



CMS Pensions Briefing

DC Schemes and Master Trusts

Welcome to our regular briefing on topical issues facing defined contribution (DC) pension arrangements.

In this briefing we take on diversity and inclusion in the pensions space, changes to the regime governing annual benefit statements, and the new "Value for Member" assessment requirements. Following on from the previous guide, we also take a "deeper dive" look at CDC schemes.

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Please get in touch with one of us or your usual CMS contact if you would like to discuss anything further.



Pete Coyne
Partner
T +44 20 7367 2748
E pete.coyne@cms-cmno.com



Johanna Clarke
Partner
T +44 20 7367 2606
E johanna.clarke@cms-cmno.com



Victoria Lee
Senior Associate
T +44 20 7524 6952
E victoria.lee@cms-cmno.com



Richard Gibson
Senior Associate
T +44 20 7524 6857
E richard.gibson@cms-cmno.com



Tasmin Patel
Associate
T +44 20 7367 3542
E tasmin.patel@cms-cmno.com



Dawn Cran
Associate
T +44 20 7367 2936
E dawn.cran@cms-cmno.com

Short - but sweet?

Annual benefit statement changes are on the way

The pensions industry awaits the outcome of the DWP's consultation on annual pension benefit statements. The consultation, which closed at the end of June, heralds the introduction of new requirements about the size and format of workplace benefit statements.

The changes proposed have been broadly welcomed in principle, though some industry voices have queried whether the new requirements will cut across scheme-specific communication processes already in place. Warning lights are also flashing about how the new form of statement will fit with the long-awaited Pension Dashboard.

Why now?

The proposed changes follow previous reviews and consultations tracking the progress of automatic enrolment, and are intended to drive member engagement via a clearer, more consistent presentation of individual savings throughout the accumulation process. The DWP identified the need for statements to be clearer and punchier, so as to help members understand their personal retirement savings position, and to act as a call to action for those who, based on current projections, seem likely to fall short of appropriate financial security in retirement.

And for whom?

The changes proposed would apply to all members of automatic enrolment "qualifying schemes" - though they won't apply to existing pensioners. For those who aren't directly impacted by the scope of the legislation, the DWP encourages the adoption of the proposed principles on a voluntary basis.

A glance at the proposals

DWP's big statement is... smaller statements. And simpler content.

Smaller? From 6 April 2022, any statements issued can be no longer than one double-sided sheet of A4 paper. This may sound like a condition for a school essay assignment but the requirement reflects the research that not enough workers are taking on board the essentials about what they have

saved, and what they still need to do to achieve their savings goals. Note that nothing is said about minimum font size – though the text should be "easily readable".

Simpler? Information, particularly around charges, must be provided in accessible and jargon-free language, covering the following five key items:

- **"Member and pension scheme details"** – including the member's anticipated retirement date and the period covered by the statement.
- **"How much money you already have in your Pension Plan"** – this should be presented in a way that enables the member to see and understand "at a glance" the year end results of the pension savings activity. It should also tell the member that details on charges and transaction costs - along with other information contained in the Chair's Statement - is publicly available, with clear signposting to a web link showing where and how that information can be accessed.
- **"How much money you could have when you retire"** – this section should provide an illustration of how much the member's pension could be worth at retirement and what this may mean for estimated retirement income, including any information on the use of assumptions - which again must be easily comprehensible by the member.

- “**What you could do to give yourself more money**” – to prompt members to think about their retirement income and retirement lifestyle as a whole, including their state provision and other sources of retirement income. Illustrations can show how saving more may generate increased pension savings, or the effect of changing planned retirement age.
- “**Find out more about your Pension Plan and how you can use your money**” – contact details for the scheme trustees should be included along with a reminder to members to check and update their own contact details.

The template

Changes would be implemented via amendments to the statutory disclosure regime, requiring trustees and managers to “have regard” to the Guidance which the DWP has prepared to help them understand how to meet the new requirements. In particular, they will need to consider the template form of benefit statement at the back of the Guidance.

The template is, pleasingly, two pages long and covers the five key items listed above; it has been designed in order to ensure consistency between schemes. Though it is “illustrative” of how

information should be ordered and presented, in practice it doesn’t seem like there will be too much scope for flexibility. Schemes may use their own branding and colour choices for the statement, but this should not “obscure the flow of information” or increase the statement’s length beyond the two side limit.

“Layering”

The Guidance notes that trustees / managers can provide additional documentation where they consider it would be helpful to members and / or is personalised for them. This can accompany the statement and be sent at the same time, but additional material should be in a separate document to the statement itself and in any pack of material the statement should be the first substantive document provided. So trustees will need to think carefully about the order in which the additional information is provided.

And if there’s a failure to communicate?

The Guidance reminds us the Pensions Regulator may take enforcement action, including the possibility of a financial penalty, for non-compliance with statutory disclosure requirements – which will include a failure to have regard to the Guidance and the template.

So when do we need to switch to the new format?

Response to the consultation is still pending. If the changes are introduced as planned, they will apply to statements issued from 6 April next year. The initiative itself seems sensible and the requirements pretty clear – but there has been some pushback. After all, the concept of ‘simplification’ in the pensions industry rarely comes without some complex baggage. In its response, the PLSA – whilst welcoming the general objectives of the proposals – expressed the desire of its members to adapt statements to their own specific scheme experiences, to be given the opportunity to align statements with strategies already in place concerning total reward packages, and to take account of interactive online tools. That would appear to go against the DWP’s desire for a consistent approach.

There is also concern that these requirements would be limited to DC automatic enrolment schemes. Admittedly that covers a lot of the UK’s pension saving population, but failure to require the new statements to dovetail easily with other aspects of communication digitalisation – in particular, the layout of the Pensions Dashboard – could make matters more confusing for those with multiple pension sources, at least in the near future. It’s still possible therefore that, when the draft Regulations and Guidance emerge, some elements of the proposals are in modified form.

A quick guide to...

“Value for Members” annual review requirements

The DWP has recently issued guidance on the new “value for members” assessment requirements under the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021. The government’s focus is on ensuring that members are in effective schemes that provide them with the best long-term outcome.

From 1 October 2021, all relevant pension schemes (this includes most DC and hybrid schemes) must:

- Calculate and state the return on investments (along with net transaction costs and charges).
- Publish the assessment on their website.
- Include the assessment in the first Chair’s Statement prepared for the first scheme year which ends after 1 October 2021.

Specified pension schemes

From 1 October 2021, there will also be additional value for member requirements for “specified schemes” – i.e. relevant pension schemes that have been running for more than three years and have less than £100 million total scheme assets.

The value for member assessment for these schemes will need to include:

- A comparison of charges and transaction costs with 3 “comparator schemes”.
- A comparison of net investment returns with 3 comparator schemes.
- A self-assessment of the scheme’s governance and admin criteria.

What is a “comparator scheme”?

A “comparator scheme” is an occupational pension scheme with assets of £100 million or more, or a personal pension scheme which is not an investment regulated pension scheme.

Trustees are expected to have a clear rationale for the schemes chosen as comparators and should include a scheme different in structure to their own, where possible.

Timing

Specified pension schemes must carry out the assessment for the first scheme year ending after 31 December 2021. It should be included in the Chair’s Statement, published on the scheme website, and included in the annual scheme return.

Authorisation and funding

How does a specified pension scheme demonstrate that it has delivered value?

DWP guidance sets out how a specified pension scheme should demonstrate value for members under each stage of the assessment. Indications include the following:

- Where the majority of total charges and transaction costs across popular funds is closely comparable with or lower than the average for the comparator pension schemes.
- Where higher charges are justified by higher investment returns.
- In terms of the net investment returns assessment, where there are greater/closely comparable net return figures when compared with the average of the comparator funds.

Trustee assessment metrics

Trustees must assess the value delivered by their governance and administration offering, as part of their assessment, using the following key metrics:

1. Promptness and accuracy of core financial transactions.
2. Quality of record keeping.
3. Appropriateness of the default investment strategy.
4. Quality of investment governance.
5. Level of trustee knowledge, understanding and skills to properly exercise their functions and operate the pension scheme effectively.
6. Quality of communication with scheme members.
7. Effectiveness of management of conflicts of interest.

Post-assessment

If the assessment demonstrates that the scheme does not provide value for members, trustees should consider winding up the scheme (with members transferred to a larger occupational or personal pension scheme) or taking action to improve the existing scheme immediately after the assessment takes place.

If trustees decide to improve the existing scheme instead of winding-up, they will need to state their reasons for doing so in the annual scheme return and detail the steps they are taking to ensure that the scheme does deliver value for members.

Looking ahead

In the summer, the DWP published a call for evidence on barriers to further consolidation of medium and large DC schemes (with assets between £100 million and £5 billion) – so it may be that the value for members assessment is adapted and rolled out to medium and large schemes in the near future. Let's wait and see.

Another step closer...

A look at the detail of the CDC proposition

The regulatory framework for collective defined contribution schemes, commonly referred to as CDC schemes, is progressing apace. Since publishing an overview of the CDC provisions in the Pension Schemes Act 2021 in our last briefing, the government has consulted on two sets of draft regulations, which were published in final form on 15 December. The new rules and supporting documents provide some welcome clarity in a number of areas.

What's new?

Much of the content in the regulations will be familiar to those who have been involved in DC master trust authorisation and it's a useful reminder that the Pensions Regulator (TPR), which will oversee the authorisation and supervision of CDC schemes, has already experienced a similar process.

Given the overlap with the master trust regime, for example in the areas of fit and proper persons, financial sustainability, systems and processes and continuity planning, we are focussing here on the aspects of CDC provision which are unique to its design and, as yet, untested.

Two of the biggest concerns raised by the industry about the introduction of CDC schemes are the risk of intergenerational unfairness and the risk that communications to members about the nature of the schemes will be misunderstood. The regulations introduce a number of measures which are intended to support sound scheme design, reduce the risk of unfair cross-subsidy and ensure effective member communications.

Soundness and viability

Trustees of prospective CDC schemes will be required to submit to TPR a description of how the scheme is designed, and why it is sound, in the form of a 'viability report'. This must be accompanied by a 'viability certificate' prepared by the Scheme Actuary. Once a CDC scheme is authorised, these viability checks will need to take place annually.

It appears from the regulations that TPR will have considerable discretion when assessing whether a prospective CDC scheme is sound. The government

acknowledges that "sound" is open to interpretation so it has worked with TPR and the Institute and Faculty of Actuaries to produce some indicators of soundness which must be taken into account as part of both the initial and ongoing viability assessments. It's also worth noting that, in addition to the specified information requirements, TPR is permitted to request any information or documents as part of its assessment of viability. Further guidance is expected from TPR in this respect.

Inflation proofing

As part of the initial actuarial certification there will be a 'gateway' test designed to assess whether the anticipated increase in benefits over a period of 10 years from when the scheme starts operating is at least in line with the consumer prices index. Whilst there's no requirement to provide increases each year, schemes will be expected to provide a certain level of inflation proofing to protect the benefits of younger members.

Value for money and restrictions on cross-subsidy

A second test, to be considered annually, will be linked to value for money and whether the value of benefits payable to members are anticipated to be at least equal to their contributions (not including any employer contributions) in five years' time.

A further annual check focuses on restricting the potential for disproportionate cross-subsidisation which could unfairly impact either new joiners or long-time members. This test, which takes account of employer contributions, requires the average value of benefits accrued over the preceding 5 years (or since the scheme began operation) to be:

- not less than half the rate of contributions paid to the scheme; nor
- more than twice the rate of contributions paid to the scheme.

Communications to members

A fundamental feature of CDC provision means that the level of an individual's benefits may be adjusted up and down over the years and members need to be made aware that their target level of benefits is not guaranteed. However, members also need to understand that such variation does not in itself threaten the overall security of their benefits. In fact, as long as CDC schemes are well designed and able to absorb such fluctuations, members should have an opportunity to benefit from economies of scale, diluted investment risk and the potential for a better return than might be expected from traditional DC provision.

The government acknowledges the importance of communications in building and maintaining member confidence in CDC schemes. The

regulations provide that TPR must be satisfied that schemes have in place adequate systems for producing and delivering member communications, and ensuring they are accurate and not misleading. TPR must take into account factors including the functionality of relevant IT systems, resource planning and member engagement.

There are further safeguards included in the annual actuarial certification process. In particular, the actuary must be satisfied that the trustees have accurately described to members the way benefits are calculated and the fact that future benefits are subject to annual adjustment.

There's still a while to go before the first CDC scheme will become operational and further insight on how to meet the requirements is expected when TPR publishes its CDC code of practice. However, the regulations are a positive and practical step towards greater choice for employers looking to provide an alternative to a standard DC scheme and potentially greater gain for members over the longer term. We will continue to watch market developments with interest.

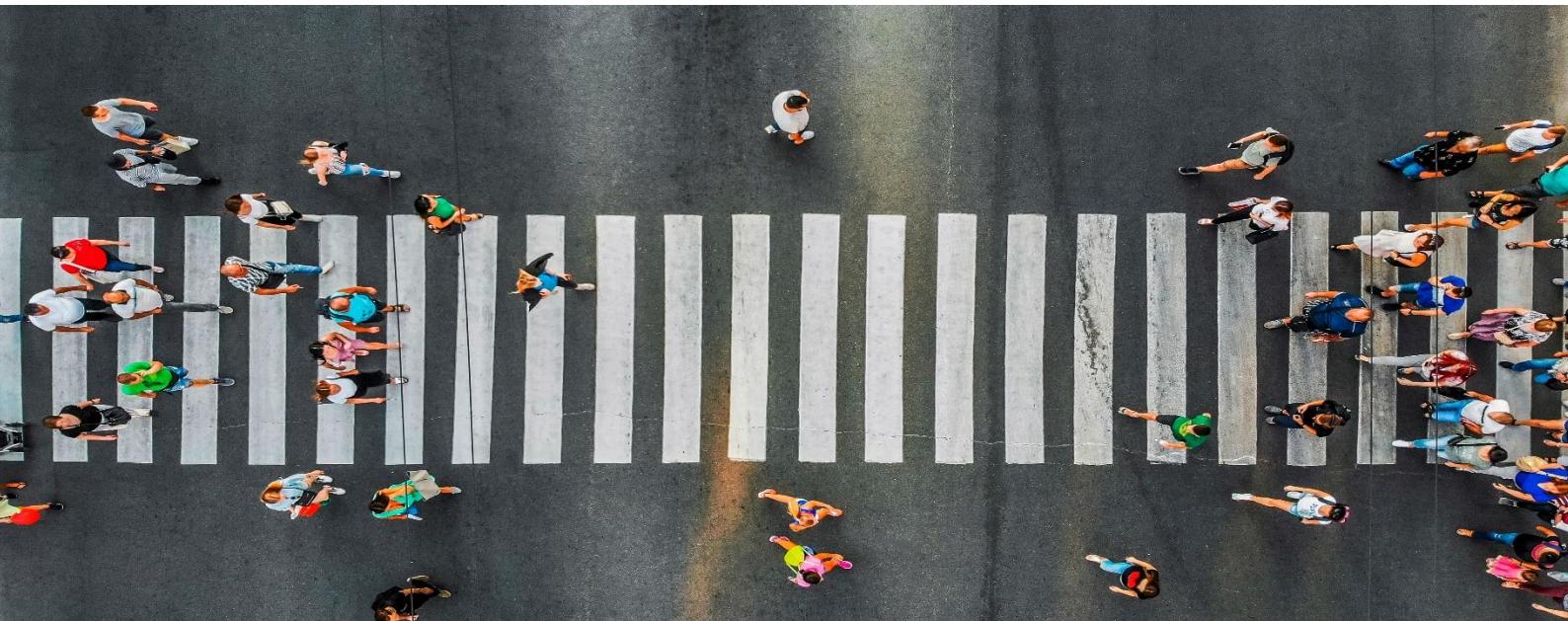
What is a CDC scheme?

Members build up benefits by making contributions which are of a defined amount, in the same way as they would in a normal DC scheme. However, by pooling assets and liabilities the scheme offers members a target DB benefit which is paid as income from the scheme on retirement. Members have the potential to benefit from the shared risk element of pooled funds while employers can offer an alternative to normal DC without committing to ongoing funding obligations.



Takeaway points

- **Scope** – As anticipated, the regulations restrict the scope of the CDC regime to single or connected multi-employer schemes. However, the government has confirmed it is consulting with the industry on the potential for opening up provision to a “broader range of models in the near future”, such as non-associated multi-employer schemes and decumulation-only models.
- **Fit and proper** – Trustee boards, as a collective, will have to be able to demonstrate the appropriate level of knowledge and skills at the point of application.
- **Annual valuation and benefit adjustment** – Trustees considering an application will need to ensure that scheme rules permit the required benefit calculations and adjustments.
- **Ongoing supervision** – The regulations set out the required content for a supervisory return and a list of ‘significant events’ which must be notified to TPR.
- **Risk notices** – TPR’s suite of powers will be supplemented by the ability to issue a ‘risk notice’ requiring trustees to submit a ‘resolution plan’ where an issue of concern has been brought to TPR’s attention.
- **Trigger events** – The continuity options following a trigger event allow for a certain amount of flexibility where it’s possible to resolve an issue and allow a scheme to continue where it’s in members’ best interests to do so.
- **Application fees and treatment of sections** – There will be one flat authorisation fee applicable to all CDC schemes, subject to certain exceptions, which TPR has confirmed will be £77,000. TPR is permitted to adjust the application fee in certain situations, including multi-scheme applications where much of the information required would be relevant to each of the schemes.
- **Next steps** – TPR expects to publish its draft code of practice for consultation in January 2022 and the regulations are due to come into force on 1 August 2022.



Have you thought about...?

Equality, Diversity and Inclusion and Pensions

As employers and organisations are starting to consider diversity and inclusion, so too is the pensions industry. The Pensions Regulator is leading from the front, with its 'bold ambition' to be a fairer and more diverse and inclusive employer and the FCA noting in its 2021/2022 business plan that it takes diversity and inclusion seriously and it expects the firms it regulates and the wider market participants to do the same. As we head into 2022, employers, trustees and governance boards are also starting to consider what it means for them and how they might embrace diversity and inclusion going forward.

ED&I: what does this phrase mean in a pensions context?

Broadly:

Equality is about ensuring that every member and everyone involved in the pension scheme has an equal opportunity to make the most of their talents and what the scheme has to offer them;

Diversity is about recognising what differentiates individuals from each other and could include someone's background, neurodiversity, socio-economic background, disability and sexual orientation; and

Inclusion is about embracing these differences and allowing individuals to fully participate irrespective of their individual characteristics.

The Equality Act 2010 (the Act)

The Act prohibits discrimination on the basis of nine characteristics including disability, gender reassignment, race and sexual orientation. Section 61 of the Act imports an equal treatment rule into every occupational pension scheme which does not already have one and trustees can be liable if they discriminate against members or prospective members and must avoid discrimination in how they run their scheme. But diversity goes beyond these protected characteristics and can include other differences such as socio-economic background and mental health conditions.

What is TPR's view of ED&I?

The Pensions Regulator (TPR) has been looking at ED&I more closely in recent years in respect of pensions and governance. In its Equality, Diversity and Inclusion Strategy (ED&I Strategy) published in June 2021 ([Equality, Diversity and Inclusion Strategy | The Pensions Regulator](#)) TPR set out how it plans to lead by example to create a fairer and more inclusive culture across the pensions industry and work with others to address inequality. One of its stated strategic objectives is to "*embed diversity and inclusion within our people, regulatory and operational practices by 2025*".

TPR 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 in order to reflect the diversity of their schemes' membership. The working group has also been asked to agree a clear definition of "*diversity and inclusion*".

TPR wants all savers to get good value for their money and all those that make decisions on behalf of savers to be scrutinised, and improving diversity and inclusion is fundamental to these goals. TPR's vision is to deliver a workplace pensions system that works for all and according to its roadmap, by the end of 2021 it will co-create a strategy with representatives from the pensions regulated community which will support and set targets for the development of more diverse and inclusive boards of trustees/managers. The plan will also agree how to share resources and best practice in the long term.

In David Fairs' blog dated 21 December 2021 (David is Executive Director of Regulatory Policy, Analysis and Advice for TPR) he noted that the strategy is not a short-term initiative but that an action plan is well underway. A key message from his blog is that trustee boards that are not diverse risk "knowledge gaps, entrenched ideas, biased thinking and poor decision making which puts savers at a disadvantage" and that a trustee board feeling "uncomfortable" isn't necessarily a bad thing as it might lead to more debates, disagreements and challenges but ultimately better decisions.

What should those involved in DC pension schemes be thinking about now?

Here are a few suggestions to consider now:

Benefits: Modern families are diverse, so is it time to challenge the approach to more 'traditional' benefits and instead pay in line with your D&I policies and that of the employer?

Consider checking your rules in case they restrict benefits for civil partners or same sex spouses to service from 2005 - this restriction has been overturned by case law¹.

Governance: For trustees and DC governance boards, consider diversity on the board, by:

- targeting a selection process for an underrepresented group;
- focusing less on an applicant's skills and instead offering more training on the job;
- having shadow trustees (to allow people to try the role before fully committing); and
- reviewing scheme documents and processes to ensure they are D&I compliant.

Decision making: Give thought to the time of meetings, the format, and whether in person or online.

Assess decisions for unconscious bias e.g. do you only award ill health benefits where the illness is physical rather than mental?

Communications: Communications with members should be "*accurate, clear, concise, relevant and in plain English*" according to TPR's draft single code of practice. Keep this in mind when communicating with members.

Advisers: Advisers who embrace diversity are less likely to give biased advice, so it is always helpful to check if your advisers' policies promote diversity amongst their employees.

Other areas:

- How diversity is contemplated in establishing actuarial factors and valuation assumptions e.g. using unisex factors.
- Consider whether your AVC/DC investment options are sufficiently broad and inclusive to suit a diverse pool of members.
- ED&I is an important component of the "S" in "ESG" and therefore should be a core factor when deciding how/where to invest the scheme's assets. Consider with your investment consultants how the social aspects are integrated into your decision-making.

Some suggested actions to take ED&I forward

Those in the DC regulatory community space (e.g. trustees, employers, governance committees, advisers and consultants) may wish to consider:

1. In-depth training on ED&I issues.
2. Carrying out an ED&I audit of your scheme and governance.
3. Engaging with the employer to align the scheme's approach to ED&I.
4. Reviewing TPR's strategy/targets for the development of more diverse and inclusive boards of trustees/managers when published].
5. Incorporating the above into an ED&I policy (use the employer's one as a starting point).

¹ Walker v Innospec Limited and others [2017] UKSC 47

Calling a halt...

New regulations put the brake on troublesome transfers out

November saw the coming into force of legal changes designed to help combat scams and pensions liberation. The changes follow on from previous, well-publicised steps taken by government to counter the problem, such as the ban on pensions cold calling.

Readers will recall that, until very recently, trustees and managers ultimately had no power to block a transfer request from a member with a statutory transfer right. The new changes, in the form of the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (Regulations), now hand powers to pension trustees and managers to request further information from members before proceeding with a transfer, and – crucially – give them the power to refuse transfers in certain cases.

The new conditions set out in the Regulations apply to requests to make a DC transfer (or applications for a statement of entitlement in the case of DB schemes) made on or after 30 November 2021. In the DC context, members must be notified of the new conditions within a month of the transfer request.

The details - recapped

Trustees (or where applicable, managers of the scheme) cannot pay a statutory transfer unless one of following two conditions is met:

- The first condition is that the trustees are satisfied “beyond reasonable doubt” that the receiving scheme is a public service scheme, authorised master trust or authorised CDC scheme.
- The second condition is that the trustees consider that no “red flags” are present, and have requested evidence of an employment link or residency link.

The “**red flags**” summarised = *no right to transfer*

- the member failing to provide a substantive response to a request for information (within specified time limits);
- advice being given by a person without the appropriate regulatory approvals;
- the member receiving unsolicited contact, being offered an incentive (other than by an employer) or feeling they have been put under pressure;
- the trustees identifying an “amber flag” (see over) and the member failing to confirm that they have taken pension scams guidance from the Money and Pensions Service (MaPS) in relation to the transfer.

The “**amber flags**” summarised = *member must take MaPS guidance*

- the member providing incomplete information in response to a request from the trustees/managers;
- the trustees considering that some or all of the information provided may not be genuine;
- the trustees not being satisfied that the member has a sufficient employment link with the receiving occupational pension scheme or an employment or residency link with a qualifying recognised overseas pension scheme;
- the trustees deciding that the receiving scheme has high risk, unregulated or unorthodox investments or is charging high fees;
- there has been a sharp or unusual rise in the volume of requests to make a transfer to the same receiving scheme, or involving the same adviser.

Weren't we expecting this?

Yes – the changes were subject to consultation. Under the Government's original proposals (published in Spring this year), transferring scheme trustees would have to be satisfied that one of four statutory conditions was met. Since then, the DWP has removed FCA-regulated schemes operated by an insurer from the list of 'safe' schemes within the first condition. It has also decided to merge the previous second, third and fourth conditions (the employment link, residency link and red and amber flags tests) into a 'holistic' second condition, covering all occupational and personal pension schemes which do not fall within the first condition. Whilst this second condition is now a single test, the main requirements under the original three conditions are all still present – so this "simplification" in the legislation may in reality be unlikely to result in much simplification for pension schemes and their processes.

More helpfully, the DWP expressly says that where trustees believe no flags are likely to be present, they have no obligation to seek further information and can process the transfer without additional activity – and says that this may include using "white lists" of receiving schemes which have been identified as posing a low scam risk.

Putting the paperwork together

The Pensions Regulator has issued guidance to support the changes, including a checklist of the information which trustees should require from members, and examples of what trustees should consider when assessing the red and amber flags.

Administrators already have their own internal transfer checking processes which they have had to modify from time to time – so they will need to review those processes once again and as necessary adapt scheme transfer paperwork and follow-up processes. Some schemes may decide that it is necessary to suspend transfers for a period (within the time limits permitted in the legislation) whilst they change and test their new practices.

So, an end in sight?

Perhaps, for now. The history of public pronouncements and regulatory action in this area illustrates just how much government and the pensions industry have struggled to balance protection from the unscrupulous on the one hand and freedom of choice on the other. We have often heard the frustrations of trustee clients hesitant to process 'toxic' transfer requests, but who, under the previous statutory framework, were ultimately powerless to prevent members going through with decisions which may well have caused significant financial harm. Giving trustees and managers a legal right to delay or even halt transfers where they have bona fide concerns about the circumstances of a specific transfer request is surely a step in the right direction.

It is hoped that the modified regime and the link between schemes and the MaPS guidance will be reasonably easy to adopt, and that trustees and managers find that their 'business as usual' transfer work and due diligence processes do not become significantly more onerous. Whilst the regime beds down, trustees, managers and administrators should be looking urgently at their existing transfer paperwork and processes to ensure they are still fit for purpose.



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