessary to review the performance of their investment consultant against the strategic objectives the trustees set for them in 2019.

Actions/Osborne Clarke Comment:

Trustees need to understand which of these requirements apply to them and what they need to do, and by when, in order to comply with the CMA's order. Any non-compliance must be reported to the CMA within 14 days of becoming aware of the failure to comply, together with a description of the steps taken to address the failure.

All | Call for evidence: trustees' understanding of 'Social' aspect of ESG

The DWP has **launched** a **call for evidence** on the "*effectiveness of … trustees' current policies and practices in relation to social factors*" (in the context of environmental, social and governance factors, or ESG) "*how trustees…understand "social" factors and how they seek to integrate considerations of financially material social factors into their investment and stewardship activities*". The responses will inform a review, by the DWP, of whether it needs to take action "*to ensure that trustees are better able to meet their legal ESG obligations*" and "*to ensure both the risks and opportunities presented by social factors are adequately considered by pension schemes*".

The consultation paper gives examples of social factors which could be financially material (these include company supply chains), includes links to resources which provide more information about social factors and gives some examples of how trustees can take social factors into account and/or take action in relation to them.

Actions/Osborne Clarke Comment:

Having reviewed the position in relation to climate change, the government is moving its attention to the 'S' in ESG. Trustees might like to ask for a reminder of the legal duties and requirements in this area (and when they can or should take account of members' views) and start to think about whether there is any action they can take. We have written a series of **Insights** on *ESG, Sustainability and Responsible Business*.

All | Implementation statements

As discussed in our **Q2 2021 Pensions Action Plan**, the trustees of DC and DB schemes must now include in their annual report an implementation statement in relation to their statement of investment principles. They must also publish this statement online. The things the implementation statement must cover and the date by which it must be published online depend on whether the scheme is DC or hybrid, or DB. DB schemes have less to report upon and a little more time to publish, but all schemes must publish online by 1 October 2021.

Actions/Osborne Clarke Comment:

Trustees need to understand when they must prepare their first implementation statement, what they must include in it and by what date they must publish it online. They should consider taking legal advice on this and on compliance.

All | Climate risk governance and reporting

Please see the entry in the next section of this action plan.

Pension Schemes Act 2021

All | Royal Assent and timings

In previous editions of the Pensions Action Plan, we have reported on the Pension Schemes Bill. The Pension Schemes Act 2021 received Royal Assent on 11 February 2021.

For DB schemes and sections, the Act introduces new provisions relating to scheme funding and contribution notices, together with a series of new criminal offences and civil penalties. For example, in connection with funding, schemes will have to prepare a funding and investment strategy and a written statement of strategy. For contribution notices, there will be two new (and additional) tests for imposing a contribution notice: an "employer insolvency test" and an "employer resources test", and changes to the "reasonableness" test. "Avoidance of employer debt" and "conduct risking accrued scheme benefits" will be criminal offences punishable by fine and or up to seven years in prison, or a civil penalty of up to £1 million. The Bill will also change the notifiable events regime.

For all schemes (DB and DC), the Act extends the Pensions Regulator's investigative powers and introduces other new criminal offences and civil penalties. For example, there will be a civil penalty of up to £1 million for knowingly or recklessly providing false or misleading information to the Pensions Regulator. It also introduces a framework for:

– new climate change risk governance and reporting duties;

– changes to the statutory transfer right to help to combat pension scams;

– pensions dashboards; and

– collective money purchase schemes.

At the moment, only a few provisions of the Act are in force, mainly ones which contain a power to make regulations. Guy Opperman has **suggested** that, for the changes to the notifiable events regime (including the new requirement for employers to prepare a "statement of intent" in relation to certain changes that will affect DB schemes or sections), the government "*will consult on the draft regulations later this year, for commencement as soon as practical thereafter*". The same statement confirms that "*(i)n early Summer we plan to consult on draft regulations for scams and Collective Defined Contribution Schemes, with commencement on the scams measures from early Autumn 2021. …We aim to consult on proposed regulations for the Pensions dashboard later this year and lay draft regulations before Parliament for debate in 2022. Delivery remains on track for 2023 in line with the plans published by the Pensions Dashboards Programme…On Defined Benefit Scheme Funding, later this year we will consult on draft regulations, following promised engagement with key interested parties, working closely with colleagues at the Pensions Regulator as they develop the revised Funding Code, which will also be subject to a full public consultation*". Separately, the Pensions Regulator is reported to have said that it now plans to launch its second consultation on the DB funding code at the end of 2021 and to have the new code in force in late 2022 or early 2023.

The other entries in this section confirm the dates that other provisions are expected to come into force.

Actions/Osborne Clarke Comment:

Trustees and employers should make sure they understand the changes being made by the Act and continue to follow developments. The changes to the contribution notice tests and rules, changes to the notifiable events rules and new criminal offences of "avoidance of employer debt" and "conduct risking accrued scheme benefits" are extremely important for DB employers and trustees.

DB Draft policy on the new criminal offences

Since the Act received Royal Assent, the Pensions Regulator has consulted on a draft policy setting out how it expects to investigate and prosecute the new criminal offences of "avoidance of employer debt" and "conduct risking accrued scheme benefits". We discuss the consultation in our **Insight**.

Actions/Osborne Clarke Comment:

The draft policy suggests that the two new offences will start to apply on 1 October 2021. However, employers, trustees and others need to understand and start to take account of them now, both when approaching and taking decisions, and in recording them.

All Draft regulations: contribution notices and investigatory powers

The Department for Work and Pensions (DWP) has consulted on draft regulations which provide more detail on the new "employer resources test" for imposing a contribution notice, and more detail on the new information gathering powers (these being a new power to require people to attend an interview, extending the purposes for which an inspector can enter premises and new fixed or escalating penalties for non-compliance with information gathering requirements). We discuss the consultation and the two sets of draft regulations in our **Insight**.

Actions/Osborne Clarke Comment:

The changes to the contribution notice provisions are designed to make it easier for the regulator to issue a notice. This, combined with the introduction of the criminal offences discussed above, means that employers and trustees should take legal and other advice in relation to any change which could affect a DB scheme, affect the employer's 'resources' and/or reduce the amount the scheme might recover in an insolvency situation. The range of activities potentially caught is very wide and, although Guy Opperman has **suggested** that the changes will apply from this Autumn (1 October seems a likely date), it is possible that the regulator will look back at earlier acts and omissions.

The expanded investigatory powers are relevant both to DB and DC schemes and trustees and employers should take note that the changes are expected to apply from 1 October 2021.

All | Climate change risk governance and reporting

There has also been an update on when the new climate change risk governance and reporting duties will come into force. We discussed the draft regulations and statutory guidance likely to be made under the Act in our **Q2 2021 Pensions Action Plan**, and take a more detailed look at what the new climate change risk duties mean for trustees and employers in our **Insight**.

Guy Opperman has now **confirmed** that the government intends to lay the regulations "*this Summer to come into force ahead of COP26*", (the 26th UN Climate Change Conference of the Parties) which is due to start on 1 November 2021.

Actions/Osborne Clarke Comment:

The trustees of pension schemes with assets of £1 billion or more, and of master trusts, need to discuss the changes now with their advisers and start to prepare for them coming into force. This will be either later this year (where they have assets of £5 billion or more, or for master trusts) or in October 2022 (where they have assets of between £1 billion and £5 billion). **The Pensions Climate Risk Industry Group (PCRIG) non-statutory guidance** is also likely to be a helpful resource.

The trustees of schemes with assets of less than £1 billion need to understand what is changing and consider, with their advisers, what action they can take now in relation to trustee knowledge and understanding and climate change governance and reporting in the period up to 2023-24 (being mindful of the fact that the duties might be extended to them from late 2024 or early 2025). The government encourages "*smaller schemes not in scope to begin to report on a voluntary basis … wherever it is proportionate to do so. Trustees of these schemes can use both the statutory guidance which will accompany our regulations and* ***The Pensions Climate Risk Industry Group (PCRIG) non-statutory guidance***".

All trustees also need to be aware of the Pensions Regulator's new climate change strategy, which we discuss in the **Pensions Regulator** section of this action plan.

Employers might like to discuss all of these changes with their trustees, with a view to working together on climate change issues where possible.

All | Pensions dashboards

In our **Q1 2021 Pensions Action Plan**, we reported that The Pensions Dashboard Programme (PDP) had published a timeline for the development of pensions dashboards. The Pensions Administration Standards Association (PASA) has now released **guidance**, suggesting actions schemes should take to prepare for pensions dashboards. This can be read in conjunction with PASA's new **data management plan guidance**.

Actions/Osborne Clarke Comment:

Trustees might like to discuss these two new guidance notes with their pensions consultant and administrators and agree what actions to take, from now, to prepare for compulsory onboarding to the first pensions dashboard. The second guidance note is also relevant to other projects and data more generally.

The trustees of Master Trusts and other larger schemes might be interested in the PDP's **call for** providers or schemes who might be interested in participating in the voluntary onboarding stage, which is scheduled for 2022.

Pensions tax

All | Consultation: increasing the minimum pension age from 55 to 57 in 2028

In our **Q2 2021 Pensions Action Plan**, we reported that the government intended to increase the normal minimum pension age (NMPA) from 55 to 57 from 2028.

HM Treasury has now **consulted** on how this change (which is due to take place on 6 April 2028) will be implemented. This suggests that:

- members will keep any protected pension age they have from when the NMPA increased from 50 to 55 in 2010;
- there will also be a new protected pension age, this time for members who had a right under the scheme rules on 11 February 2021 to take pension benefits at an age below 57. This time, neither the "retirement condition", nor the requirement to take all scheme benefits on the same date will apply. If the scheme rules allow it, members will be able to draw scheme benefits while they are still working and access their benefits in 'slices';
- if they want to, trustees and employers will be able to increase the minimum pension age in their scheme to 57 before 2028;
- trustees will need to "*notify members of the increase in NMPA when it is practicable to do so and in any event in line with usual disclosure of information requirements*"; and
- the government plans to publish draft legislation in summer 2021 and make the change in the subsequent Finance Bill.

Actions/Osborne Clarke Comment:

Trustees and employers should take advice on whether any members/employees are likely to benefit from a protected pension age. They should also start to think about how and when to communicate the increase in the NMPA to members, who will need to take it into account in their financial and retirement planning.

All | Budget 2021

On 3 March 2021, the chancellor of the exchequer delivered Budget 2021. As we report in our **Insight**, there are eight points for trustees and employers to note, including two announcements in relation to the DC charge cap and an announcement that the lifetime allowance will not increase in line with the Consumer Prices Index (CPI) as projected. It will remain at the current level of £1,073,100 until 5 April 2026 (the end of the 2025-26 tax year).

Actions/Osborne Clarke Comment:

Trustees and employers should think about how best to communicate the freeze in the Lifetime Allowance to all members, so that they can factor this into their retirement planning, and remind members how benefits in excess of the lifetime allowance will be taxed when benefits are paid. Members with pension benefits which are likely to be worth more than £1 million, may wish to take financial advice on whether they are eligible to apply for Individual Protection. Employers may wish to take advice on options for employees who are affected by the lifetime allowance freeze.

We discuss the two announcements relating to the DC charge cap in more detail in the **DC** section of this action plan.

All “Tax Day”

The Budget was followed by “Tax Day” (23 March 2021). The **tax policies and consultations paper** included three announcements relevant to pensions. The government is going to:

– Review the tax framework for DB superfunds and “*it should not be assumed that the tax regime that currently applies to entities and transactions in the Superfund structure or the pension schemes that have transferred to the Superfund will remain unchanged. The government's approach will be informed by the features of the permanent regulatory regime*” that is being pulled together.

– Address expansion of the assets to be included in the Dormant Assets Scheme in a future Finance Bill. (In our **Q2 2021 Pensions Action Plan**, we look at what the Dormant Assets Scheme is and which pensions assets might be included.)

– Make “*technical updates to pension tax rules to remove … anomalies*” which will otherwise stand in the way of the remedy for the age discrimination identified in the *McCloud* case (age discrimination created by protecting older members of the public service pension schemes from the 2015 scheme reforms).

Actions/Osborne Clarke Comment:

Employers and trustees who are considering a transfer to a DB superfund should take note of the first announcement and continue to follow developments.

Restructuring and insolvency

DB Moratoriums and restructuring: updated guidance and resources

The Pension Protection Fund (PPF) has updated its resources relating to moratoriums and restructuring plans. The resources **include** new, interim, guidance for cases where a scheme employer is involved in a moratorium or a restructuring plan under the Corporate Insolvency and Governance Act 2020. The guidance reflects the fact that there is a requirement to notify the PPF, which will exercise creditor rights. It confirms how notifications should be made and sets out the approach the PPF will take. There is a draft notification form and a series of standard restructuring documents (shareholders' agreement, articles of association, loan note agreement, security documents in support of loan notes and inter-creditor agreement guidance).

Actions/Osborne Clarke Comment:

Employers, trustees and insolvency practitioners should take note of these essential resources.

All Corporate Insolvency and Governance Act 2020

In our **Q4 2020 Pensions Action Plan**, we reported that the Corporate Insolvency and Governance Act 2020 had come into force on 26 June 2020. The Act and related regulations introduced a number of changes, including:

– a new 20 business day (extendible) moratorium to give companies breathing space from creditors while they seek a rescue;

– a new restructuring procedure for companies facing financial difficulties, including “cross-class cram down” provisions allowing dissenting creditors to be bound;

– temporary restrictions on the use of statutory demands and winding-up petitions; and

– a temporary relaxation of wrongful trading liability for directors.

Since then, we have reported a number of extensions to the temporary measures. Another set of regulations, containing further extensions, was **made** on 22 March 2021.

Actions/Osborne Clarke Comment:

The changes made by the Act could have a significant impact on pension schemes. Trustees and employers should read our **Insight** and take legal advice if any of the changes could soon be relevant to them. Trustees and employers might also be interested in our **Insight** on moratoriums.

Scheme funding

DB | Changes to scheme funding regime: update on timing

In our **Q2 2021 Pensions Action Plan**, we reported that the Pensions Regulator had published an **interim response** to its first consultation on changes to the scheme funding regime. The response confirmed that the Pensions Regulator expected to publish its second consultation (to include its full consultation response, a draft revised DB funding code and details of its proposed regulatory approach) in the second half of this year. The "Royal Assent and timings" entry in the **Pension Schemes Act 2021** section of this action plan gives an update on the timing of the second consultation and the date the new DB funding code is likely to come into force.

The Pensions Ombudsman

All | Three new factsheets

In our Q4 2019 pensions action plan, we reported that the government had published a consultation response confirming that it intended to change the law so that before, or at any stage of, the internal dispute resolution procedure (IDRP) the parties to a complaint can agree to it being considered by an Early Resolution Service (ERS) at the Pensions Ombudsman's Office, "*allowing parties to explore a route to resolution that is relatively quicker and therefore more cost-effective, in a potentially less formal manner*". As the law currently stands, the Ombudsman can only usually investigate a complaint after trustees have issued an IDRP decision.

The Pensions Ombudsman has now published a **factsheet about the ERS**. This is not the ERS discussed above. The law has not changed and there are points for trustees and employers to watch when corresponding with the ERS.

The Ombudsman has also published new/updated factsheets **on how it investigates complaints** and its **approach to trustees and employers providing factual information in respect of independent financial advisers** (for example, suggesting a list or panel of independent financial advisers (IFAs) who members might like to approach for advice).

Actions/Osborne Clarke Comment:

Trustees and employers should take note of these new factsheets and consider the need for legal advice in relation to member complaints and/or providing members with information about IFAs.

The Pensions Regulator

All | Single code and important new governance requirements

The Pensions Regulator has published a consultation on a new code of practice, which will combine 10 of the existing codes into 51 shorter topic-focused modules. The combined code includes additional material in some areas. It is also the code of practice required by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 and so introduces important new governance requirements for all schemes, including a requirement for schemes with 100 or more members to regularly complete and document an Own Risk Assessment (ORA).

Actions/Osborne Clarke Comment:

Our **Insight** suggests actions trustees can take to prepare for the new governance requirements and ORA. Trustees might like to read this and agree an action plan with their advisers.

All | Climate change strategy

The Pensions Regulator has published a climate change strategy, setting out its strategic response to climate change and confirming how it will help trustees to meet the challenges presented by climate change (and what it expects of trustees).

Actions/Osborne Clarke Comment:

We discuss the strategy and suggest actions for trustees and employers in our **Insight**. Trustees might like to read this and agree actions with their advisers.

All | Settlement policy

The Pensions Regulator has published a **settlement policy** "*for employers, trustees or anyone else who is a target of, or directly affected by, our regulatory or civil enforcement action*" setting out the approach it "*will take when negotiating and concluding settlements*" and what it expects from anyone making a proposal to settle potential or ongoing enforcement action.

Actions/Osborne Clarke Comment:

Trustees and employers should take note of this new policy and of the fact that it will not apply, for example, to penalty amounts (where the **monetary penalties policy** applies), enforcement of employer automatic enrolment duties and criminal proceedings.

All | 15 year corporate strategy

The Pensions Regulator (TPR) has published a **corporate strategy** setting out its objectives for the next fifteen years. The related **press release** confirms that "*[r]eflecting the changing nature of workplace pensions, the strategy sets out how TPR will carefully balance its focus between DB and DC, with a focus on acting where it can make the most difference – and to the benefit of all savers. It also builds on TPR's transformation to be a clear, quick and tough regulator*".

The document sets five strategic priorities: security of benefits and protection from scams; value for money; scrutiny of decision making; embracing innovation to enhance security, efficiency, transparency, simplicity and choice; and bold and innovative regulation. It also recognises the challenges that the continued consolidation of DC and DB schemes will bring.

Actions/Osborne Clarke Comment:

Trustees and employers should take note of this new 15 year strategy.

The Pension Protection Fund

DB Moratoriums and restructuring: updated guidance and resources

Please read the entry in the **Restructuring and insolvency** section of this action plan.

All Fraud Compensation Fund levy

In our **Q2 2021 Pensions Action Plan**, we reported that The High Court had confirmed that the Fraud Compensation Fund (which is managed by the Board of the Pension Protection Fund (PPF)) could help to compensate the members of 'scam' pension schemes who have suffered loss as a result of transferring to those schemes when caught by a pensions liberation scam (*The Board of the Pension Protection Fund v. Dalriada Trustees Limited and another*).

The PPF has now **reported** that it has "*a number of claims from such schemes, with a total value of over £40 million*" and expects "*to receive more claims from schemes which have been confirmed as eligible to apply for compensation*". As a result, it needs to apply a Fraud Compensation Fund levy of 75p per member (30p for master trusts) in 2021/22, to be collected by the Pensions Regulator.

Actions/Osborne Clarke Comment:

Trustees and employers should take note of, and plan for, this levy.

DB Consultation on changes to valuation assumptions

The PPF has **consulted** on changes to the actuarial assumptions underlying section 143 valuations (valuation during a PPF assessment period) and section 179 valuations (PPF levy valuations). The aim of the changes is to keep the assumptions in line with estimated pricing in the bulk annuity market. The changes would also apply to valuations under sections 152, 156 and 158 of the Pensions Act 2004.

Actions/Osborne Clarke Comment:

Trustees might like to discuss the consultation with their scheme actuary.

DB No change to compensation cap

The PPF has **confirmed** that there will be no change to the compensation cap for the year starting on 1 April 2021. The compensation cap (£41,461.07 at age 65, adjusted at other ages) is a cap on the total amount of compensation the PPF can pay to a scheme member each year. The Department for Work and Pensions' (DWP) decision to leave it unchanged is "*in response to the UK annual average wage inflation having decreased over the year*".

Actions/Osborne Clarke Comment:

The trustees of schemes in, or about to enter, a PPF assessment period should take note of the DWP's decision.

DB Business plan for 2021/22

The PPF has **published** its **business plan for 2021/22**. This confirms the actions it intends to take in this, the last of the three years covered by its **2019/22 strategic plan**.

Actions/Osborne Clarke Comment:

Trustees and employers should take note of the business plan, which sets actions in the areas of sustainable funding, innovation, service for members and schemes, culture and value for money.

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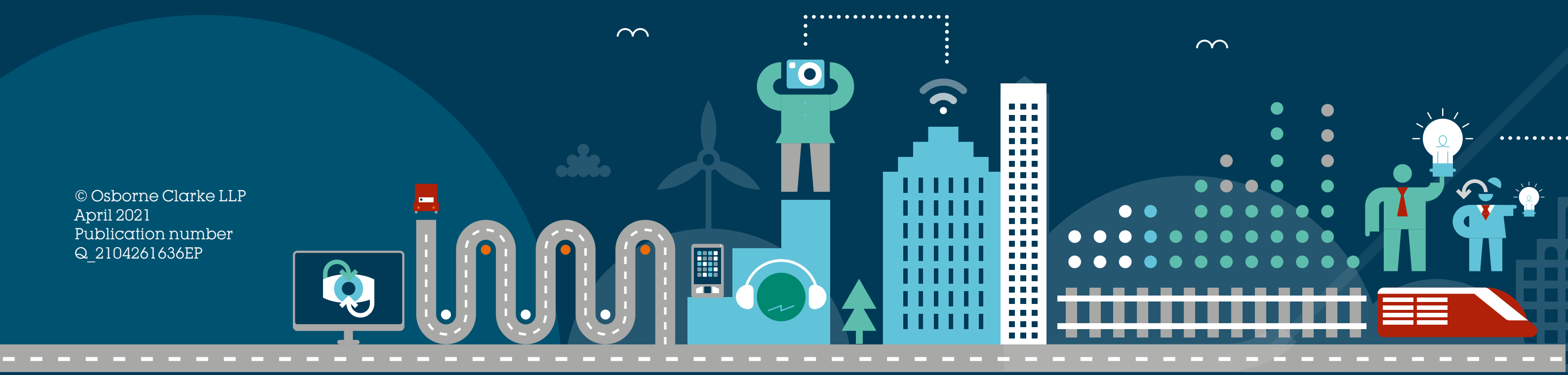

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