SQUIRE PATTON BOGGS

Hot Topics in Pensions

Spring 2024

With lighter nights and warmer weather, spring is a traditional season for homeowners to turn their attention to DIY projects. Pensions projects have a lot in common with home improvements – they both involve good planning, making sure that you have the right tools for the job and knowing when to call for expert help. Our Spring Hot Topics celebrates the British obsession with DIY, as we highlight 10 topics for your trustee or corporate agenda.

Buffing Up Scheme Governance

For trustees of well-run schemes, compliance with the general code of practice should be more of a spring-clean than a major renovation. Policies and procedures should be dusted and polished and The Pensions Regulator (TPR) expects trustees to have "clear and realistic plans" to address governance gaps. Trustees should refine their effective system of governance and establish the date for their scheme's first Own Risk Assessment. Compliance plans should be proportionate, taking into account the scheme size and type, its journey plan and any known risks. Where trustees have made progress based on the draft code, minor amendments will need to be considered (but this should not need much elbow grease).

Scheme Funding – New Foundations

The Pension Schemes Act 2021 provided the building blocks for a new defined benefit (DB) funding regime. Subsequent consultations on draft regulations and a revised funding code put the new measures firmly under construction. Feedback on the draft regulations, however, along with the government's proposals for increasing pension fund investment in productive finance, resulted in a redesign. The new look of the regime has been cemented into place by a revised draft of the funding and investment regulations, which are due to come into force on 6 April 2024 and will apply to valuations with effective dates from 22 September 2024.

Read the Instructions Carefully – This Is Very Taxing!

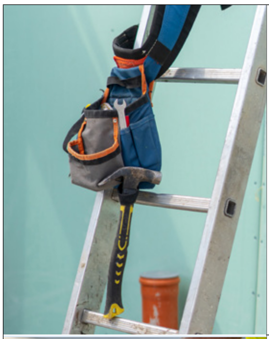
Before starting work on an assembly project, it is best to study the instructions carefully and assess whether any important pieces are missing. Pension scheme trustees and administrators who are updating systems and documentation to address the abolition of the Lifetime Allowance (LTA) from 6 April 2024 should consult materials published by HM Revenue and Customs (HMRC) (such as FAQs published in February 2024) to better understand the implications for their pension schemes, and monitor updates to existing HMRC guidance. While those instructions may be incomplete, progress is being made – the Finance Act 2024 has received royal assent and yet more guidance is expected in the coming weeks. This task definitely feels harder than it should be!

Dashboards Plans Should Be Watertight

Trustees should be prepared to take action when the Department for Work and Pensions (DWP) issues its dashboards connection guidance. We anticipate that most schemes will be expected to connect to the dashboards ecosystem in 2025 – this may cause capacity issues for some service providers who will be flooded with additional work. Trustees should seal any leaks in their connection plans and ensure that all dashboards compliance efforts are clearly documented as set out in TPR's initial guidance. Pensions dashboards should be firmly plumbed in as a standing item on trustee agendas.

Local Government Pension Scheme (LGPS) – Someone Call an Electrician!

If the lights start to flicker and people look towards the nearest exit, it is time to call in the experts. In 2022, the LGPS Scheme Advisory Board took counsel's opinion to assess whether members opting out of the LGPS on religious grounds might constitute unlawful discrimination by the scheme or its employers. The board took an expert opinion, which has confirmed that, as a DB scheme, Muslim members can continue to enjoy LGPS membership as a benefit of their employment contract, but highlighted that many common investment classes are not Sharia compliant and Muslim (and other) members will be interested in how their contributions are invested. The board will now take final counsel's opinion to assess whether it needs to make recommendations to the minister to rewire the scheme.



ESG and Fiduciary Duties – Always Use the Right Equipment

The Financial Markets Law Committee (FMLC) has published its paper on pension fund trustees and fiduciary duties. This gives trustees the tools they need to understand fiduciary duties in the context of sustainability and climate change, and to also apply the principles more widely. The paper drills down into the legalities, chisels away at the myths and hammers home the message that financially material considerations must be taken into account when making investment decisions. The paper also screws into place the importance of stewardship. For trustees who wish to put the nuts and bolts on their own responsible investment strategy, our short guide is an essential part of the toolkit.

Sizing-up Fraud Prevention Measures

Wise carpenters measure twice before making the crucial cut. A recent determination by The Pensions Ombudsman (TPO) flagged that pension schemes should also think twice before actioning member requests. In this case, a fraudster with access to a member's emails had arranged the withdrawal of pension savings by posing as the member. TPO considered that the pension provider should have spotted the warning signs and carried out additional checks (such as contacting the accountant who had allegedly certified copies of documentation, to confirm that the copies were genuine). This is a timely reminder for schemes to ensure that their policies and procedures measure up.

Corporate Transparency – Improving the View

The window into the world of UK corporate structures is sometimes faulty and far from transparent. Companies House has started work to put in place a clearer picture by carrying out some repairs. The first fix fills in the gaps – companies will be required to have a proper registered office address and Companies House will have greater powers to issue financial penalties. The second fix will involve more than window dressing. It will include a ban on corporate entities acting as directors (including where they are appointed to corporate trustees), except in limited circumstances. In the meantime, blackout blinds will be allowed, where appropriate, to protect personal data.

Automatic Enrolment to Be Freshened-up

Automatic enrolment is receiving a makeover. Look out for a consultation on the removal of the lower earnings limit (LEL) and the reduction of the age of enrolment. This reform should go some way towards papering over the cracks of inadequate retirement savings, but we can expect future debate around increases to minimum contribution levels. In the meantime, the government confirmed that there will be no embellishments to the earnings trigger or the qualifying earnings band for automatic enrolment, which will be unaltered for 2024-25. The earnings trigger will remain at £10,000, and the qualifying earnings band will continue to apply to earnings between the LEL of £6,240 and the upper earnings limit of £50,270.

Building a New Defined Contribution (DC) Framework – the Scaffolding Is Up!

Government and regulators have erected the scaffolding on several DC developments and work is well underway. A small pots working group has been constructed to make recommendations on implementing the government's proposals for consolidating deferred DC pots of less than £1,000, but the government's further suggestions around a pension "pot for life" are causing controversy. We expect the new value for money framework to be hoisted back into the headlines soon – this framework will apply to schemes regulated by the Financial Conduct Authority and TPR and aims to improve consistency, comparability and competition across the DC market, with anticipated proposals including enforced closure for schemes judged to be underperforming.

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