



MAY 2021

Pensions Round-Up

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Introduction

Welcome to the latest edition of DLA Piper's Pensions Round-Up newsletter in which we provide an overview of developments in pensions legislation and regulatory guidance.

In this edition we look at key developments from May 2021 including the following.

- **The Pensions Regulator:**

a call for input on the pensions consumer journey; the Regulator's Corporate Plan for 2021-24; the Annual Funding Statement 2021; a consultation on updates to code of practice 12 to reflect the two new tests in relation to Contribution Notices in the Pension Schemes Act 2021; and a blog post on liquidity risk.

- **Department for Work and Pensions:**

a consultation on draft regulations to amend the statutory right to transfer; a consultation on simpler annual benefit statements for DC schemes used for automatic enrolment; and a consultation on permitted charges within DC pension schemes.

- **Legislation:** a Bill containing provisions relating to the Fraud Compensation Fund.

- **Pensions dashboards:**

the Pensions Dashboards Programme's third Progress Update Report; and a call for input on staging.

- **On the horizon:**

a timeline of some of the key future developments in pensions to help employers and trustees plan ahead.

If you would like further information about any of the issues raised in this edition of Pensions Round-Up, please get in touch with Cathryn Everest or your usual DLA Piper pensions contact. Contact details are at the end of this newsletter.



The Pensions Regulator

Pensions consumer journey

On 18 May the Regulator and the Financial Conduct Authority (FCA) published a joint call for input on the pensions consumer journey, inviting views on what else they can do to help engage consumers so that they can make informed decisions that lead to better pension saving outcomes. The deadline for submissions is 30 July 2021.

The call for input focuses on the stages of the pensions consumer journey relating to starting up a pension and accumulating pension savings. A section on drivers of harm in the consumer journey looks at the key risks of: (1) consumers who struggle to make decisions that optimise their pension saving; (2) consumers remaining in poorly performing products; and (3) consumers' vulnerability to scams or transfer decisions not in their best interests. The call for input also considers the factors which lead to these harms. In relation to what else the Regulator and the FCA can do to enhance engagement and support consumer decision-making, the call for input considers and raises questions in relation to: harnessing behavioural biases and values; embracing technology and innovation; and engaging employers and firms. The section on engaging employers and firms includes that: (1) in workplace schemes, employers select the pension scheme into which their employees save; and (2) the Regulator and the FCA are interested in hearing views on whether employers are supported in this decision sufficiently. The call for input also asks whether there are areas of regulatory overlap between the Regulator and the FCA which are

causing problems for the consumer journey and, if so, what would mitigate these.

In terms of next steps, the Regulator and the FCA state that the responses to the call for input will help them to determine whether they have identified the right areas to explore further, and will inform regulatory interventions and actions in the years to come.

Corporate Plan

In March 2021 the Regulator published *TPR Strategy: Pensions of the future* setting out its commitment to put the pension saver at the heart of its work. The 15 year corporate strategy sets out five strategic priorities, which are security, value for money, scrutiny of decision-making, embracing innovation, and bold and effective regulation. On 19 May the Regulator published its *Corporate Plan 2021-24* which includes a roadmap detailing its main areas of focus under each of the five strategic priorities for the first year of the plan (2021-22) and how the Regulator will move forward across years 2 and 3 (2022-23 and 2023-24). The Regulator also looks at how it will measure its performance, with the corporate plan setting out key outcome indicators and key performance indicators. Points of note in the corporate plan in relation to 2021-22 include the following.

- The Regulator notes its new powers in the Pension Schemes Act 2021 in relation to civil and criminal sanctions, information gathering, new grounds for issuing contribution notices and changes to the notifiable events regime. The Regulator states

that it will continue to prepare so that it is fully equipped to use its "new powers from October 2021, and the changes to the notifiable events regime when these provisions are commenced in 2022". It notes that this will include updating its codes and publishing new guidance.

- The Regulator's exploratory work around value for money will include considering the merits and practicalities of a common, cross-industry standard and the development of benchmarks and it will publish a joint discussion paper with the FCA. (It is also worth noting that an updated version of the Regulatory Initiatives Grid published by the Financial Services Regulatory Initiatives Forum in May refers to planned publication of the joint discussion paper in the second or third quarter of 2021.)
- The Regulator has set up an industry working group to look at ways of encouraging the industry to ensure its trustee boards are made up of people with diverse backgrounds, knowledge, skills and perspectives. The Regulator also reports that it has developed an Equality, Diversity and Inclusion Strategy "that looks out across the period of this corporate plan and sets out our intended direction and activity". The Strategy was subsequently published on 24 June and we will provide further information on it in the June 2021 edition of Pensions Round-Up.
- The Regulator states that it will: continue to work with government to keep its interim regime for superfunds under review; and use its experience

“to support the DWP in continuing to develop the legislative framework for superfunds, which we anticipate being introduced from 2022-23”.

- The Regulator has made resource provision for two regulatory initiatives to commence during the first year of the corporate plan. The focus areas for these initiatives are noted to be dependent on the largest risks that the Regulator believes it can successfully mitigate with this approach, but the plan states that it is likely that one initiative will address the regulatory impacts of the pandemic on employers.

Annual Funding Statement

On 26 May the Regulator published its *Annual Funding Statement 2021* (Statement) for trustees and sponsoring employers of occupational DB pension schemes. The Statement is particularly relevant to schemes with valuation dates between 22 September 2020 and 21 September 2021 (Tranche 16), as well as schemes undergoing significant changes that require a review of their funding and risk strategies. The Statement sets out guidance on how to approach valuations under current conditions, what the Regulator expects from trustees and employers and what they can expect from the Regulator.

DB FUNDING CODE

A section of the Statement about the Regulator’s consultation on its updated DB funding code includes that: (1) the Regulator will wait for the DWP’s consultation on the new legislation to conclude before it publishes its second consultation on the draft code; (2) it expects this to take place towards the end

of 2021; and (3) it does not expect the new code to come into force until late 2022 at the earliest. For the avoidance of doubt, the Regulator notes that the current regime applies until the new legislation and revised code come into force, and it will regulate all Tranche 16 valuations according to the requirements of the existing legislation and guidance that is currently in force.

SCHEMES CURRENTLY UNDERTAKING VALUATIONS

The section of the Statement on considerations for schemes currently undertaking a valuation looks at: (1) actuarial assumptions and scheme demographics, including inflation and mortality assumptions; (2) post valuation experience; (3) investment considerations including liquidity; and (4) covenant considerations, with this section looking at covenant assessments, the impact of the COVID-19 pandemic on the employer, the impact of Brexit, affordability and deficit repair contributions, covenant monitoring and contingency plans, and corporate transactions.

MANAGING RISKS

The Regulator states that it continues to expect trustees to focus on the integrated management of three broad areas of risk: the ability of the employer to support the scheme; investment risks; and the scheme’s funding plans. It also states that trustees should consider the impact of climate change on integrated risk management.

In the sub-section on long-term funding targets (LTFTs), the Regulator states that it encourages schemes that have not already done

so to set a LTFT consistent with how the trustees and employers expect to deliver the scheme’s benefits, and then be prepared to evidence that their shorter-term investment and funding strategies are aligned with it. The Statement notes that new provisions in the Pension Schemes Act 2021, once implemented, will make it a legal requirement for schemes to have a specific long-term strategy designed to deliver an agreed long-term objective. It states that trustees should consider taking steps to incorporate this approach into their thinking, and agree it with the employer, if they do not do so already. It states that this will help them comply with any such changes.

It also notes the upcoming requirement for schemes with 100 or more members to carry out and document an Own Risk Assessment (ORA) of the system of governance, with information about this requirement included in the draft single code of practice that was published for consultation in March. The Statement includes that: (1) once the new code has been implemented (which it states is expected to be late 2021), the regulations in relation to the ORA will become effective; and (2) current proposals are that trustees will have to carry out and document their first ORA within 12 months. The Statement reminds trustees of Tranche 16 schemes that, at some stage during their next inter-valuation period, they will be required to carry out and document their first ORA. It states that documenting their key risks at the present valuation and how they are managing them within an IRM framework should make this task easier.

THE REGULATOR'S APPROACH

In terms of what to expect from the Regulator, the Statement includes that: (1) the Regulator will be engaging with schemes if it has concerns over corporate distress, to ensure they are following its guidance, and it is therefore imperative that trustees review its guidance on *Protecting schemes from sponsoring employer distress*; and (2) it will risk assess valuation submissions that it receives in a proportionate way.

KEY RISKS AND ACTIONS

The Statement also includes the series of tables (used in the Annual Funding Statements in recent years) which segment schemes according to funding strength, covenant and scheme maturity. The Statement notes that this year's tables are consistent with those published last year, with no material changes. Each table identifies the key risks that the Regulator expects trustees to focus on and features of the funding plans that it expects them to develop, depending on their scheme and employer characteristics. The Regulator reminds trustees that the tables are not intended to be exhaustive for each category.

The Regulator states that trustees should first decide how, if at all, their covenant has changed because of COVID-19 and Brexit, broadly where they are in the maturity spectrum, and how good their funding position is relative to their long-term funding target given the period over which they are aiming to achieve it. It states that this should enable them to find the table closest to their situation, setting out the Regulator's expectations on risks and actions. It states that trustees should then set about preparing

their recovery plans to balance affordability with contributions linked to well-defined triggers, contingency plans and other protections for member security, as outlined in the Statement.

Contribution Notices

On 27 May the Regulator published a consultation on changes to its code of practice 12 (currently called *Circumstances in relation to the material detriment test*) in light of the two new tests in relation to Contribution Notices (CNs) in the Pension Schemes Act 2021 (Act).

THE TWO NEW TESTS

The Act introduces two new grounds for issuing a CN (both of which are subject to a statutory defence).

- The 'employer insolvency test' which would be met in relation to an act or failure to act if the Regulator is of the opinion that: immediately after the relevant time, the value of the scheme's assets was less than the amount of its liabilities; and, if a section 75 debt had fallen due, the act or failure would have materially reduced the amount of the debt likely to be recovered by the scheme.
- The 'employer resources test' which would be met in relation to an act or failure to act if the Regulator is of the opinion that: it reduced the value of the resources of the employer; and that reduction was a material reduction relative to the estimated section 75 debt.

The Regulator notes that: (1) the new tests measure the impact that an act (or failure to act) has had on the employer relative to the scheme

on a snapshot basis, comparing the situation with and without the act; (2) the 'employer insolvency test' considers the impact on the hypothetical insolvency outcome for the scheme; (3) the 'employer resources test' considers the impact on the value of the employer's resources, relative to the scheme's deficit; and (4) these snapshot employer-impact assessments contrast with the existing 'material detriment' test, which looks at the effect of an act on the prospect of scheme benefits being paid many years into the future. The Regulator's accompanying press release also states that its new powers are expected to take effect from this autumn and that, "as already confirmed by the Government, will not be applicable to acts taking place before then".

THE REGULATOR'S APPROACH

The Regulator states that it does not expect the new tests significantly to shift its current approach for assessing potential CN cases, but that it is important that it consults with the industry and gives some examples of the circumstances in which the new tests could apply.

Code of practice 12 currently relates to the material detriment test, but the updated draft additionally covers the employer insolvency test and the employer resources test. The Regulator has also taken the opportunity to update and clarify the circumstances in relation to the material detriment test, and corresponding examples in its guidance, based on its experience to date. The Regulator notes that the code will be presented in the new 'single code' format when it is finalised.

DRAFT CODE AND GUIDANCE

The draft code lists the following circumstances in which the Regulator expects to issue a CN if it is of the opinion that one or more of the tests discussed in the code could be met.

- Sponsor support is removed, substantially reduced or becomes nominal (any of the tests).
- Weakening of the scheme's creditor position (material detriment and/or employer insolvency test).
- Some instances of paying a dividend or a return of capital by the sponsoring employer (any of the tests).
- Payments favouring other creditors of the employer over the scheme where no such sums are then due to those creditors (any of the tests).

The Regulator notes that the circumstances are not mutually exclusive.

It is also important to note that the consultation states that whether a CN would be pursued, or could be issued, would depend on the particular facts of the case, not just the 'act' test, including whether it would be reasonable to exercise that power. The draft code states that it is possible for the material detriment, employer insolvency or employer resources test to be met, but for the Regulator to conclude that it is not reasonable to issue a CN in the circumstances.

The draft code-related guidance sets out: some examples which the Regulator considers would not

normally be materially detrimental to the likelihood of members receiving their accrued benefits or meet the employer insolvency or employer resources tests; and some examples of actions that it considers do fall within the circumstances outlined in the code (that is, they could be the subject of a CN meeting the material detriment, employer insolvency or employer resources test). The Regulator states that the examples are for illustrative purposes only and should not be considered as setting precedents as they are not exhaustive and do not illustrate all instances where it may or may not act.

Blog post – liquidity risk

On 28 May the Regulator published a blog post by its Executive Director of Regulatory Policy, Analysis and Advice entitled *Now is the time to manage liquidity risk*. The blog post notes that investment in illiquid assets "may offer trustees the opportunity to capture an illiquidity premium, improve the overall risk and reward trade-off and improve outcomes for their scheme members". However, it goes on to state that "the extent to which trustees decide to invest in illiquid assets should be determined by their scheme characteristics, including their investment, risk management, governance and funding arrangements and consideration of the holding structure for those investments and the degree of investor protection embedded".

The blog post states that the Regulator wants trustees better to understand the cashflow and liquidity dynamics of their

scheme, how those dynamics might develop in the future and how they might change in times of market stress. It is also worth noting that the section on liquidity in the Regulator's Annual Funding Statement 2021 includes that: (1) given that the majority of schemes are now closed to new members and gradually maturing, trustees should actively monitor and mitigate their liquidity risks alongside other risks such as diversification; and (2) analysis should be proportionate to the scheme. The Statement also sets out some of the items that the Regulator expects more robust liquidity risk analysis to include.

The blog post includes a section on the draft single code of practice which the Regulator published for consultation in March. The draft code includes that: "Unless there are exceptional circumstances, governing bodies should ensure no more than a fifth of scheme investments are held in assets not traded on regulated markets". In relation to this, the blog post includes that: (1) the Regulator understands that this expectation has caused some concern; (2) in issuing the draft code, it believed it would be helpful to set out an appropriate maximum allocation other than in exceptional circumstances; (3) it does not want this expectation to limit the ability of trustees to invest in assets which may be illiquid and which may offer the opportunity of improved scheme outcomes, once they have taken appropriate advice and understand their scheme's liquidity risks; and (4) it acknowledges that some concerns have been raised and it is considering what adjustments might be appropriate.

Department for Work and Pensions

Pension scams

The Pension Schemes Act 2021 includes a power for regulations to be made prescribing additional conditions that must be met in order for there to be a statutory right to transfer. These provisions are designed to enable trustees to prevent transfers from occurring if there is a risk that the scheme member might be scammed. On 14 May the DWP published a consultation (*Pension Scams: Empowering Trustees and Protecting Members*) on draft regulations to be made under this power.

INTRODUCTION

The draft regulations apply to the statutory right to transfer. In summary, they require trustees or scheme managers of occupational and personal pension schemes to ensure that at least one of four specified conditions is met before they make a transfer. The DWP states that its regulatory approach strives to achieve a balance between providing greater protection for pension savers, giving trustees and scheme managers greater power to act in their members' best interests and continuing to give savers the right to exercise choice over how to use their pension savings. It states that this approach "will ensure the majority of pension scheme transfers can continue without unnecessary hindrance". In this article we provide an overview of the proposed four conditions in the draft regulations. References in this summary to transferring trustees include trustees or managers.

THE FIRST CONDITION

The First Condition sets out a list of types of receiving scheme which present a low scams risk, by virtue of the requirements placed on those schemes. This list

includes: authorised master trusts; and pension schemes operated by an insurer that is registered and authorised by the FCA and authorised by the PRA. To meet the First Condition, which would enable the transfer to proceed, the trustees must confirm that the proposed receiving scheme has been authorised or established in accordance with the relevant requirements for that scheme.

THE SECOND CONDITION

The Second Condition applies to transfers to occupational pension schemes to which the First Condition does not apply. In this case, the transfer can only proceed if the member can demonstrate an 'employment link' with the proposed receiving scheme. In summary, the criteria for there to be an employment link are that: (1) the member's employer is a sponsoring employer of the receiving scheme; (2) the member is in employment with the sponsoring employer that has lasted for a continuous period of at least three months ending with the date the current transfer request was received; (3) the employment during the last three months of that period has met a minimum salary requirement; and (4) the member and employer have both contributed to the scheme during those last three months. The draft regulations specify the evidence to be requested from the member to demonstrate an employment link. This evidence includes a letter from the employer, a schedule of contributions or payment schedule, and payslips. Alternatively, the member can provide evidence that they have made a previous transfer to the same receiving scheme within the last 12 months.

THE THIRD CONDITION

The Third Condition applies to a transfer to a Qualifying Recognised Overseas Pension Scheme (QROPS) in respect of which the Second Condition does not apply or applies but is not satisfied. In this case, the transfer can only proceed if the member can demonstrate a 'residency link'. In summary, this means that: (1) the member is resident in the same financial jurisdiction as that in which the QROPS is established; and (2) the member's residence in that jurisdiction has been for a continuous period of at least six months ending with the date the current transfer request was received. The draft regulations are not prescriptive as to the evidence to be provided, which the consultation explains is because different jurisdictions have different forms of residency documentation and the evidence members will be able to provide will vary. The consultation states that the Pensions Regulator will explore how best to support schemes to understand and apply the residency link requirement through guidance. The draft regulations state that the member can instead provide evidence that they have made a previous transfer to the same QROPS in the last 12 months.

THE FOURTH CONDITION

If none of the above conditions apply, the Fourth Condition applies. In summary, under the Fourth Condition: (1) the trustees must consider whether any specified 'red flags' are present and, if they are present, the transfer cannot proceed; (2) if there are no red flags, the trustees must consider whether any specified 'amber flags' are present; (3) if there are no red flags and no amber flags,

the transfer can proceed; and (4) if there are no red flags but there are amber flags, the transfer can only proceed if the member takes pension scams guidance from the Money and Pensions Service (MaPS) (or if they made a previous transfer to the same receiving scheme in the last 12 months and took MaPS pension scams guidance in that period). The draft regulations set out: proposed red flags; proposed amber flags; some additional information about the interpretation of certain terms used in the red and amber flags; and a power for the trustees to require that the member provides them with information in order for them to decide if the Fourth Condition is satisfied. An Annex to the consultation contains a draft list of standard questions for trustees to use to gather information from the member.

The draft red flags include that the trustees have a reasonable belief that: (1) a person or firm without the appropriate regulatory permission has provided financial advice to the member in relation to the transfer; (2) the member's request was made further to unsolicited contact about making a transfer from a party previously unknown to them; (3) the member has been offered an incentive to make the transfer; or (4) the member has been pressured to make the transfer quickly. It is also a red flag if the member: fails or refuses to respond to a request for information relating to the Fourth Condition; or is required to take the MaPS pension scams guidance but does not do so.

The draft amber flags include that the trustees have a reasonable belief that: (1) there are high risk or unregulated investments included in the receiving scheme; (2) there

are unclear or high fees being charged by the receiving scheme; or (3) the investment structures of the receiving scheme are unclear, complex or unorthodox.

The consultation notes that trustees may be able to decide that the red and amber flags are not present without the need for additional checks or activity to that which they already undertake as part of their current processes.

TIMING AND REGULATORY GUIDANCE

The DWP states that it intends to introduce the regulations in the autumn. The consultation also states that: the DWP expects that the regulations will be supported by guidance issued by the Pensions Regulator for occupational pension schemes; and the FCA will provide equivalent support for the personal pension schemes that it regulates.

Annual Benefit Statements

In the [October 2020 edition of Pensions Round-Up](#) (page 7), we reported on the government response to the DWP's 2019 consultation on *Simpler annual benefit statements*. The October 2020 response stated that the government would consult on a mandatory approach to simpler statements for DC schemes used for automatic enrolment. On 17 May the DWP published a consultation on draft regulations and accompanying draft statutory guidance to introduce these new requirements. The DWP states that the proposal to move to a simpler annual benefit statement will enable a member to see: how much money they have in their pension plan and what has been saved in the statement year; how much money they could have when

they retire; and what they could do to give themselves more money at retirement. The DWP proposes to introduce the new requirements by amending the disclosure regulations which set out the requirements for annual benefit statements. The draft amending regulations include the following proposals.

- The schemes in scope of the new requirements will be qualifying schemes for automatic enrolment under which all the benefits which may be payable are money purchase benefits.
- The new requirements will not apply to members who are in receipt of benefits under the scheme.
- The draft regulations require the information that the legislation currently states must be included in the annual benefit statement (and any other information which is included as part of the statement) to be provided to the member in a statement of no more than one double-sided sheet of A4-sized paper when printed. Trustees may give the information in a format that does not meet this requirement where it is necessary to do so to comply with their duties under the Equality Act 2010.
- The new requirements will come into effect on 6 April 2022. However, this will be subject to a transitional provision so that, where trustees have already given a statement to a member prior to that date based on the legislation in place at that time, they will not need to re-issue the statement.

The draft statutory guidance sets out how the information may be structured and presented. The consultation states that this is so that there is consistency between schemes, whilst recognising the need to allow for some flexibility of approach. The draft guidance includes an illustrative template.

The 2019 consultation and the October 2020 response also looked at the idea of a 'statement season', that is, a short specific period during the year when statements are sent out. A press release published by the DWP in relation to its latest consultation reports that it has established a Working Group to investigate the concept of a 'statement season' and whether this could improve public conversations about retirement saving.

DC charges

In January 2021 the DWP published the government response to a June 2020 call for evidence relating to a review of the charge cap which applies to default funds of qualifying DC schemes. The response reported that the government proposes to implement a de minimis pot size (initially set at GBP100) below which flat fees cannot be charged in such default funds. On 24 May the DWP published a consultation in relation to the implementation of the de minimis and the future structure of charges that are permitted within the charge cap. The consultation closes on 16 July and the government will aim to publish its response later this year.

DE MINIMIS

The proposals in relation to the de minimis include that: (1) it will only relate to the flat fee component of the combination charge,

which means that a percentage of funds under management charge could still be charged on all pots, irrespective of the pot size; (2) it will initially be set at GBP100; (3) if a member has multiple pots within the same provider's default arrangement which charges a flat fee charge, the assessment in relation to the de minimis will be based on the combined value of those pots, rather than on the separate value of the individual pots; and (4) it will apply to all members as this may minimise any additional complexity for providers in trying to differentiate whether a pot is deferred or active. The DWP currently envisages that the legislation implementing the de minimis will come into force in April 2022, subject to other parliamentary priorities. The consultation asks respondents whether proposed implementation in April 2022 would create any business or operational challenges. The DWP also states that any future change to the level of the de minimis will be considered alongside any potential solutions to tackle the proliferation of small pension pots and any future reform of the permitted charging structures.

FUTURE REFORM

The consultation also seeks views on the broader direction that the DWP should take on the future structure of charges that are permitted within the charge cap. It seeks views on a proposal to rationalise the current three permitted charging structures, down to a single charging structure. That single permitted charging structure would allow a single percentage annual management charge, based on the value of the member's pot within the default fund. The purpose of

a universal charging structure would be to enable better member understanding of the charges they pay (and of other features of their pension) and, in doing so, improve member engagement. The consultation notes that, in turn, this may enable members to compare pensions and exercise choice where they feel an alternative pension product could more closely meet their needs.

The DWP notes that, subject to consideration of the consultation responses, there will be a further opportunity to comment on any detailed proposals for legislation.

In relation to the role of the employer, the DWP states that it would like better to understand employers' policies toward paying a contribution towards employees' pensions, where an employee may wish to switch to an alternative fund within the same provider or to an entirely new provider. It notes that employers are under no legal obligation to continue to pay a contribution towards a member's pension should they wish to transfer to an alternative product with a different provider, which means "there is a risk that the employee could lose the employer contribution, which could far outweigh any impact resulting from paying a lower charge elsewhere". The consultation questions include whether the proposal for a single charging structure would change the way employers select the scheme they use for automatic enrolment and whether an employer would continue to pay its 3% minimum contribution if the employee decides to move their pension savings to a different provider.

Legislation

Fraud Compensation Fund

In the [April 2021 edition of Pensions Round-Up](#) (page 8), we reported on an update published by the PPF in relation to the Fraud Compensation Fund (FCF) levy for 2021/22.

In summary, that announcement: (1) noted a November 2020 High Court judgment concerning eligibility to claim on the FCF; and (2) stated that, given the value of claims already received and the expectation that further claims will be made, the Board of the PPF needs to raise a levy of 75p per member (30p for master trusts) in 2021/22, which is the maximum allowed under current regulations.

On 12 May a Bill was introduced to Parliament which provides power for the Secretary of State to make a loan to the Board of the PPF and for that loan to form a part of the funds of the FCF. The Explanatory Notes to the Bill include that: (1) the PPF has estimated that the compensation payments claimed will be in the region of GBP350 million; (2) at the time of the High Court judgment, the FCF had assets of GBP26.2 million; (3) even with future levy income, the expectation is that there will be unfunded liabilities in the region of GBP200 million to GBP250 million; (4) the loan will be made to the Board of the PPF on terms that the Secretary of State will

determine; (5) the loan will be repaid by the FCF levy on eligible pension schemes; and (6) the FCF levy rates and the repayment period (currently estimated to be between 10 and 15 years) will be subject to public consultation, which is timetabled for autumn 2021.

Dormant Assets Bill

The Bills announced in the Queen's Speech on 11 May include a Bill to expand the Dormant Assets Scheme (Scheme) into new asset classes, and on 12 May, the Dormant Assets Bill was published. By way of background, the Explanatory Notes to the Bill include that: (1) the Scheme is led by industry and backed by the government with the aim of reuniting people with their assets; (2) where this is not possible, "the Scheme enables this money to support social and environmental purposes across the United Kingdom"; and (3) the principles underpinning the Scheme include that industry participation is voluntary.

The Bill provides that a "pension institution" can transfer dormant eligible pension benefits to the Scheme with the consent of the reclaim fund which administers the Scheme. The eligible pension benefits which the Bill brings in scope of the Scheme are: (1) benefits in the form of income

withdrawal that have become payable under a personal pension scheme; (2) benefits that have become payable under a personal pension scheme under which all benefits that may be provided are money purchase benefits, and which is not (and has at no time been) a qualifying scheme or an automatic enrolment scheme in relation to the member; and (3) an amount available to be paid as benefits under a personal pension scheme of a kind mentioned in point (2). The Bill also states that benefits under a personal pension scheme are excluded from being eligible pension benefits if they are provided from sums invested in a with-profits fund. The Bill makes provision as to when eligible pension benefits can be classed as dormant for these purposes.

Another principle underpinning the Scheme is that owners of dormant assets are able, at any point, to reclaim the amount that would have been due to them had a transfer into the Scheme not occurred. The provisions of the Bill in relation to pensions include that, on the transfer of eligible pension benefits to the Scheme, the owner no longer has the right to payment of the benefits against the pension institution, but rather has that right against the reclaim fund.

Public service pension schemes

Transitional provisions

In December 2018 the Court of Appeal issued a judgment concluding that transitional provisions in relation to the 2015 reform of the firefighters' pension scheme and the judicial pension scheme (which permitted members within a specified period from retirement to remain in the legacy schemes) constituted unlawful age discrimination. In February 2021, HM Treasury published the government response to its July 2020 consultation on proposals to remove this discrimination from the main public service pension schemes. The response stated that the government intends to proceed with the deferred choice underpin, which means that: (1) shortly before their benefits are paid, members will choose between receiving legacy or reformed scheme benefits in respect of their service between 1 April 2015 and 31 March 2022 (the remedy period); and (2) in the meantime, they will be deemed to have accrued benefits in their legacy schemes for the remedy period. The background briefing notes to the Queen's Speech which was given on 11 May include information about the Public Service Pensions

and Judicial Offices Bill. This Bill (which has not yet been published) will implement changes across all the main public service pension schemes in response to the Court of Appeal judgment.

In July 2020 a separate consultation was published on proposals to address this issue in the Local Government Pension Scheme, but the government response to that consultation has not yet been issued. On 13 May, the Minister for Regional Growth and Local Government made a written statement about local government pensions which: reports that responses to the consultation were largely supportive of the key elements of the proposals; and sets out the key elements of the changes to scheme regulations which will be made in due course. The statement also reports that: the full government response to the consultation will be published later this year; and it is anticipated that the regulations giving effect to the changes will be made after new primary legislation in relation to public service pensions has completed its passage through Parliament.

NHS Pension Scheme

On 27 May the Department of Health and Social Care published the government response to its January 2021 consultation on proposals to amend the NHS Pension Scheme regulations. The response confirms that the government will proceed with the amendments to: (1) provide female members in an opposite sex marriage or civil partnership with the same survivor benefit provision as female members in a same sex marriage or civil partnership; (2) ensure that payments and allowances under the New to Partnership Payment Scheme are treated as non-pensionable earnings; (3) reform the final pay control provisions of the 1995 regulations following a review and recommendations by the Scheme Advisory Board (with two further changes included in relation to this issue following suggestions by respondents to the consultation); and (4) make miscellaneous amendments to update definitions and make minor corrections. The relevant amending regulations were laid before Parliament on 27 May.

Pensions dashboards

Progress Update Report

On 13 May the Pensions Dashboards Programme (PDP) published its third Progress Update Report which: provides a summary of what it has achieved since it published its second report in October 2020; and sets out its focus and priorities for the next six months. In its October 2020 report, the PDP set out an indicative timeline for the development of pensions dashboards. The latest Progress Update Report states that the overall phase plan still holds true, but the PDP has developed an updated indicative programme timeline which includes an extra layer of detail.

The phases of the plan are: Phase 1 (April 2020 to September 2021) – programme set-up and planning; Phase 2 (from 2021) – develop and test; Phase 3 (from 2022) – voluntary onboarding and ongoing testing; Phase 4 (from 2023) – staged onboarding and dashboards available point; and Phase 5 (from 2024) – transition to business as usual. Future developments in the more detailed timeline include that: (1) in 2021, the PDP plans to publish an update about estimated retirement income and a consumer protection discussion paper; and (2) the DWP's consultation on draft regulations in relation to pensions dashboards is expected in December 2021. The PDP has also published more information for data providers on its website, including information on 'steps to connection' which looks at what data providers need to do to prepare to connect to dashboards in phases one to four.

Call for Input – staging

On 27 May the Pensions Dashboards Programme (PDP) published a call for input on proposals for the staged compulsory connection of pension providers to the dashboards ecosystem. The PDP notes that it is ultimately for the DWP and the FCA, respectively, to determine the sequencing by which occupational pension schemes and providers of personal pensions will come under legal obligations. The proposals in the call for input, and the feedback received in response, will feed into the development of the DWP and the FCA's consultation on draft regulations and rules.

The PDP's recommendations include that staging should comprise of three waves: (1) wave one: largest schemes (1,000 or more memberships); (2) wave two: medium schemes (100 to 999 memberships); and (3) wave three: small and micro schemes (99 or fewer memberships). The PDP states that 'memberships' refers to the total number of the pension provider's members (active, deferred and pensioner).

The call for input states that wave one would start in April 2023 and run for up to two years. In wave one, the PDP recommends three distinct cohorts: (1) cohort one – master trusts and FCA regulated providers of personal pensions, starting spring 2023; (2) cohort two – DC schemes used for automatic enrolment, during 2023; and (3) cohort three – all remaining occupational pension schemes with 1,000 or more memberships (in order of size), with the largest DB schemes to onboard in 2023.

The PDP states that wave two would not commence until the bulk of large schemes have successfully connected (which would be unlikely to be before 2024), allowing more time for the integrated service provider (ISP) market to emerge and enabling learning from the first wave to inform the approach to subsequent waves. The call for input also recommends that timing for wave three should be determined in line with the ISP market forming. (The call for input explains that an ISP is "a third-party service allowing pensions information to be connected into the ecosystem on behalf of pension providers, which avoids having to connect the systems directly".)

The call for input recommends that there should be a mechanism to allow pension providers to onboard in advance of their staging date, although to help the PDP manage capacity of schemes onboarding, such early staging will be subject to its control.

The call for input also states that it is important to distinguish between staging and the point at which the data becomes publicly accessible (that is, when dashboards are launched to the public). In relation to this issue, the call for input includes that: (1) the PDP anticipates that compulsion duties will be in effect for many pension schemes and providers before the dashboards service goes live; (2) this will allow for thorough, ongoing scale and operational testing of the end-to-end service with live data in a controlled environment before the service is launched to the public; and (3) the PDP's recommendations aim to achieve this public launch at the earliest possible date.

On the horizon

DATE	DEVELOPMENT
Unknown	Following the publication of its October 2020 Statement of Policy Intent entitled Stronger Nudge to Pensions Guidance , the DWP is expected to publish a consultation on draft regulations to implement its proposals.
2021	In April 2019 the DWP published guidance on GMP conversion which notes that the government is considering changes to this legislation to clarify certain issues. The GMP Equalisation Working Group plans to publish examples on anti-franking and guidance on GMP conversion and communications during the implementation stage.
2021	Regulations to implement provisions of IORP II in relation to governance came into force in 2019, with the detail of the new requirements to be set out in a code of practice. On 17 March the Regulator published a consultation on the first phase of its work to combine its current codes to form a single, shorter code. The consultation closed on 26 May 2021.
2021	Following the government's March 2019 response to its consultation on Collective DC schemes , a framework for such schemes is included in the Pension Schemes Act 2021. The DWP plans to consult on regulations in early summer 2021.
2021	The Regulator's second consultation on its DB funding code , which will focus on the draft code itself, is expected to be published towards the end of 2021.
Autumn 2021	The Pension Schemes Act 2021 includes provisions which amend the Regulator's powers and introduce new powers. The aim is for the powers to be available to the Regulator by autumn 2021. In relation to the duty to give notices and statements to the Regulator in respect of certain events, the DWP will consult on the draft regulations later this year, for commencement as soon as practical thereafter.
Autumn 2021	In August 2017 the government confirmed that it will proceed with proposals to limit the statutory right to transfer in order to tackle pension scams . Regulation-making powers are included in the Pension Schemes Act 2021. Regulations are expected to be introduced in autumn 2021. The DWP published a consultation on draft regulations on 14 May 2021.
October 2021	The Pension Schemes Act 2021 includes provisions on climate change risk which set out powers to make regulations imposing requirements on trustees in relation to governance and disclosure. The DWP has published a consultation on draft regulations and statutory guidance and the response was published on 8 June 2021. It is proposed that the regulations will come into force on 1 October 2021.
October 2021	Annual Reports produced on or after 1 October 2020 have to include implementation statements . The information to be included in these statements depends on whether the scheme is a relevant scheme or a DB scheme. The first report for DB schemes and certain information for relevant schemes must be published by 1 October 2021.
October 2021	In September 2020 the DWP published a consultation on proposals to improve outcomes for DC members which looks at issues including assessing value for members, consolidation and the charge cap. The consultation proposed that the regulations would come into force on 5 October 2021, although some of the requirements would apply from different dates. The response to consultation was published on 21 June and we will report on this in the June 2021 edition of Pensions Round-Up.
2021 2023	Provisions in relation to pensions dashboards are included in the Pension Schemes Act 2021. An indicative timeline published by the Pensions Dashboards Programme (PDP) estimates that phase 4 of the development of pensions dashboards, which will be the phase in which schemes will begin to be compelled by law to connect to the dashboards ecosystem, will run from 2023. In May 2021, the PDP published a call for input in relation to the order and timing of when data providers will connect to the pensions dashboards ecosystem. The DWP aims to consult on proposed regulations in relation to pensions dashboards later in 2021.
April 2022	On 17 May 2021 the DWP published a consultation on draft regulations introducing simpler annual benefit statements for DC schemes used for automatic enrolment. It is proposed that the regulations will come into force on 6 April 2022.

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