UK: PENSIONS UPDATE - SEPTEMBER 2018

Contents

1. Pensions Regulator announces revised approach to scheme supervision

Last week, the Pensions Regulator issued a statement setting out its new approach for scrutinising pension schemes. Key to this new approach is the introduction of a supervision regime which will monitor schemes more closely.

Specifically, the Regulator intends to introduce:

- Dedicated one-to-one supervision for 25 of the biggest defined contribution (**DC**), defined benefit (**DB**) and public service pension schemes from October this year. This approach will then be rolled out to more than 60 schemes over the next year. The Regulator will maintain 'ongoing' contact with such schemes (and in some cases their sponsoring employers), noting that where it finds schemes are not engaging with the Regulator or meeting their duties, it will step up the intensity of its interventions. However, the Regulator is clear that this will not automatically lead to an exercise of its enforcement powers as it hopes that schemes will then engage and rectify any issues identified.
- Assessment of compliance with messages in the Regulator's 2018 annual funding statement (specifically concerning whether pension schemes are being treated fairly when it comes to dividend payments to shareholders). This will initially be piloted using approximately 50 DB schemes, with the intention to roll it out to hundreds of schemes thereafter.

2. DWP publishes response to consultation on investment duties

The Department for Work and Pensions (**DWP**) has published a response to its consultation (launched over the summer) on measures seeking to clarify and strengthen trustees' investment duties.

The consultation proposed several changes to existing legislation governing trustees' investment duties and disclosure obligations designed to better reflect environmental, social and governance (**ESG**) and stewardship considerations. Note that none of this changes the law on how trustees should actually make investment decisions (broadly, that these factors can only be considered to the extent they are in the scheme's financial interests).

The response was published alongside regulations which will amend the Occupational Pension Schemes (Investment) Regulations 2005 and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013; imposing new obligations which trustees will need to ensure compliance with, in the most part, **by 1 October 2019**.

The extent to which the new requirements will apply will depend on the nature of benefits provided by a scheme (DB or DC) and the number of members it has.

Overview of the new requirements

Requirement	To which schemes does it apply?	Timing
Trustees must update or prepare the Statement of Investment Principles (**SIP**) to set out: • how they take account of "**financially material considerations**", defined as including, but not limited to, those arising from ESG considerations (including climate change) which the trustees consider financially material. (*This replaces the existing requirement to set out the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments);* and • their **policies in relation to the stewardship of investments**, including engagement with investee firms and the exercise of the voting rights associated with the investment. *(This replaces the existing requirement to set out trustees' policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments.)*	Pure DB schemes with more than 100 members DB schemes with more than 100 members which also provide DC benefits limited to AVCs Schemes which provide DB and DC benefits (where DC benefits are not limited to just AVCs) with more than 100 members Pure DC schemes with more than 100 members	*<u>By</u> 1 October 2019*
Trustees must prepare or update the **SIP** relating to the **default arrangement** to set out how they take account of "**financially material considerations**" (as above).	All pure DC schemes All schemes which provide DB and DC benefits where DC benefits are not limited to just AVCs	*<u>By</u>* 1 October *2019*
Trustees must prepare or update the **SIP** relating to the **default arrangement** to set out their **policies in relation to the stewardship of investments** (as above).	Pure DC schemes with more than 100 members Schemes which provide DB and DC benefits (where DC benefits are not limited to just AVCs) with more than 100 members	*<u>By</u> 1 October 2019*
Trustees must also include a reference in their SIP (and SIP relating to the default arrangement) regarding the extent (if at all) to which "**non-financial matters**" are considered in the investment process. "**Non-financial matters**" is defined to mean the members' views, including (but not limited to) their ethical views and their views in relation to social and environmental impact matters and quality of life considerations. *This has replaced the original proposal to require trustees to consider and prepare a statement on how they will take account of the views which they consider scheme members hold in the preparation or revision of the SIP. This change of approach is likely to be welcomed by the industry because of the potential difficulties the original proposal would have raised, with the Government confirming that it was not the intention to give an impression that trustees must survey pension scheme*	Pure DB schemes with more than 100 members DB schemes with more than 100 members which also provide DC benefits limited to AVCs Schemes which provide DB and DC benefits (where DC benefits are not limited to just AVCs) with more than 100 members Pure DC schemes with more than 100 members (Requirement to include in default arrangement SIP applies to all pure DC schemes and all schemes which provide DB and DC benefits where DC benefits are not limited to just AVCs (i.e. 100-member threshold does not apply)).	*<u>By</u> 1 October 2019*

Requirement	To which schemes does it apply?	Timing
members or act on members' views about how their scheme is invested.		
Where required to produce a SIP for the **default arrangement**, trustees must **publish the SIP on a publicly accessible website** and inform members of its availability via the annual benefit statement.	Pure DC schemes with more than 100 members Schemes which provide DB and DC benefits (where DC benefits are not limited to just AVCs) with more than 100 members	*By 1 October 2019*
Produce an **implementation statement** setting out how the trustees acted on the principles they set out in the SIP; and **publish that statement online** in the same way as the SIP and inform scheme members of its availability via the annual benefit statement.	Pure DC schemes with more than 100 members Schemes which provide DB and DC benefits (where DC benefits are not limited to just AVCs) with more than 100 members	*From 1 October 2020*

The DWP has also revised its statutory guidance on the reporting of costs and charges to take into account the new requirements. Further guidance from the Pensions Regulator is expected by the end of November.

3. Signposting to the Ombudsman and Pensions Advisory Service to be updated

Earlier this year, there was a reshuffle of the functions carried out by the Pensions Ombudsman and the Pensions Advisory Service (**TPAS**).

Under the new structure:

- General requests for information or guidance should be referred to TPAS. *(Note that TPAS is due to be replaced by a new single financial guidance body in January.)*
- Complaints or disputes concerning workplace or personal pension arrangements should be referred to the Pensions Ombudsman.

The Ombudsman also now operates an "early resolution service", aimed at providing quick and informal resolution of complaints or disputes. (The Ombudsman does not expect complaints intended for this service to have been through a scheme's IDRP first.)

Under current legislation, trustees are required to inform members bringing complaints via the scheme's Internal Dispute Resolution Produce (**IDRP**) about the availability of TPAS (and to provide contact details) as soon as reasonably practicable after an application is received. When being notified of a decision under the IDRP, members must then be told about their right to complain to the Pensions Ombudsman (and be provided with the relevant contact details).

The legislation has not yet been updated to reflect the revised structure so there is currently a mismatch between what trustees are legally required to tell members and how complaints will be dealt with in practice.

In a joint statement published last week the DWP and the Pensions Regulator have confirmed they are expecting the legislation to be updated "at the latest by April 2020". However, pending these changes, the statement acknowledges that schemes may wish to update their signposting communications to make the new position clear and the Regulator acknowledges that no purpose would be served in applying penalties for non-compliance with the current (unamended) legislation where schemes update their communications to clearly reflect the updated position (that: (i) complaints or disputes should be referred to the Ombudsman; and (ii) general requests for information or guidance should be referred to TPAS).

Given the comfort provided by this statement, schemes which have previously been reluctant may now wish to review and update their communications to reflect the revised structure of the Ombudsman and TPAS.

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4. Ombudsman publishes updated factsheet on distress and inconvenience awards

The Pensions Ombudsman has published guidance setting out his new approach to making awards for 'non-financial injustice' (distress and inconvenience suffered by the applicant) caused by maladministration.

The Ombudsman's new approach introduces fixed amounts for these awards, designed to enhance transparency, create consistency and manage expectations for all parties. All awards will now usually fall into one of five categories:

Category	Description – one or more factors apply	Fixed award
Nominal	• Minimal or no distress/inconvenience established • Very limited distress and duration • Single occasion	No financial award likely, but formal apology likely recommended.
Significant	• Some significant distress/inconvenience has been caused • One or more occasion • Effect was short term • Respondent took reasonable steps to put matters right	£500
Serious	• A serious level of distress/inconvenience which has materially affected the applicant • Several occasions • Lasting effect over a prolonged period • Respondent slow to put matters rights	£1,000
Severe	• A severe and adverse, but not quite exceptional, level of distress/inconvenience • Chronic situations • Numerous/repeated/compounded errors over a prolonged period but opportunities to notice and remedy those mistakes were missed • Lasting effect over a prolonged period • Applicant's wellbeing affected • Applicant prevented from making informed life decisions at critical times • Respondent failed to respond to the applicant • Respondent failed to take steps to put the matter right • Respondent failed to understand distress/inconvenience	£2,000
Exceptional	One or more of the severe factors above apply PLUS aggravating factor/s: • Applicant was persistent in explaining distress/ inconvenience • Respondent wilful or reckless • Repeated failure by respondent to engage with Ombudsman on one or more complaints • Widespread failure by respondent to address complaints • Grave adverse health consequences for applicant • Disregarding IDRP recommendations	Above £2,000

The new guidance replaces the factsheet previously published in July 2015, which was much less prescriptive.

In the new guidance, the Ombudsman confirms that he will consider a range of relevant factors in considering whether an award for non-financial injustice is warranted, including: (i) whether the complaint could have been avoided or resolved at an early stage; (ii) how well the complaint (and IDRP) was handled; (iii) whether there were excessive avoidable delays; (iv) whether the maladministration occurred on a single or over many occasions; and (v) what level of distress or inconvenience was suffered.

If the Ombudsman decides an award is merited, he will evaluate the correct level according to the list of factors described above. The Ombudsman notes that he will always take account of the individual circumstances of the case, but similar complaints should result in consistent and broadly comparable awards.

5. Corporate governance developments

(1) Government publishes consultation response on insolvency and corporate governance

The Government published a response to its consultation on insolvency and corporate governance last month.

The consultation asked for views on a variety of proposals designed to improve the corporate governance of businesses that are in or approaching insolvency and there are a couple of key points coming out of the response from a pensions perspective concerning: (i) dividend payments; and (ii) stewardship.

Dividend payments	Stewardship
The consultation sought views on whether: (i) the current regime for ascertaining when a company can pay dividends remains fit for purpose; and (ii) there is sufficient transparency and accountability to shareholders for dividend decisions and broader choices about how any surplus profits should be allocated. Specifically, the question was raised of whether dividend payments should be restricted where a company's pension scheme is in significant deficit. The outcome from the consultation response is that the Government agrees there should **not** be an automatic bar on companies paying dividends in these circumstances. However, the Government does plan to give further consideration to the ways in which directors could provide stronger reassurances for shareholders/other stakeholders that proposed dividends will not undermine the affordability of agreed pension deficit reduction contributions and it seems that new reporting/disclosure obligations around this could be in the pipeline. At this stage, there are no details of what these new reporting/disclosure obligations (if any) would look like – it is intended this will be looked at as part of a wider review of the UK's dividend regime. As regards disclosure more generally, the consultation response comments that companies should be following best practice and disclosing how they are allocating surplus profits between shareholders, investment and R&D, rewards for employees, DB pension schemes and other demands; and explaining the rationale for these decisions. The Government expects that pressure from institutional investors, together with pressure to come from new company reporting regulations (which from next year will require, amongst other things, large companies to explain how their directors have had regard to certain specified matters, including the likely consequences of a decision in the long term, when performing their duty to promote the success of the company) should be sufficient to encourage fuller disclosure by companies of their rationale for capital allocation decisions. However, if these measures do not deliver sufficient progress, the Government will legislate to require companies to disclose and explain their capital allocation decisions.	The consultation also looked at what more could be done (through a revised Stewardship Code or otherwise) to promote more engaged stewardship of UK companies by their investors. The outcome is that there will be a consultation on a revised Stewardship Code later this year and it is possible the revised Code may be extended to cover pension funds (and other assets owners) as opposed to focussing primarily on asset managers, as is currently the case. The response also comments on the potential to enhance the role of pension schemes in the stewardship process through new regulations which will amend the Occupational Pension Schemes (Investment) Regulations 2005 and which have recently been finalised (discussed above). The Government also plans to carry out some work to see how the investment mandates given to asset managers by pension schemes and other asset owners can, as a matter of good practice, make explicit reference to stewardship.

(2) FRC publishes final 2018 UK Corporate Governance Code

The Financial Reporting Council (**FRC**) published a new UK Corporate Governance Code in July.

The 2018 Code applies to companies with a 'premium' listing for accounting periods beginning on or after 1 January 2019 and replaces the previous (2016) Code.

In the same way as the 2016 Code, the new Code consists of "Principles" which are supported by "Provisions" in various areas and it works on a "comply or explain" basis – companies to which it applies are currently required by the Listing Rules (though the Financial Conduct Authority (**FCA**) is currently considering any consequential amendments needed to the Listing Rules as a result of the 2018 Code) to make a disclosure statement in their annual financial report regarding the Code. Very broadly, this statement must cover: (i) how a company has applied the Principles of the Code; and (ii) whether a company has complied throughout the accounting period with all relevant Provisions of the Code (and if not, setting out which Provisions it has not complied with and the reasons for such non-compliance).

From a pensions perspective, companies to whom the Code applies should be aware of new Provision 38 (which relates to the general remuneration Principles). This states that: (i) only basic salary should be pensionable; and (ii) the pension provision of executive directors should be aligned with that available to the [general] workforce. (Note this is not a complete overhaul of the position under the old Code, which contained a similar statement to (i)).

The Code is also supported by Guidance ("*Guidance on Board Effectiveness*") which the FRC encourages boards and companies to use. The Guidance does not set out the 'right way' to apply the Code but is designed to help Boards when reporting on the application of the Code's Principles. This provides some further detail on Provision 38; stating that, in relation to the recommendation that pension commitments for executive directors should be aligned with those available to the workforce, it may not be practical to alter existing contractual commitments in this regard, but remuneration committees will need to ensure future contractual arrangements "heed" this. It therefore appears to be more a case of ensuring current practice is kept under review and that a company is in a position to explain the purpose behind any such differences (in line with the "comply or explain" approach).

For more information on the Code generally, please see the Firm's briefing entitled "A shorter, sharper UK Corporate Governance Code".

6. Case law update

(1) Supreme Court hands down judgment in 'gig economy' worker case

In a judgment[1] handed down over the summer, the Supreme Court has ruled that a plumber was a 'worker' and an 'employee' rather than an independent contractor.

Last year, the Court of Appeal concluded that the individual was a "worker" as he was required to use the firm's van for assignments and was contractually obliged to perform a minimum number of hours per week. He was therefore entitled to bring legal claims against Pimlico Plumbers for disability discrimination, holiday pay and unauthorised wage reduction. Pimlico Plumbers appealed the decision, but the Supreme Court dismissed the appeal, taking the view that:

- Personal service was the dominant feature of the plumber's contract (i.e. he needed to perform the services under his contract personally and could not substitute someone in his place).
- Pimlico Plumbers was not a client or customer of the plumber – the firm had a contractual obligation to offer work to the plumber if it was available and the plumber had a contractual obligation to make himself available for work up to 40 hours over five days each week.

The judgment follows a wave of cases concerning so-called 'gig-economy' workers which centre on the question of whether people are independent contractors or "workers" entitled to certain rights and as well having employment implications, it is likely to have pensions implications in the context of auto-enrolment. Following the judgment, a spokesperson for the Pensions Regulator said that it would study the judgment and consider its implications, noting that employers have a duty to automatically enrol qualifying workers into a workplace pension scheme.

(2) ECJ hands down judgment in PPF compensation case

In a ruling[2] earlier this month, the ECJ has confirmed that while Article 8 of the EU Insolvency Directive does not prevent Member States from reducing employees' accrued pension entitlements in the event of an employer insolvency, provisions of domestic law which lead to a guarantee of benefits limited to less than 50% of the accrued entitlement cannot be

[1] *Pimlico Plumbers Ltd v Smith [2018] UKSC 29*

[2] *Grenville Hampshire v The Board of the Pension Protection Fund [2018] (Case C-17/17).*

considered to fall within the definition of "protect" used in Article 8 and are therefore incompatible with the Directive. **The ECJ ruled that this 50% minimum guarantee applies as an individual minimum guarantee for each employee.**

As a result, the Pension Protection Fund (**PPF**) compensation rules which can, in certain cases, result in an individual receiving less than 50% of their accrued entitlement would be considered incompatible with the Directive. The member who made the original claim in this case had his benefits reduced by 67% on his scheme entering the PPF due to a combination of having retired before normal pension age, the application of the PPF compensation cap and the lower level of pension increases which apply under the PPF compensation rules.

It is expected that only a small number of people will be affected by the ruling, although it is also likely to have implications for schemes that wind-up outside of the PPF with PPF-level benefits.

In a statement issued on 6 September, the PPF said it has been working with the DWP about the changes that may result from the ruling and that it will work to implement the judgment as quickly as possible. It is also possible that schemes could see an increase in their PPF levies as a result.

Following the ruling, the DWP is no longer proceeding with previous proposals to aggregate pensionable service accrued in a scheme with transferred-in service to the same scheme when applying the PPF compensation cap due to concerns this could result in more cases of the 50% individual minimum guaranteed not being met.

(3) Court of Appeal clarifies certain aspects of legal privilege

The Court of Appeal has clarified some important aspects of privilege in a ruling in the recent case of *ENRC*[3], in which it overturned the first instance decision.

Clarifying aspects of litigation privilege

In its judgment, the Court considered that litigation was reasonably in contemplation at least by the time the company had instructed its lawyers to carry out an investigation (into the allegations received from a whistle-blower of internal corruption) even though this was before the Serious Fraud Office (**SFO**) had expressed any overt interest to the company in the matter. The Court did not go as far as saying that the decision to set up an internal investigation was in itself sufficient to show that litigation was reasonably in contemplation, but its judgment indicates that if there are serious allegations then it may well be litigation is sufficiently in contemplation for privilege to apply.

In addition, the SFO argued that the dominant purpose of the investigation was to find the facts for corporate compliance and governance reasons, not for the conduct of litigation. The Court of Appeal rejected this. The clear threat of criminal investigation and prosecution meant that litigation was to be treated as at least the dominant purpose of the investigation.

Lack of clarity on legal advice privilege

The focus on litigation privilege in this case meant that the Court did not need to decide the legal advice privilege points which would have also been of interest. (Specifically, the question of whether legal advice privilege only applies if the dominant purpose of the communication is the provision of legal advice in the same way that the conduct of litigation must be the dominant purpose if litigation privilege is to apply).

The Court did, however, support a contemporary approach to legal advice privilege, although it will take the Supreme Court to deliver that approach.

For more details, please see the Firm's briefing entitled: "Privilege and ENRC: Two things we now know, and two we still don't".

What is privilege?

Privilege comes in two main forms:

- Legal advice privilege, which applies to confidential communications between lawyers and their clients for the purpose of legal advice. This purpose is to be construed broadly: it is not merely telling the client the law, but includes advice as to what should prudently and sensible be done in the relevant legal context.
- Litigation privilege, which applies to communications between lawyers or their clients and third parties for the sole or dominant purpose of obtaining information and advice in connection with litigation that is ongoing or in reasonable contemplation. The litigation must be adversarial rather than inquisitorial.

Litigation privilege, unlike legal advice privilege, applies to communications with third parties, not just with the client, provided that litigation is reasonably in contemplation.

[3] *Serious Fraud Office v Eurasian National Resources Corporation Ltd [2018] EWCA Civ 2006*.

[(4) Court decision in pension increases case to be appealed to Supreme Court]

Over the summer, the Court of Appeal handed down judgment in the *British Airways*[4] (**BA**) case.

In a 2:1 majority decision, the Court Appeal allowed BA's appeal, taking the view that the trustee's role in this particular scheme (based on a review of various provisions of the scheme rules) was to "manage and administer" the scheme as set out in the scheme rules. The overall purpose of the trustee's powers was to deliver rather than "design" the benefits and by using their unilateral amendment power to confer a trustee power to grant discretionary increases, the trustee had acted for an improper purpose – effectively acting as "paymaster".

While the decision in this case was clearly based on the specific facts of the case (in particular, an explicit provision in the scheme's rules indicating that the trustee's role was one of scheme management and administration), the consideration of the proper purpose rule in this way is novel. (Although one judge allowing the appeal commented that it was the trustee's behaviour that was novel in taking a step that would increase the employer's liability for a scheme already in significant deficit).

It has subsequently been confirmed that the trustee has been granted permission to appeal to the Supreme Court and will be proceeding with an appeal.

7. Investing in derivatives – key issues for pension schemes

(1) FCA publishes helpful statement regarding expiry of clearing exemption

Certain pension schemes used to benefit from a transitional exemption in European Market Infrastructure Regulation (**EMIR**), meaning they did not have to comply with the obligation for over-the-counter (**OTC**) derivatives to be cleared.

The exemption has previously been extended twice and expired on 17 August 2018 as it was not possible to further extend the exemption under EMIR.

However, while the exemption has not been extended officially, the European Securities and Markets Authority (**ESMA**) has issued a statement confirming an intention to extend the exemption for a further (temporary) period, although the legislation needed to do so is not yet in place. There will therefore be a gap during which pension schemes will not technically be covered by the exemption. However, ESMA subsequently issued a statement acknowledging the difficulties that certain schemes would face if they had to start clearing their OTC derivatives during the gap, commenting that ESMA expects competent authorities to not prioritise their supervisory actions towards those that are expected to be exempted again. Following this, the FCA has issued its own statement confirming that it will not be taking action against schemes in this gap period.

(2) Initial margin requirements for uncleared derivatives

Large pension funds should consider whether they may fall within scope of the initial margin requirements under EMIR which will apply to certain entities which trade in uncleared derivatives. The requirements are being phased in and will only apply where an entity's "group" exceeds the relevant threshold for trading in non-centrally cleared derivatives. These thresholds are very high (the lowest threshold is EUR 8 billion - triggering a requirement for compliance by September 2020). As such, it is unlikely that any but the very largest pension schemes will fall within scope. However, given the relatively onerous requirements, any that do fall within scope are recommended to begin preparations as soon as possible to avoid the inevitable bottleneck closer to the implementation deadlines.

8. Applications for master trust authorisation to begin from 1 October

The Occupational Pension Schemes (Master Trusts) Regulations 2018 will come into force from 1 October 2018, together with elements of the Pension Schemes Act 2017; bringing with them the new regime for master trust authorisation.

Under the new regime, schemes which fall within scope will have until April 2019 to apply for authorisation or wind-up.

The application fee for authorisation of an existing master trust is £41,000 and there is likely to be considerable work required to ensure schemes within scope satisfy the authorisation criteria. Once a scheme has been authorised as a master trust, it must continue to meet the authorisation criteria and will be subject to supervision by the Regulator on an ongoing basis.

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[4] *British Airways PLC v Airways Pension Scheme Trustee Limited [2018] EWCA Civ 1533.*

The Regulator's recently published Code of Practice provides further details on the authorisation criteria and the Regulator has also published forms to enable those applying for authorisation to supply the correct information for approval.

Summary of the authorisation criteria and evidence required

Authorisation criteria	Overview	Evidence required
Those involved in running the master trust are "fit and proper persons".	This requirement applies to people carrying out a wide range of roles (although in practice, it's possible the same person will fulfil multiple roles) including the scheme trustees, 'scheme funder'[5], 'scheme strategist'[6] and various other roles. There are effectively three tests the Regulator would be assessing in respect of these people: (i) an integrity test; (ii) a conduct test; and (iii) a competency test. Where any of these people are body corporates, the Regulator will be assessing the individual directors. There are different thresholds to this criterion for different roles.	This will vary from role to role. A declaration and criminal conviction certificate will be required for each individual subject to the assessment. For trustees and strategists, the Regulator may also request evidence of competence, including statements of development, evidence of qualifications or learning programmes and other relevant professional experience.
The scheme's systems and processes are sufficient to ensure that it is run effectively.	Master trusts will have to confirm that their IT systems can provide a minimum functional capability. They will also be expected to demonstrate that they have effective systems and processes for running and governing the scheme and its operations.	This may include evidence of assurance processes, audits or similar materials.
The scheme has an adequate continuity strategy in place.	The continuity strategy needs to set out how members' benefits will be protected following a 'triggering event'.[7] The Code states that the strategy should be a high level but wide ranging and flexible document, providing the framework for identifying key actions, decisions and owners of actions required to deal with a triggering event period. It needs to set out the principles by which decisions will be made, the timescales over which this will take place and how the costs of continuing to operate the master trust and resolve the triggering event will be paid for. The strategy must also set out a statement of all levels of administration charges.	The strategy must be submitted as part of the authorisation application.
The scheme funder meets certain requirements.	If there is a scheme funder (see above), it must be able to demonstrate that it is able to provide the necessary support to the master trust as and when required.	Generally, a scheme funder must provide accounts and other financial information to demonstrate their ability to meet certain costs of the master trust.

5 The 'scheme funder' is a person who is liable to provide funds to enable the scheme to continue to run if it cannot meet its running costs from member charges, or is entitled to receive profits from the scheme where member charges exceed running costs.

6 The 'scheme strategist' is the person who makes business decisions about the master trust's commercial activities.

7 The legislation prescribes a number of events as 'triggering events' including e.g. where a scheme funder has an insolvency event/becomes unlikely to continue as a going concern, a scheme funder decides to end the relationship with the scheme, or where the Regulator refuses or withdraws authorisation. Different continuity options/requirements apply depending on the particular triggering event.

		However, mixed benefit schemes established before October 2018 with more than one scheme funder – each of which is a participating employer – are not required to provide their accounts and other information, but the trustees will be required to set out what means they have for meeting certain costs of the master trust.
The scheme is financially sustainable.	Master trusts must be able to demonstrate that they have access to sufficient financial resources to cover their set-up and running costs, and also financial reserves sufficient to cover the costs arising from a triggering event. In order to assess this, the Regulator will take into account a wide range of documents, including the business plan (see next column), the master trust's accounts, the scheme funder's accounts, the statement of investment principles and the most recent chair's statement (which must all be submitted with the application).	The evidence required will depend on the circumstances of the scheme and will include a 'costs, assets and liquidity plan' (CALP), a business plan and any other evidence necessary to demonstrate a scheme's financial resources (including the items mentioned in the previous column). The business plan must set out the master trust's objectives and how these will be achieved. It must be a comprehensive document and include all of the detail required by the legislation and the Code. In the case of mixed benefit schemes established before October 2018 with more than one scheme funder – each of which is a participating employer – the Regulator will focus on the activities of the DC section(s).

9. Upcoming developments

In a statement issued to the House of Commons recently, the Parliamentary Under-Secretary of State for Work and Pensions made comments about several upcoming pensions developments, including:

- A comment that the Government will continue to engage with industry on the model for a pensions-dashboard and legislate where necessary.
- An intention to commence formal consultation on proposals for collective defined contribution schemes in the autumn.
- A comment that the Government is investigating how to facilitate DB consolidation "superfunds" and the intention is to publish a consultation on this in the autumn.
- Confirmation that the Government is considering responses received following the DWP's consultation on proposals to strengthen the powers of the Pensions Regulator (please see our July briefing for more details) and that it hopes to publish its conclusions towards the end of this year.
- Confirmation that the Single Financial Guidance Body (which will replace the Money Advice Service, TPAS and Pension Wise) is to be launched in January 2019.

C L I F F O R D

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