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NEWSLETTER

JULY 2023

PENSIONS BULLETIN

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In this month's Pensions Bulletin, we cover:

1. Pensions announcements in the Chancellor's Mansion House speech, designed to encourage investment by pension schemes in productive finance and to boost defined benefit (DB) and defined contribution (DC) consolidation. The proposals include the expansion of Collective Defined Contribution provision and a revamped regime for DB superfunds, and there are new consultations looking at trustee effectiveness and extraction of surplus from DB schemes.
2. A High Court ruling - that historic rule amendments to contracted-out rights did not comply with procedural requirements – which may have implications for the validity of amendments made by schemes which were contracted-out on a salary-related basis between 6 April 1997 and the abolition of contracting-out in 2016.
3. The Government's announcement of a new deadline for connection to the dashboards system - 31 October 2026 for all schemes in scope, with the staging timetable to be set out in guidance.
4. The Pensions Regulator's (TPR's) Annual Funding Statement 2023, its latest guidance for trustees and sponsors of DB schemes who are preparing valuations. TPR's key messages focus on the current improved funding position of most schemes.
5. TPR's guidance for trustees on using leveraged liability-driven investment (LDI), emphasising the responsibility of trustees for governance in relation to the resilience of LDI funds.
6. TPR's refreshed guidance for trustees of DB schemes on employer distress, updated in the context of the recent market volatility affecting investment strategy.
7. A regulatory initiative on ESG – TPR is checking that schemes have published their Statements of Investment Principles and Implementation Statements in line with Government guidance.

We include our regular watch list of current and future developments.

PENSIONS REFORM: THE GOVERNMENT'S MANSION HOUSE PROPOSALS

The Chancellor announced initiatives affecting both defined contribution (DC) and defined benefit (DB) pension schemes in his Mansion House speech on 10 July 2023. These were followed by a number of consultation responses and further consultations and calls for evidence, several of them building on previous initiatives for DC and DB consolidation. The Chancellor said that decisions on all proposals would be made before the Autumn Statement (expected to be issued in October or November).

The Chancellor stated in his speech that the Government's decisions would be guided by three aims:

- To secure the best possible outcomes for pension savers.
- To prioritise a strong and diversified gilt market, to help fund public services.
- To strengthen the UK's competitive position as a leading financial centre able to fund public services.

As well as the proposals set out below, the Chancellor outlined other initiatives, including an industry-led "Compact", under which several of the largest DC providers have committed to investing 5% of their default funds in unlisted equities (not necessarily in the UK) by 2030. The Government will also be looking at the role DB schemes play in "productive investment" (investments that provide equity capital and finance for businesses in the UK, including start-ups, infrastructure and private equity, and long-term investments) and will test options to make investment opportunities in high-growth companies available to pension funds.

Expanding Collective Defined Contribution provision

The Department for Work and Pensions (DWP) has published a response to its consultation on expanding Collective Defined Contribution (CDC) provision. (For details of the consultation, please see our Pensions Bulletin March 2023.) The Government is pressing ahead with the expansion of "whole-of-life" CDC (i.e., arrangements which offer accumulation and decumulation in one vehicle) to multi-employer schemes where the employers are not associated with one another. It plans to consult on draft changes in Autumn 2023. The Government makes clear that it wishes to explore the opportunities presented by decumulation-only CDC arrangements. However, its view is that these arrangements, and the attendant risks, require further consideration.

The DWP's response highlights that much of the regulatory architecture for individual and connected employer CDC schemes, contained in the Pension Schemes Act 2021 and the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022, will apply to multi-employer schemes with "unconnected" employers, with some technical amendments to address issues raised by respondents to the consultation, including:

- To make clear that, during the wind-up of a CDC scheme, the accrued rights of the dependants and survivors of members or survivors of dependants can be transferred to a flexi-access drawdown arrangement.
- When an annual valuation shows that a decrease to benefits needs to be made, for example due to a fall in the value of the collective funds, schemes can smooth the impact of the reduction on members through the multi-annual reduction (MAR) process. The DWP will consider the suggestion that where a MAR is initiated following poor investment performance and there is a subsequent positive bounce back in investment, that increase should be offset against the planned reductions.

DB schemes

The DWP has published a call for evidence: *Options for DB pension schemes*, closing on 5 September 2023, covering:

- Consolidation options, including the possibility of the Pension Protection Fund (PPF) or another public sector body as a consolidator.
- Current scheme rules and barriers to extraction of surplus, in particular whether enabling trustees and employers to extract surplus before wind-up would encourage more risk to be taken in DB investment strategies and facilitate greater investment in UK assets, including productive finance. Another question asks whether, where an employer also contributes to a DC scheme, surplus generated by the DB scheme could be used to provide additional DC contributions above the auto-enrolment minimum.

- Methods of incentivising trustees and sponsors to consider investing in productive finance assets. The DWP confirms that it will continue to be for schemes to make decisions on asset allocation.

The DWP has also published a response to its 2018 consultation on **DB consolidation**, confirming that it will go ahead with an authorisation and supervision regime to be run by the Pensions Regulator (TPR) for DB commercial consolidators (superfunds). Legislation will be brought forward "as soon as Parliamentary time allows", with further details following in regulations. The DWP and TPR will be reviewing the interim guidance issued by TPR in 2020, including the "gateway" principles for ceding trustees and employers. (For details of TPR's guidance, please see our Pensions Bulletin October 2020.) After a transition period, existing DB superfunds will be required to comply with the legislative framework (once in force) in order to continue to accept new transfers in.

The DWP has confirmed in its response that:

- Insurers will be able to participate in the superfunds market.
- The legislation will allow a superfund to be either sectionalised or co-mingled. Where a superfund is sectionalised, the requirements on capital adequacy, capital buffers, intervention and profit triggers will be applied to individual sections. When a particular section breaches the funding triggers, this section will be treated in isolation, in terms of regulatory action or winding-up.
- Superfunds will not be required to target buyout with an insurer.

DC schemes

The DWP, the Financial Conduct Authority and TPR have published their response to their March 2023 consultation on the introduction of a **Value for Money (VFM) Framework**. This would require trustees of all occupational schemes that provide DC benefits (excepting some small schemes) to disclose key metrics and service standards and to assess the VFM of their scheme. (For details of the proposals, please see our Pensions Bulletin March 2023.) The response confirms the intention to proceed with the VFM Framework, the Government believing it will help to increase scheme investment in illiquid and private market assets. The new Framework will replace the existing "Value for Members" assessment, which applies to schemes with assets of less than £100m.

The new Framework will require legislation; again, this will be "when Parliamentary time allows". Implementation will be in phases, starting with default arrangements, and the DWP envisages that it will apply to Collective Defined Contribution schemes during the latter phases of implementation.

The DWP comments that there will be an increasing overlap between the VFM Framework and the Chair's Statement, and it will therefore consider how the requirements of the Statement could be managed down and ultimately phased out.

On **decumulation**, the DWP has published a consultation: *Helping savers understand their pension choices*. The consultation seeks views on proposals to require all DC schemes to offer decumulation services to members at the point of access to benefits, either in-house or in partnership with another supplier. The DWP suggests this could include a collective DC option for decumulation. The consultation closes on 5 September 2023 and legislation will be introduced "when Parliamentary time allows".

Deferred small pots

The DWP has published a response to its March 2023 call for evidence on consolidating small pots, confirming that it will go ahead with its favoured "multiple default consolidator" model. An industry group will be set up in late 2023 to explore design and implementation. The key aspects of the proposed model are:

- Initially, a small pot would be classified as one of £1,000 or less, with no minimum size for automatic consolidation.
- There will be a small number of authorised default consolidator schemes.
- Under the proposed process, the scheme would identify an eligible deferred pot, contact the member and a central clearing house (to see if the member already has a chosen consolidator) and, if the member has not chosen

one, the clearing house would contact the member. The scheme would receive notification of the designated consolidator and would initiate a transfer of the deferred pot.

- A pot would be eligible for automatic consolidation 12 months after the last contribution was made to it.
- Schemes will be encouraged, but not mandated, to undertake same scheme consolidation.

Trustees' skills, capability and culture

The DWP and HM Treasury have published a joint call for evidence (closing on 5 September 2023) on the culture of investment decisions and how to "improve" the understanding of trustees' fiduciary duty. The background is that UK trustees are not investing in high-growth companies to the same extent as their international counterparts and the Government believes that trustees do not have sufficient widespread knowledge to engage effectively with alternative assets. The Government is seeking evidence on:

- **Trustee skills and capability:** The Government suggests it would be beneficial to require all trustees to provide enough information to TPR for each trustee to be uniquely identified, to allow TPR to monitor trustee training and accreditation and to "*enable checks to ensure that all trustees are complying with requirements*". This could be done by requiring more detailed information in the scheme return, or through a separate return for scheme trustees. The Government is also considering whether every trustee board should be required to have a certain proportion of accredited trustees (one trustee, more than half of trustees on a board, or all trustees). The "long-term vision" is to have a smaller number of schemes, each with a professional trustee.
- **The role of advice:** The call for evidence asks about the role of investment consultants, advice on investing in unlisted equities and how legal advice affects investment decisions, particularly in relation to risk.
- **Barriers to trustee effectiveness:** The Government notes that there is evidence that the way in which trustees are exercising or interpreting their fiduciary duties could be holding them back from exploring a broader range of investments, including in less liquid assets. It expresses concern that there may be a risk averse culture, or even a perception that fiduciary duty means capital preservation at all costs and adds that "*Failing to consider the full range of investment options, where this is appropriate, is a failure of governance and a failure to fulfil fiduciary duty*". There is also concern as to whether trustees have enough time and support to perform their duties.

Next steps for employers and trustees: Perhaps the most significant development trailed in the Mansion House proposals is the confirmation that the Government is pressing ahead with legislative changes to facilitate the expansion of CDC pensions to multi-employer schemes where the employers are not associated with one another. This essentially opens the door to industry-wide CDC schemes, CDC master trusts and other commercial provision of CDC arrangements, a development which is likely to be of significant interest to UK employers and savers alike. The Government plans to consult on draft changes in Autumn 2023. There is no clear indication of when we might expect to see the other legislation to implement the Mansion House proposals and there must be some doubt as to whether they will take effect before the next General Election. Amongst the announcements, the call for evidence on trustee skills stands out as raising significant new issues. There is emphasis on increasing the professionalism of trustees, with a suggestion that trustees should be required to provide more information to TPR, to enable it to check "compliance", and criticism of the perceived risk aversion of current investment decision-making. There is confirmation that the Government's key plank in DC consolidation, the new VFM Framework, will go ahead as proposed, although no start date has been announced. None of the proposals for DB schemes mention TPR's Funding Code or the comments of the Parliamentary Work and Pensions Committee inquiry into DB schemes on possible amendments to the Code in the light of the recent crisis in liability-driven investment.

AMENDMENTS TO CERTAIN CONTRACTED-OUT RIGHTS MADE WITHOUT ACTUARIAL CONFIRMATION WERE INVALID

The High Court, in Virgin Media Limited v NTL Pensions Trustees II Limited, decided that historic rule amendments to contracted-out rights did not comply with procedural requirements. The decision may have implications for the validity of amendments made by schemes which were contracted-out on a salary-related basis between 6 April 1997 and the abolition of contracting-out in 2016.

Background: From 6 April 1997, schemes which were contracted-out on a salary-related basis had to meet an overall scheme quality test known as the reference scheme test. Rights accrued in these schemes are known as "Section 9(2B) rights". Section 37 of the Pension Schemes Act 1993, together with Regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations 1996, prohibited amendments to the rules of salary-related contracted-out pension schemes in relation to Section 9(2B) rights, unless the scheme actuary had provided written confirmation that the scheme would continue to satisfy the reference scheme test if the amendment was made.

Facts: The National Transcommunciations Limited Pension Plan (the Plan) was contracted-out on a salary-related basis. The Plan's 1999 Deed & Rules, executed on 8 March 1999, sought to amend the Plan's revaluation provisions, by (in broad terms) reducing the rate of revaluation of deferred pensions under the Plan. The question for the Court was whether Section 37 made the amendments void, and if so to what extent. As the parties had not been able to locate an actuarial confirmation, the question was answered on the assumption that the 1999 Deed & Rules were not the subject of the confirmation required by Regulation 42.

Decision: The High Court decided that Section 37 made an amendment to the rules of a contracted-out scheme relating to Section 9(2B) rights void if the amendment was introduced without the actuarial confirmation required by Regulation 42, and that this applied to both past and future service Section 9(2B) rights. The Court also decided that all alterations to Section 9(2B) rights were void; not merely alterations that would or might adversely affect those rights.

Next steps for employers and trustees: The decision may be appealed to reverse the decision (permission is being sought). The Government could legislate to cure the position for all schemes where there has been a void amendment. Rather though than wait optimistically for either of these, some employers and trustees - who have cause to consider that there may be doubt about whether the requisite actuarial confirmation under the legislation was obtained for an amendment - are now seeking to reassure themselves. The relevant contracting-out legislation was introduced on 6 April 1997 and was abolished with effect from 6 April 2016. Some employers and trustees will be checking for such formality compliance in any event, for example, due to a commercial transaction or a structural event such as a buy-in. If a requisite actuarial confirmation were discovered not to have been obtained or there is uncertainty it may then be possible to cap or correct the position, besides taking other appropriate steps.

GOVERNMENT ANNOUNCES NEW CONNECTION DEADLINE FOR PENSIONS DASHBOARDS

The Pension Schemes Act 2021 and the Pensions Dashboards Regulations 2022 contain statutory obligations on trustees of occupational pension schemes to provide information about members' benefits and the scheme to pensions dashboards. Earlier this year, the Government announced that the Pensions Dashboards Programme, responsible for rolling out the dashboards ecosystem, would be unable to meet the connection deadlines set by the Dashboards Regulations (the first of which, for master trusts, was 31 August 2023), and the timing of the connection obligations needed to be revised.

The Department for Work and Pensions (DWP) has now announced that the staging timeline will be taken out of the Dashboards Regulations and replaced by a single connection deadline of 31 October 2026 for all schemes in scope (schemes with 100 or more active and/or deferred members). Staging will instead be set out in guidance, from the DWP and the Money and Pensions Service, which the Government will "collaborate on with industry this year". Amended initial guidance from the Pensions Regulator confirms that the DWP guidance will indicate when schemes (by size and type) are scheduled to connect. The amended Dashboards Regulations will change the reference date for calculating scheme size, from the scheme year end date falling between 1 April 2020 and 31 March 2021 to the scheme year end date falling between 1 April 2023 and 31 March 2024.

The ability for schemes to apply for a one-off deferral of the (31 October 2026) connection deadline, subject to specific and limited conditions, where the scheme is transferring data to a new administrator, or retendering scheme administration, will be retained. The application will need to be made within 12 months of the amended Regulations coming into force.

As a reminder, the Dashboards Regulations apply to all registerable UK-based occupational pension schemes with active and/or deferred members, including collective defined contribution schemes. Schemes outside the UK and non-registrable schemes are out of scope of the Regulations. (Personal and stakeholder schemes are also out of scope and are covered by FCA rules.)

Next steps for employers and trustees: Despite the delay, trustees will want to continue to liaise with their advisers, and with the third parties on whom the trustees will depend for support, on preparations for dashboards connection. There are important decisions trustees need to take, in particular on their approaches to matching members to their pensions and to providing the data that will be sent to members to view.

THE PENSIONS REGULATOR'S ANNUAL FUNDING STATEMENT 2023

The Pensions Regulator's (TPR's) Annual Funding Statement (AFS) 2023 is guidance for trustees and sponsors of defined benefit (DB) schemes with valuation dates between 22 September 2022 and 21 September 2023 (Tranche 18) and for all schemes undergoing significant changes that require a review of their funding and risk strategies. The guidance forms the basis of the risk assessment of Tranche 18 valuations by TPR's supervision team, so TPR reminds trustees and employers that they should be prepared to justify their approach with supporting evidence. TPR confirms it now expects the Regulations and revised DB Funding Code to come into force at the same time, in April 2024.

Much of the guidance on potential risks to employer covenant and scheme investments is unchanged from the 2022 AFS, but given the increase in funding levels, there is more discussion on the options for schemes at or above buy-out level. TPR divides its advice on funding strategies into three groups:

1. **Where funding level is at or above buy-out:** (25% of DB schemes, TPR estimates): trustees and employers should consider whether proceeding with a buy-out is the best way to lock in funding gains. The AFS discusses the options, recommending that schemes get "insurance ready" for buy out, and warns trustees to have strategies to mitigate key risks in the chosen option. TPR suggests trustees might mitigate future risk by creating a specific risk buffer using some of the surplus.
2. **Where funding level is above Technical Provisions (TPs) but below buy-out:** Trustees should consider whether the long-term objective and a timescale agreed with the employer remain appropriate. If the scheme has plans for investment strategy to align with the long-term objective, with triggers for action, then exceeding the TPs should trigger further actions such as strengthening the TPs and reducing risk in the investment strategy. If there was a significant improvement in the funding level over the last year, schemes should consider accelerating this process.
3. **Where funding level is below TPs:** TPs should be revisited to ensure that they are aligned to the long-term funding target. Any deficit should be recovered as soon as the employer can reasonably afford. If the funding level has improved significantly, consideration should be given to applying some of the funding gains towards a less risky funding and investment strategy. The small number of schemes whose funding levels have fallen will need to reset funding and investment strategies and should review their operational governance processes to ensure future resilience; there is a reference to TPR's latest LDI guidance (see item below).

As in previous years, there is a table of the key risks trustees and employers should focus on, and actions to take, divided into the five levels of covenant strength and sub-divided according to whether the scheme is immature or mature. TPR encourages schemes to set their long-term funding target in accordance with the "general direction of travel" in the draft DB Funding Code.

Other points on strategy:

- **Investment considerations:** In the light of the change in market conditions in 2022, schemes should review their investment strategy, particularly the split between matching and growth assets and the proportion of scheme assets that are illiquid.
- **Covenant consideration:** If the funding level has improved, schemes should not assume less reliance on the employer covenant; scenario analysis should reveal how quickly covenant dependency can increase. Schemes should also consider the short-term impact of the current economic environment (higher interest rates, inflation and energy costs). Ongoing trading volatility means it may be difficult to test management's forecast assumptions against prior year performance, emphasising the importance of engaging with management to understand their forecasts. Specialist advice should be obtained, particularly where the covenant is complex or deteriorating, or if it has been materially affected by recent market events. Refinancing risk should be incorporated into covenant analysis; the AFS refers to TPR's 2022 blog on refinancing.

TPR plans to set out proposed changes to its 2015 employer covenant guidance "later this year". There will be more detail on covenant visibility, reliability and longevity, how to treat guarantees for scheme funding purposes and more information on how ESG risks can be factored into the covenant.

- **Recovery Plans:** TPR repeats from AFS 2020 and 2021 its expectations where the employer is considering whether to reduce or stop Deficit Repair Contributions as part of an actuarial valuation. If the employer seeks to renegotiate the terms of contingent arrangements, because they appear proportionately more favourable, trustees are expected to evaluate the proposal critically, and understand the value being given up against a range of reasonable scenarios.
- **Other considerations:** The AFS mentions changes in mortality assumptions and inflation (referring to the 2022 AFS).

Next steps for employers and trustees: Trustees and employers will want to consider the key themes that emerge from the AFS as schemes have experienced better funding. More schemes will be considering the possibility of buying out liabilities with an insurance company and how to deal with surpluses on various bases. However, trustees should take note of the warnings about ongoing economic uncertainty and the possible short-term nature of recent improvements in funding levels.

THE PENSIONS REGULATOR'S GUIDANCE ON LEVERAGED LDI

The Pensions Regulator (TPR) has published guidance for trustees on using leveraged liability-driven investment (LDI). The new guidance, a response to the Bank of England's recent recommendation that TPR take action "as soon as possible" to specify the minimum levels of resilience for LDI funds in which pension fund trustees invest, replaces previous TPR statement and guidance published in October and November 2022. The guidance should be read in conjunction with TPR general guidance on DB investment. Given that the Pensions Minister recently told the two Parliamentary Committees looking at DB schemes and LDI that the Government will consider their recommendations before issuing the revised DB Funding Code and Regulations, we are likely to see similar LDI guidance in the Funding Code.

Key points from the TPR guidance are:

- LDI arrangements need to be resilient to short term adverse changes in market conditions, with only cash, cash equivalents and other assets that can reliably be sourced or converted to eligible collateral being held in the buffer.
- The buffer should comprise two (cumulative) elements:
  1. An operational buffer (to manage day to day volatility) that, as a minimum, reflects gilt yield volatility in normal market conditions.
  2. A market stress buffer (to provide resilience during severe market stress): this should be, at a minimum 250 basis points, on the assumption that trustees can provide additional cash or assets to replenish the buffer within five days. If not, a larger market stress buffer may be appropriate.

  Processes to replenish the buffer if it drops too low should be put in place, recorded and reviewed. The process for selling assets should be clear and all delegations recorded.
- Resilience should be tested; the guidance suggests some methods. Trustees should record the outcomes, and address areas of concern. Resilience should also be monitored, in accordance with TPR guidance on monitoring investments. Trustees should ensure that they receive sufficient information from LDI managers to understand risks; the guidance lists examples of data that may be useful for monitoring purposes. TPR suggests that trustees are also likely to need adviser support.
- Trustees should ensure they are not delegating key strategic decisions and that they are receiving information on how the delegated authority is being used, to ensure it is consistent with what has been agreed. Delegations should set out clearly the service each party is providing, processes that must be followed and any limitations, and ensure that this is reflected in legal agreements and contracts.

- Trustees should seek assurance that all parties have capacity to operate in stressed market conditions and that action can be taken promptly as required. Trustees should put controls in place, in line with TPR guidance on the selection and management of suppliers.
- Governance and operational processes should be reviewed periodically.

Next steps for employers and trustees: Trustees should review their investment governance model and consider how it affects their LDI arrangements. Employers and trustees will also need to consider more strategic advice on what impact changes in gilt prices have had on the scheme's funding and investment strategy.

REVISED GUIDANCE FROM THE PENSIONS REGULATOR ON EMPLOYER DISTRESS

TPR has published revised guidance for trustees of defined benefit schemes on protecting schemes from sponsoring employer distress. The first version of the guidance was issued during the pandemic, in November 2020; TPR has refreshed the guidance in the light of the economic challenges currently facing schemes, with an emphasis on investment strategy.

The key message remains that trustees should take action at an early stage where the employer shows signs of distress. The main element of this approach is a fully documented and regularly reviewed integrated risk management (IRM) plan. TPR emphasises the need to:

- Assess the employer's legal obligations to the scheme and the possible results of an insolvency.
- Review scheme governance protocols (such as trustee skill and experience, conflicts, record keeping and information sharing) on an ongoing basis. Trustees should ensure they have access to full and up-to-date information about the sponsoring employer and its wider group.
- Seek appropriate advice.

The guidance lists key warning signs of financial distress and suggests a number of approaches for trustees:

- Increase the frequency of covenant monitoring.
- Make a detailed review of the scheme's position.
- Review investment strategy. This section of the guidance is new and recommends that trustees:
  - Use a method of estimating the risk of investments, such as a Value at Risk assessment, stress test scenario or equivalent, to assess any fall in growth, or risky assets combined with a fall in bond yields.
  - Consider what level of investment risk is supportable.
  - Assess level of interest rate or inflation hedging and whether this should be increased (within the leverage constraints of the scheme) if the level of downside investment risk is unsupportable.
  - Consider a contingency plan if the level of risk needs to be reduced because of a sudden deterioration in the covenant. This might include reviewing investment governance and deciding on a target of de-risked asset allocation and associated level of interest rate or inflation hedging. Trustees should ensure they understand any additional asset classes (such as liability-driven investment) and prepare for the hiring of any new investment managers.
- Understand the role of other stakeholder interests, taking specialist advice when a sponsor has complex financing arrangements.
- Consider employer requests for scheme easements, ensuring that there is proper information sharing between employer (including its wider corporate group) and the trustees.
- Consider the impact of transaction activity. This section, and the case examples in Annex 3, lists considerations for trustees in scenarios where a scheme's position has worsened because of corporate activity and where, if there is no mitigation, there could potentially be a material detriment attracting TPR action. In the example of a lender seeking security ahead of the scheme, TPR expects trustees to consider the different outcomes for the employer

and the scheme that could flow from the proposal, the protections for the scheme, the effect on the level of investment risk and whether the scheme is being "treated fairly" compared to other stakeholders. Trustees are also reminded to take professional advice on the impact of the proposal on the scheme.

- Communicate with members and remain alert to scams or unusual transfer activity.

Where the sponsor faces the prospect of insolvency, the guidance refers to the Pension Protection Fund's (PPF's) contingency planning guidance and steps that will need to be taken to prepare the scheme for PPF assessment.

Next steps for employers and trustees: The revised guidance is a reminder of the need for regular IRM assessment, with appropriate advice. In particular, TPR says it expects trustees to have appropriate covenant monitoring in place.

THE PENSIONS REGULATOR'S ESG INITIATIVE

The Pensions Regulator (TPR) has published a blog post on ESG, confirming that it will be carrying out a regulatory initiative on trustees' Statements of Investment Principles (SIPs). The initiative will have two phases: checking that all trustees have published their SIPs and Implementation Statements (ISs), followed later this year by a qualitative review.

Earlier this year, TPR announced a regulatory campaign to monitor trustees' compliance with their duties in relation to environmental social and governance (ESG) and stewardship matters in SIPs, as well as on climate risk reporting. (For a detailed analysis of TPR's recent review of climate risk reporting, please see our Pensions Bulletin April 2023.) TPR has now given a little more detail on the timing of its regulatory initiative on SIPs. The first phase has already started. TPR is checking that trustees of schemes with 100 or more members have published a SIP, detailing the policies for how the scheme invests, including consideration of financially material ESG factors including climate risk, together with an IS which shows how the principles in the SIP have been implemented. Trustees must provide a web address to their SIP and IS in scheme returns.

In phase 2, starting in Autumn 2023, TPR will review ESG provisions in a cross-section of SIPs and ISs, focusing on the extent to which the Department for Work and Pensions guidance on reporting on stewardship and other topics through the SIP and the IS, which is statutory guidance in relation to ISs, has been adopted by the trustees.

In the latest blog post, TPR repeats earlier warnings that enforcement action may be taken if trustees "fail to publish" SIPs and ISs. TPR has not yet spelt out in detail its approach towards trustees who publish their SIP/IS but where the content does not comply with the statutory requirements, but it comments in the blog that it can take enforcement action where it believes schemes "have not made a reasonable effort" to define their policies in the SIP and report on how those policies have been implemented in the IS.

TPR also comments that it wants to see a change to the practice of disclosures where the wording is "relatively vague and generic". It acknowledges trustees' apprehensions about availability and quality of data, effective modelling of outcomes and impacts, the implementation risks of greenwashing and the potential for "green hushing" (where firms keep quiet about their emissions reduction targets to avoid scrutiny) but says that these legitimate concerns should not be a barrier to trustees meeting their legal duties "or an excuse to put things in the too-difficult-to-do box".

Next steps for employers and trustees: Trustees should check that ISs for scheme years ending on or after 1 October 2022 reflect the DWP statutory guidance.

PENSION LEGISLATION AND REGULATION WATCH LIST

No	Topic	Effective date or expected effective date	Further information/action
1	Changes to DC scheme governance and disclosure	From 1 October 2023: Inclusion of explanation of illiquid investment policies in default SIPs and disclosure of asset allocation data in Chair's Statement.	DC schemes only. TPR guidance expected shortly. Consultation expected on draft regulations for phased introduction of new Value for Money framework for all DC schemes (excepting some small schemes). Draft regulations to extend Collective Defined Contribution to multi-employer schemes expected Autumn 2023.
2	DB consolidation	Legislation, "as soon as Parliamentary time allows", for new compulsory framework for superfunds.	DB commercial consolidators. TPR interim guidance will be reviewed.
3	Changes to pensions tax allowances	Finance (No 2) Act 2023: removal of lifetime allowance charge (replaced with income tax charge on lump sums that could have triggered a charge) and changes to other allowances, from 6 April 2023.	Lifetime allowance to be abolished from 6 April 2024, through Finance Bill 2023-24.
4	DB Funding Code of Practice	Part 2 of TPR consultation and draft Code issued 16 December 2022; consultation closed 24 March 2023. Regulations and Code expected to be in force from April 2024.	Update on DWP regulations (issued for consultation July 2022) expected Autumn 2023. Once in force, the Code will apply to triennial valuations submitted thereafter. Consultation on covenant guidance in 2023.
5	TPR General Code of Practice	Revised Code expected shortly.	All schemes.
6	New notification requirements for DB schemes in relation to corporate and financing activity and change to the notification process	Response to consultation on draft Notifiable Events (Amendment) Regulations expected later in 2023.	TPR will consult on update to Code of Practice 2 (Notifiable Events) and accompanying guidance once DWP have published their finalised regulations and consultation response.

No	Topic	Effective date or expected effective date	Further information/action
7	Pensions dashboards	Compulsory connection deadline of 31 October 2026 for all schemes with 100 or more active and/or deferred members at the scheme year end between 1 April 2023 and 31 March 2024; staging timetable to be set out in DWP guidance.	All registerable UK-based schemes with active and/or deferred members.

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