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Current issues

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Coming to terms with the pensions review

The Government has published terms of reference for the first phase of its promised review of the pensions system. In keeping with previous announcements[1], the focus is on encouraging consolidation and value for money in defined contribution (DC) schemes, and on asset pooling and governance in the Local Government Pension Scheme (LGPS) in England and Wales.

The terms of reference have been issued under the imprimatur of His Majesty's Treasury, the Department for Work and Pensions, and the Ministry of Housing, Communities and Local Government. The review is being led by Emma Reynolds, our Janus-headed Minister for Pensions/Parliamentary Secretary at the Treasury.

The review is being conducted in two stages. For the first phase, the terms of reference identify four areas of focus:

1. Driving scale and consolidation in workplace DC schemes;
2. Confronting '*fragmentation and inefficiency*' in the LGPS;
3. The structure of the pensions system, and delivering better pensioner outcomes by looking beyond cost when assessing value; and
4. Encouraging greater investment in UK assets, to boost growth.

The Government says that the review will keep in mind the desirability of boosting returns for pensions savers, and of improving LGPS affordability and sustainability in the interests of its members, participating employers, and taxpayers. It will consider the role that pension funds could play in boosting returns and UK growth, through their participation in capital and financial markets, as well as the implications for wider financial-stability policy objectives. It will also be mindful of work that is already underway, such as the 'value for money framework' being developed by the Financial Conduct Authority and Pensions Regulator (see the separate article in this

[1] See 'Early news on promised review', in *Current Issues* August 2024.

edition of *Current Issues*). The reviewers will take heed of the views of pensions-industry stakeholders and local government, amongst others.

A report of the initial findings from the review is expected later in 2024, '*ahead of... the Pension Schemes Bill*'. The second phase of the review is expected to kick off before the end of the year, and will consider '*further steps to improve pensions outcomes and increase investment in UK markets, including assessing retirement adequacy*'.

We agree that there are significant opportunities for the Government to help the industry to improve outcomes for DC pension savers: for example, by taking advantage of the increasing scale of today's schemes, which opens up new investment opportunities, and enabling the introduction of more sophisticated default retirement propositions. Given the undeniable success of LGPS delivery, in alignment with local government, it's disappointing that the premise of the pensions review is a need to tackle '*fragmentation and inefficiency*'. The history of LGPS governance is one of continuous improvement and readiness to adopt best practice.

Establishing a common basis for value

The Financial Conduct Authority (FCA) is consulting on detailed rules and guidance for a new Value for Money Framework for defined contribution (DC) pension schemes.[2] Although the FCA Framework would apply directly only to the default investment arrangements of contract-based schemes, occupational DC trustees are also being encouraged to respond to the proposals.

Overview

The FCA wants to foster improvement in value for money (VFM) in personal pension schemes, by encouraging competition, and bringing attention to measures other than just cost when considering long-term value. The Framework entails

- consistent measurement of investment performance, costs and service quality against metrics, with public disclosure of the findings;
- enabling those responsible for overseeing VFM in contract-based schemes (independent governance committees and governance advisory arrangements[3]) to assess their performance against that of comparators, on a consistent, objective basis;
- publicly branding each arrangement with a red, amber or green VFM rating; and
- requiring specific action for those that receive red or amber ratings.

Traffic lights

Providers that receive an amber rating will be expected to inform the FCA and come up with corrective measures. They will also have to alert employers that are contributing to the scheme, and cease accepting business from new employers. If the amber assessment persists for more than three years, the IGC/GAA will generally have to give a red rating in the fourth year of assessment.

[2] *CP24/16: The Value for Money Framework*.

[3] Broadly speaking, FCA-regulated firms are expected to establish IGCs if their personal pension schemes are large or complex, and GAAs if they are not.

A red rating denotes that the arrangement is unlikely to achieve VFM within a reasonable period. As a consequence, the FCA plans to require the provider to consider transferring the members to a better-value alternative. However, it notes that legal changes may be necessary to permit transfers without consent.

Occupational trustees: carpe VFM

Although the FCA consultation relates to contract-based schemes, the Framework has been developed in conjunction with the Pensions Regulator and the Department for Work and Pensions, with the intention that it is also appropriate for trust-based DC schemes. Both the FCA and the Regulator have therefore encouraged occupational DC trustees to respond to the proposals. It is expected that the Government will put forward primary legislation (i.e. via a bill in Parliament) to apply the Framework to occupational schemes.

Consultation arrangements

Comments on the consultation proposals should be submitted to the FCA by 17 October 2024.

The switch away from a singular focus on cost to a more holistic assessment of value is a positive one, and should help to deliver better long-term member outcomes. It'll also encourage innovation in areas like investment strategy and member support. All DC members should benefit, regardless of the legal foundations of their arrangements, so we especially welcome the proposal to align the obligations of FCA-regulated firms and occupational scheme trustees.

Regulator rues minimal-effort ESG disclosures

The Pensions Regulator published a Market Oversight: ESG report, which is about trustee compliance with environmental, social and governance (ESG) obligations. The Regulator notes that general compliance levels were extremely high, but is disappointed that many trustees are doing the minimum to comply with the requirements for statements of investment principles (SIPs) and implementation statements (ISs). In particular, there was a lack of evidence of oversight by trustees who delegate day-to-day responsibility to investment managers.

The Regulator recommends that trustees

- dedicate sufficient time and resources to preparing their SIP and IS and take proportionate and appropriate action to mitigate risks;
- take ownership of ESG activities and review fund manager polices on ESG issues if invested in pooled funds;
- provide sufficient detail on policies to show they are considering ESG-related risks specific to their scheme;
- take a more thorough approach to assessing their arrangements with asset managers; and
- consider developing dedicated policies in relation to environmental factors beyond climate change, such as social factors.

Fun to stay at the N-M-P-A

(or, *NMPA, NMPA, stick it up yer jumper*)

The Pensions Administration Standards Association (PASA) has published guidance on *Preparing for the Change to Normal Minimum Pension Age (NMPA)*. It encourages scheme trustees and administrators to begin preparations for the increase in NMPA, from 55 to 57, that's scheduled to occur on 6 April 2028.

What's a NMPA & why should I care?

In broad terms, NMPA is the earliest age at which members of registered pension schemes can begin to access their benefits, without incurring unauthorized payment charges, other than in circumstances of serious ill-health. It varies, depending upon when that access occurs:

Period	NMPA (years of age)
before 6 April 2010	50[4]
6 April 2010 – 5 April 2028	55
from 6 April 2028	57[5]

Source: s. 279 of the *Finance Act 2004*

The forthcoming increase to the NMPA will, as with the increase in 2010, come with an associated '*protected pension age*' (PPA). It will permit members who have established rights to receive benefits at ages below the raised NMPA to continue to do so, without suffering tax penalties. The rules around the 2028 change are significantly different from those for PPAs under 55. However, members who already have sub-55 PPAs in connection with the 2010 change will, provided they meet the associated at-retirement conditions, retain those rights after 5 April 2028.

Issues for schemes

The PASA guidance lists the issues that trustees may need to consider, with their advisers and service providers. They include, for example

- whether their scheme rules confer entitlement to a PPA on members, and what implications the rules have for PPAs arising from inward transfers;
- what information they'll provide for outgoing transfers, and what they require to deal properly with incoming ones (in some circumstances receiving schemes may need to ring-fence transferred-in funds or rights that come with a PPA);
- what, if any, action is required to fill information gaps in connection with past transfers;

[4] Some people, mostly sportspersons, have transitionally protected rights to access benefits under personal pensions and retirement annuity contracts at ages below 50.

[5] Except for members of the '*uniformed services*' (armed forces', police and firefighters') pension schemes.

- what changes to scheme booklets and other member communications, and what information may need to be conveyed to those potentially affected by the change; and
- how they might need to adapt their administration systems and procedures.

The PASA notes that more information, and probably legislation, is expected from the Government on transitional matters, such as the treatment of people who have no PPA and reach the age of 55, but not 57, before 6 April 2028. It says that the guidance will be updated accordingly.

The PASA guidance is a timely reminder of the challenges that come with the forthcoming NMPA increase, as they may have slipped from people's minds given all that has happened since 2021 when the details were confirmed.

HMRC newsletters: August 2024

Pension Schemes Newsletter 161, from His Majesty's Revenue and Customs (HMRC), confirms the Government's intention to introduce fixes for the problems in the lifetime-allowance-abolition legislation '*as soon as the parliamentary timetable permits after the summer recess*' (Parliament is scheduled to resume sitting on 1 September 2024). There was an '*informal technical consultation*' on two sets of draft Regulations in late July and early August.

Other contents of the Newsletter include

- reminders for relief-at-source scheme administrators about the need to complete their annual returns;
- updated statistics on pensions-flexibility tax reclaims (with nearly £57m repaid in Q2 2024);
- data on transfers to qualifying recognized overseas pension schemes (QROPS) each tax year since A-day (showing a spike during 2023/24, perhaps from people taking advantage of a lacuna between the abolition of the lifetime allowance charge and the introduction of the new overseas transfer allowance); and
- the now-familiar prompts to migrate schemes (and annuity contracts) to HMRC's online Managing Pension Schemes service.

Catch-up

We omitted the July 2024 edition of HMRC's Newsletter on the Public Service Pensions Remedy from our packed August *Current Issues*. The 'remedy' is the Government's chosen method of redressing '*McCloud*' discrimination in the public-sector pension schemes, and can retrospectively alter a member's tax liabilities.

HMRC has delayed re-opening its Calculate Your Public Service Pension Adjustment service, which members will use to work out any changes to their annual and lifetime allowance liabilities, and declare resulting tax charges. The service is closed for maintenance and improvement, and had been due to re-open in July 2024; however, HMRC has decided to keep it closed until September, whilst it conducts additional development and testing. The Newsletter gives details of some of the changes that are being made, and provides interim processes for members who need to make submissions to HMRC in the meantime.

And finally…

AF was interested by the Office for National Statistics' [Public opinions and social trends, Great Britain: July 2024](), and particularly by the question, '*How often do you think you can recognize when you are using artificial intelligence?*'.

The report doesn't say how often respondents misinterpreted the question as a suggestion that their own acumen might fail to rise to perceptible levels, and therefore answered with some variation on '*All right, you're going the right way for a smacked bottom*' (© *Shrek*, 2001)…

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