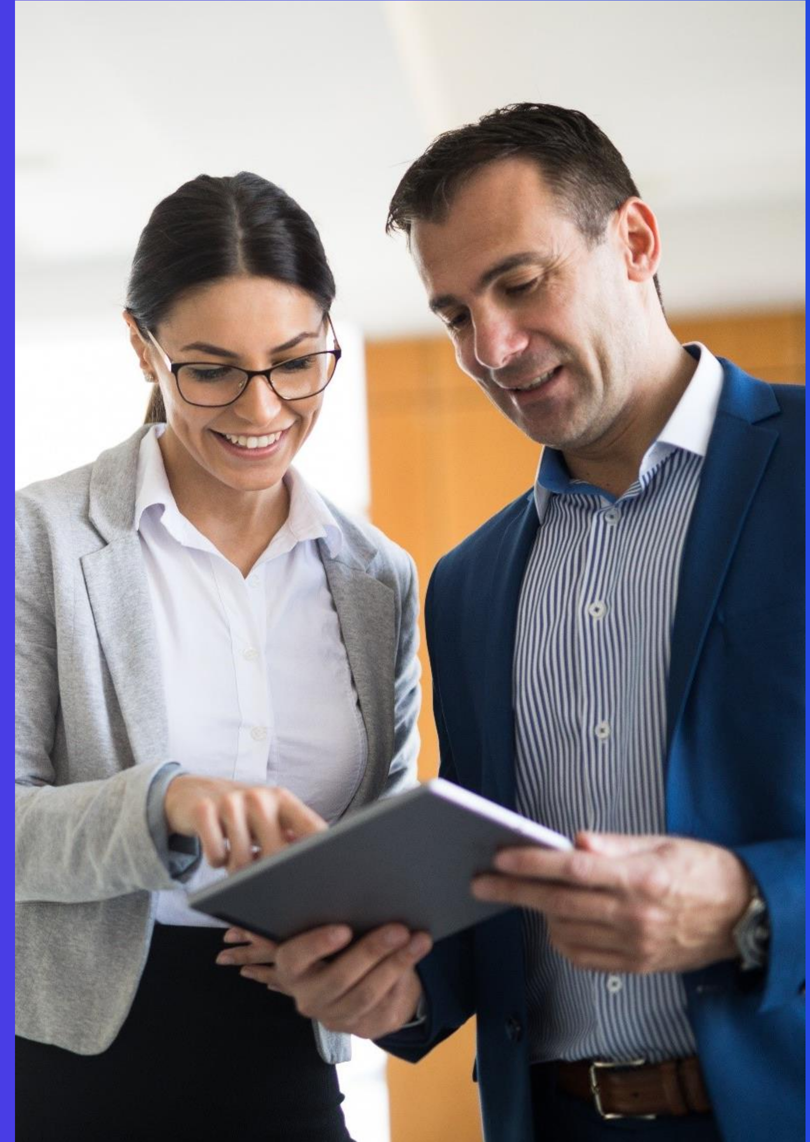
Pensions accounting, assurance and regulatory round-up



Private sector occupational pension schemes

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Autumn 2024

Introduction

Welcome to the most recent edition of our Pensions accounting, assurance and regulatory round-up for private sector occupational pension schemes. This update covers a range of topics and considers developments from the Pensions Regulator ("TPR"), the Department for Work and Pensions ("DWP") and the wider pensions industry.

If you have any queries or would like to discuss any of the matters herein further, please do get in touch with your usual contact at KPMG, Sarah or Anne.

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At time of writing (09 September 2024) all articles are up to date.

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Executive Summary

General Election

Brief overview of developments post election.

Proposed revisions to FRS 102

A high-level view of the impact on pension schemes of the Financial Reporting Council's ("FRC") proposals.

Amendments to scheme provisions

Two recent cases highlight the complexities of amending scheme provisions.

General Code

A look at the content of TPR's long awaited new General Code.

TPR news

A round up of some of TPR's recent activity.

TPR Statement of Strategy Consultation

A look at TPR's proposals for the new Statement of Strategy document.

FCA framework for value in workplace pension schemes

Overview of FCA's proposals.

Defined Contribution ("DC") activity and reminders

An update of insights for DC schemes.

TPR Review of ESG Compliance

An overview of the outcome of TPR's recent review of scheme documentation.

ESG Essentials

A summary of headlines over the period, to keep schemes abreast of new developments and announcements.

Climate Change Governance and Reporting: Understand and increase confidence in disclosures

A brief summary of the benefits of obtaining assurance over climate disclosures.

PPF response to DWP plans for a public sector consolidator and Superfunds update

DWP continues to plan Public Sector Consolidator supported by the Pension Protection Fund ("PPF"). Debenhams Retirement Scheme transfers in to Clara Pensions superfund avoiding PPF.

Ending the proliferation of small pots: the multiple default consolidator model

A summary of the latest proposals on consolidation of small pots.

Decumulation: Helping savers understand their pension choices at the point of access

A summary of proposals requiring all schemes to offer a decumulation provision.

News in Brief

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General Election

Many of the articles within this Round Up were written pre-election and therefore reflect the position of proposals at that time.

There have been relatively few developments since the previous edition of Round Up as a result of the hiatus caused by the General Election in July. As the new Government is as yet in its early days, we do not have any update as to whether current proposals will be taken forward and the timeframes envisaged. However, the King's Speech on 17 July outlined plans for a new Pensions Bill, which covers many initiatives which we have already seen progressed to date. The Government briefing note includes the following as measures to be included in the Bill:

- Preventing people from losing track of their pension pots through the consolidation of Defined Contribution individual deferred small pension pots.
- Ensuring all members are saving into pension schemes delivering value through the Value for Money framework.
- Requiring pension schemes to offer retirement products so people have a pension and not just a savings pot when they stop work by placing duties on trustees of occupational pension schemes to offer a retirement income solution or range of solutions, including default investment options, to their members.
- Consolidating the Defined Benefit (DB) market through commercial Superfunds.

In addition, plans were also announced for a National Wealth Fund Bill, aiming to 'deliver growth and a greener economy' utilising private sector investment. A government pensions review was announced shortly after the King's Speech, to focus initially on investment and then, in a second phase, on pension outcomes, investment in UK markets and retirement adequacy.

Terms of reference for the first phase of the review were published in August and cited to focus on:

— 'Driving scale and consolidation of defined contribution workplace schemes;

— Tackling fragmentation and inefficiency in the Local Government Pension Scheme through consolidation and improved governance;

— The structure of the pensions ecosystem and achieving a greater focus on value to deliver better outcomes for future pensioners, rather than cost; and

— Encouraging further pension investment into UK assets to boost growth across the country.'

We will continue to monitor the position and consider the progress of current proposals together with any new developments in future editions of Round Up.

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Proposed revisions to FRS 102

The Financial Reporting Standard ("FRS") appropriate to pension schemes in the UK is FRS 102. The Pension Schemes Statement of Recommended Practice ("SORP"), giving further practical application to pension schemes, flows from FRS 102.

FRSs are subject to periodic reviews (every 5 years). The second review of FRS 102 is underway. The Financial Reporting Council ("FRC") issued Financial Reporting Exposure Draft ("FRED") 82 outlining proposed changes to FRS 102. The revised FRS 102 was originally expected to be effective for accounting periods starting on / after 1 January 2025. However, a project update reported that the effective date will not be earlier than 1 January 2026. The FRC issued a revised standard on 27 March 2024.

The changes have been precipitated by changes to international standards, International Accounting Standards Board ("IASB") proposals in relation to smaller entities, feedback and other developments in reporting. Principal amendments relate to revenue and lease accounting.

The Pensions Research Accountants Group ("PRAG") SORP Working Party will review the proposed amendments to develop a revised SORP looking at the revisions to FRS 102 and other pension specific matters. The effective date of the revised SORP is expected to be in line with the effective date of the revised FRS 102.

An update to the SORP opens up the possibility of wider discussion on the development and purpose of scheme annual reporting. The proposed revised SORP will be subject to a consultation process. We will keep you updated as to the progress of the project and opportunities to respond on the SORP consultation draft.

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Amendments to scheme provisions

Two recent court cases have shed light on the validity of changes made to scheme provisions.

In June 2023, the High Court handed down a decision in the case of Virgin Media Limited v NTL Pension Trustees II Limited and others relating to the validity of certain historical pension changes. This case may have implications for other defined benefit schemes in the UK.

The case focuses on the implications of failing to obtain actuarial confirmation (as required by s37 of the Pension Schemes Act 1993) when making an amendment to the deed and rules affecting section 9(2B) rights and, consequently, whether the scheme would continue to satisfy the requirements for those rights. Section 9(2B) rights refer to the reference scheme test level of benefits to be met by schemes contracted-out on a salary-related basis over the period from 6 April 1997 to 6 April 2016.

The Virgin Media case related to the validity of a trust deed and rules change from 1999, for which no Section 37 Confirmation had been located. There are three parts to the court's decision:

- **Issue 1:** What was the consequence of failing to obtain actuarial confirmation?
  The court decided that the failure of a salary-related contracted-out scheme to obtain an actuarial confirmation required by Section 37 meant that the amendment was invalid and void.
- **Issue 2:** Was the invalidity limited to changes in relation to rights attributable to service before the date of the amendment (past service rights) or did it also apply in relation to rights attributable to service after that date (future service rights)?
  The court decided that any change in relation to Section 9(2B) rights would be invalid and void; the invalidity was not limited to changes to past service rights.
- **Issue 3:** Was the invalidity limited to adverse alterations to Section 9(2B) rights or did it apply in relation to all alterations to such rights?
  The court decided that the requirement for actuarial confirmation applied to all amendments to Section 9(2B) rights and not just those which would or might adversely affect Section 9(2B) rights. All changes to Section 9(2B) rights, even where the changes could only improve such rights, are therefore invalid if no actuarial confirmation was obtained.

The judgement is potentially relevant for schemes that:

a) were contracted-out on a salary-related basis between 6 April 1997 and 5 April 2016, and

b) made changes to member benefits in that period that could have impacted Section 9(2B) rights.

The court ruling is fairly wide ranging, in that it is possible that both past service and future service changes are invalid, even if those changes could not adversely affect Section 9(2B) rights. A recent appeal upheld the High Court's decision. Schemes will need to consider whether the ruling impacts them or not.

Trustees of impacted schemes may see auditors undertaking additional enquiries of management and review of legal and other documentation. Appropriate accounting and narrative disclosure in the scheme annual report and accounts will need to be dealt with on a case by case basis.

In a second and separate High Court case involving the BBC the court ruled that, under the relevant rule, changes to future service benefits and/or member contributions for active members could only be made when the trustee and employer agree and set conditions in the rule were satisfied. An appeal has recently been dismissed.

The above cases highlight the complex issues which need to be considered when making changes to scheme provisions and the need for trustees to obtain expert advice and document decisions made.

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General Code

TPR's General Code (the 'Code') was laid before Parliament on 10 January. Its effective date is 27 March 2024: some three years after the original draft was published.

The Code consolidates 10 out of the existing 16 Codes of Practice. It should be noted that 6 Codes remain outside this new 'supercode' and should be referred to separately where circumstances dictate.

A modular approach is taken, with 51 modules in total, facilitating easier update of individual topics. Modules are clear, short, and concise and helpful glossaries are included throughout.

Some modules contain what appear to be long lists of useful considerations, e.g. the Trustee Knowledge and Understanding module, though these will need to be tailored to the needs of each scheme.

Much of the content is familiar from TPR's existing codes. However, there are new areas (noted below) which trustees need to be aware of and follow up on.

Stewardship

The module reiterates requirements for reporting requirements and policies in relation to financially material Environmental, Social, and Corporate Governance ("ESG") considerations, voting and arrangements with asset managers. TPR's expectations are set out and include for example identifying rights (including voting rights) attached to investments and considering the approach to voting and engagement.

Climate change

The module distinguishes between physical and transition risks and notes Task Force on Climate-related Financial Disclosures ("TCFD") reporting for schemes in scope. Trustees should 'talk to advisers and managers about how short and long term climate change risks and opportunities are built into their recommendations and understand what is being done in relation to climate change risk within investments. The module notes that although schemes are not required to align to the Paris Agreement and other goals such as the UK's target of net zero by 2050, they may wish to assess progress towards these goals.

Cyber security

Trustees should reduce the risk of incidents and deal appropriately with any which do occur. Expected actions for assessing and managing cyber risk are noted, such as regular back-ups, policies on device use and on data. A cyber incident response plan should also be in place.

Risk Management

The Code includes a requirement for schemes requiring an Effective System of Governance ("ESOG" – see below) with 100+ members to have a risk management function. This is to be proportionate to the circumstances of the scheme and is in addition to the Own Risk Assessment ("ORA" – see below).

Assurance on internal controls

Options are noted such as statutory audit (in relation to financial affairs), internal audit, assurance reporting by service providers and trustees' commissioning of their own assurance procedures and reporting.

Two key new areas will require more trustee consideration. These are the ESOG and the ORA.

ESOG

A new term for pension schemes in the UK, the ESOG includes all delegated functions. Features of an ESOG are described by the Code as:

'A system of governance will include anything that can reasonably be considered part of the operation of a pension scheme. Internal controls are a key feature of any system of governance.'

A proportionate approach can be implemented taking the 'size, nature, scale and complexity' of the scheme into consideration.

The module refers to other areas of the Code which form part of the ESOG, including:

- management of activities, such as the role of the governing body, meetings and remuneration policy,
- organisational structure, including appointment and role of the Chair and conflicts,

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General Code (cont.)

- investment matters, such as investment governance, decision making and monitoring, the Statement of Investment Principles ("SIP"), stewardship and climate change, and
- communications and disclosure covering general principles for member communications.

The ESOG should be reviewed every three years but this does not have to be done at a single point in time. Review may form part of the ORA. Trustees may wish to consider obtaining assurance.

One area specifically referred to in the ESOG module is the remuneration and fee policy. There is a requirement for a written remuneration policy, to be reviewed every three years. In a change from the draft General Code we saw in March 2021, there will be no requirement to publish the policy on a website.

ORA

Schemes requiring an ESOG with 100 members or more will need to undertake an ORA. The ORA considers how well the ESOG is working and how risks are being managed. Again, the principle of proportionality applies. TPR may view failure to complete an ORA as indicative of poor governance.

The first ORA must be carried out according to the timescales set out in the Regulations. This is likely to mean a date roughly two years into the future though, as there are other considerations within the Regulations, each scheme must assess this based on its own individual circumstances.

All areas covered by the ORA should be assessed. It is not necessary to review all aspects together but a whole ORA should be completed every three years (note this is a change from the one year timescale set out in the 2021 draft and now fits in with the 3 year requirement in the 2018 Regulations). A new assessment will be needed where there are new or updated elements and where there is a material change in the ESOG or risk profile of the scheme.

Trustees may need to enhance existing risk assessments to meet the requirements. The ORA could be a collection of existing documentation and may include assurance reporting from delegated functions.

Undertaking an ORA should be an iterative process; the results may be useful in formulating

- processes or procedures and help trustees with prioritisation of required actions.

ORAs must be in writing, signed off by the Chair with documents supplied to all trustees. They should include the date of current and next review and detail regarding any interim reviews.

As an overview, an ORA should cover:

- 'how the governing body has assessed the effectiveness of each of the policies and procedures covered;
- whether the governing body considers the operation of the policies and procedures to be effective and why'.

The ORA module of the Code then goes on to list the specific areas to be covered – regarding policies for the governing body, risk management, investment (with additional matters for DB schemes), administration and payment of benefits.

What can trustees be doing now?

Trustees need to plan ahead for the new requirements. They should:

- familiarise themselves with the requirements of the Code;
- identify the modules expected to form part of the ESOG now and ensure they are planning how to comply;
- consider new requirements, such as the remuneration policy;
- assess whether existing procedures meet the requirements for an ORA, collate documents which will form part of the ORA and identify gaps. The first ORA process may involve significant work and resource needed to complete this should be recognised and planned for; and
- ensure training and resource to meet the new requirements is anticipated and planned for.

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TPR news

TPR has published a number of items since our last Round Up. Some items of news not covered in other articles are summarised here.

New DB funding code laid in parliament

On 29 July, following consultation, TPR's new DB funding code ("the Code") was laid before parliament. The Code complements the regulations which came into force in April and outlines a framework offering protection and flexibility. The Code sets out guidance and expectations on compliance with the Regulations and is effective for valuations with effective dates on or after 22 September 2024.

Per TPR's Press Release:

'The new DB funding code:

- encourages good long-term planning and risk management behaviours
- includes guidance on how trustees can set funding plans in line with the support their sponsors can provide and how maturing schemes can move to a point of low dependency on their sponsor
- gives guidance on setting recovery plans in line with what is reasonably affordable for their sponsor'.

TPR add that the 'DB funding code …. will support trustees in effectively planning and managing the long-term funding of their scheme today, and in the future.'

There will be a gap between applicability of the Regulations and the new Code being in force. TPR note that 'schemes with valuation dates in this period can use the new DB funding code as the base for their approach. TPR will be communicating with affected schemes and will take a reasonable regulatory approach to them.'

TPR have also published responses to consultations on the Code and regulatory approach, including final fast track parameters.

TPRs response to the funding code consultation notes key considerations following the consultation.

The final Code takes on board changes made by DWP in the final Occupational Pension Schemes ("OPS") (Funding and Investment Strategy and Amendment) Regulations. The final regs included focus on stability in long-term planning, specifics relating to open schemes and responding to concerns regarding governance burden.

The consultation on the Code revealed key themes, noted below, which are addressed in the final Code.

Ensuring stability in long-term planning – the final regulations set a fixed date for assumptions in calculating maturity. The final version of the Code sets maturity at duration of 10 years for DB schemes and 8 years for cash balance schemes, with duration defined as the weighted mean time until payments are expected to be made, with the weighting being the discounted value of those payments. Duration is measured in years.

How the notional investment allocation impacts actual decisions – the final version of the Code clarifies that investment decisions 'are not constrained by the notional investment allocation'. The notional allocation is utilised in setting actuarial assumptions. However, TPR do state that, while not interfering with trustees' duties, they expect trustees to invest in alignment with the funding and investment strategy.

Replacing prescription with a principles-based approach:

a) Assessing 'highly resilient' – the definition of a low dependency investment allocation has been simplified to look at resilience to short-term adverse market changes. The Code provides flexibility in that it does not set a method to be used by trustees although they must be 'satisfied that it demonstrates low dependency on the employer'. Trustees are not restricted in what they may invest in and may invest in scheme specific strategies and productive assets at any stage.

b) Scheme specific approaches to risk-taking along the journey plan – in considering maximum risk which is supportable by employer covenant, the final Code replaces a formulaic approach with a principles based approach. There will be a need to demonstrate that the risk taken is supportable by the covenant and to consider the effects of downside events during the reliability period (defined as 'the period over which trustees can be reasonably certain of the employer's cash flow to fund the scheme') and whether this is supportable by the maximum affordable contributions and available contingent assets over that period. TPR plan to set a test to trigger a regulatory risk assessment

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TPR news (cont.)

Recognising open schemes' unique characteristics – the final Regulations allow for consideration of future accrual and new members in assessing maturity. The final Code follows this approach with greater flexibility in the assumptions trustees can make and recognising that there may be a difference between the way benefits are to be provided and the need to set a journey plan to low dependency as these may not align for open schemes.

Further clarity on how to assess the employer covenant – the final Code, aligning with the regulations, gives clarity on assessing the reliability and covenant longevity periods. TPR expectations on these periods are noted though longer periods may be acceptable.

Proportionality – guidance is included in the final Code including on the level of detail and analysis required in setting the low dependency investment allocation and funding basis, assessing the employer covenant and supportable risk and in the statement of strategy.

TPR's Evolving Supervision of Master Trusts

In July, TPR announced a shift in its supervision of master trusts, Neil Bull, TPR's Executive Director of Market Oversight, gave a speech at a TPR event and told an audience of master trust professionals that he believes that master trusts can become the "gold standard for pension provision" by focusing on three key areas:

1. Investments:

- TPR will probe and challenge master trusts on how their investment approach delivers for savers.
- They will investigate how master trusts seek the best possible long-term risk-adjusted returns.
- TPR will look more broadly at master trust investment governance practices and decision-making.
- They will request deep dives into the systems and processes of master trusts.

2. Data Quality and Standards:

- TPR will focus on ensuring master trusts have high-quality data that is accurate, complete, and timely.
- They will also focus on ensuring master trusts meet high standards for data governance and security.

3. Innovation at Retirement:

- TPR will encourage master trusts to innovate and develop new solutions to help savers at retirement, this could include developing new retirement products and services, or using technology to improve the retirement experience.

TPR's Partnership approach

TPR wants to work in partnership with master trusts to mitigate harms, identify opportunities for savers, and deliver value. They are encouraging master trusts to candidly share their thoughts and concerns so that TPR can build a better understanding of the bigger picture.

DB Superfunds Guidance

In July 2024, TPR published detailed guidance on DB superfunds, which are a new type of consolidation vehicle for DB pension schemes. This guidance aims to help trustees understand the key considerations when transferring their scheme to a DB superfund.

What is a Superfund?

- The employer's liability to fund the scheme's liabilities is replaced by a new entity, usually backed by a capital buffer.
- The new entity typically supports a consolidator scheme, which involves the bulk transfer of liabilities from multiple ceding schemes.
- The consolidator scheme will have its own governance and administration, which may be in-house or outsourced.
- There will usually be one trustee board responsible for overseeing the scheme.
- Special Purpose Vehicle ("SPV") Employer: In some cases, the scheme employer may be replaced by an SPV employer, which is essentially a shell employer used to preserve the scheme's Pension Protection Fund ("PPF") eligibility.

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TPR news (cont.)

Benefits of Superfunds:

- Superfunds can provide greater security and stability for members by pooling assets and liabilities, reducing reliance on a single employer.
- Superfunds can achieve cost savings through economies of scale and access to more efficient investment strategies.
- Superfunds can benefit from improved governance and risk management practices due to their larger size and dedicated resources.

Considerations for Trustees:

- Trustees should carefully assess the financial strength and governance arrangements of the superfund before transferring their scheme.
- Trustees need to understand the potential impact on members' benefits, including any changes to contribution levels or benefit structures.
- TPR has a regulatory role in overseeing superfunds, ensuring they meet the necessary standards and operate effectively.

Superfunds offer a potential solution for DB schemes facing challenges such as rising costs, complex investments, and a lack of specialist expertise. However, trustees should carefully consider the risks and benefits involved before transferring their scheme to a superfund.

Why superfunds require specific guidance

Superfunds are new entrants to the occupational pension scheme world and bring unique benefits and challenges. Their complex structures and reliance on unconventional approaches to replace employer covenants necessitate specific guidance to ensure they operate effectively and protect members' interests.

TPR will regulate superfunds before a legislative authorisation framework is in place. This approach aims to protect members' benefits while the superfund is ongoing and if it exits the market, addressing potential risks related to funding, personnel, and governance.

TPR's proactive approach to regulating superfunds before legislative authorisation, demonstrates its commitment to protecting members' interests and ensuring the stability and sustainability of the superfund market.

Superfund Assessment Expectations and Information

TPR has outlined its expectations and information requirements for assessing superfunds.

- TPR will assess superfunds based on the following areas:
  - People
  - Governance
  - Systems and processes
  - Financial sustainability
- Superfunds must submit a full suite of governing documentation and arrangements, along with supporting narratives and clear signposting to relevant evidence.
- TPR will provide superfunds with information requests detailing the specific information required, including forms, templates, and questionnaires.
- The assessment timeframe will depend on the complexity of the superfund's arrangement and the quality of information provided.
- Superfunds are encouraged to approach TPR early for discussions and clarification of expectations.
- Superfunds should submit any additional information for consideration as soon as possible.

Superfunds must carefully prepare for TPR's assessment by providing comprehensive information and demonstrating compliance with the outlined expectations. Early engagement and proactive communication with TPR are crucial for a smooth and efficient assessment process.

TPR's assessment of superfund personnel aims to ensure that these individuals have the necessary qualifications, experience, and integrity to manage the superfund effectively and protect members' interests. Superfunds must provide comprehensive information and demonstrate compliance with TPR's expectations to ensure a successful assessment.

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TPR news (cont.)

Superfund Governance Expectations

TPR expects superfunds to demonstrate strong governance practices with appropriate checks and balances to protect members' interests. This includes clear roles and responsibilities, effective communication, conflict of interest management, and robust risk management practices.

- Superfunds must demonstrate that their corporate and trustee boards are well-governed with appropriate checks and balances.
- Boards must have the collective knowledge and experience to effectively govern the superfund;
- Clear and open communication between corporate and trustee boards and committees is expected.
- Superfunds must have a clear and comprehensive policy to deal with conflicts of interest at both individual and group levels.

  The relationship between the superfund and the pension scheme should be clearly documented outlining the roles and responsibilities.
- Superfunds are expected to comply with relevant sections of the UK Corporate Governance Code, including open and transparent appointment processes, clear division of responsibilities, and regular review of board roles and composition.
- Trustees should have a clear process for obtaining and addressing members' views, including complaints.
- Superfunds and trustees must have robust risk management practices in place to identify and manage governance-related risks, including fraud, cyber-crime, business continuity, and regulatory compliance.
- Superfunds must have robust oversight of investments, including clear structures, roles, responsibilities, and decision-making processes.
- Details of any incentive structures for managers, key decision-makers, employers, or trustees, and performance-related fee structures, should be provided.
- If a partnership structure is proposed, a clear rationale for its use must be provided.

TPR's governance expectations aim to ensure that superfunds are well-managed and operate in the best interests of members. Superfunds must demonstrate compliance with these expectations and provide comprehensive information to support their assessment.

Superfund Systems and Processes Expectations

TPR expects superfunds to have robust and effective administrative systems and governance processes in place to ensure efficient and compliant operation. While recognizing that a superfund may not be fully operational before assessment, TPR expects its systems and processes to be sufficiently developed for evaluation.

Superfund Financial Sustainability and Capital Adequacy

TPR expects superfunds to demonstrate financial sustainability and capital adequacy to ensure they can operate effectively and protect members' interests. This includes the financial resources of the pension scheme, the capital buffer, and the superfund's corporate entity.

TPR's expectations for superfund financial sustainability and capital adequacy aim to ensure that these entities have the necessary resources to operate effectively, protect members' interests, and address potential risks and challenges. Superfunds must demonstrate compliance with these expectations and provide comprehensive information for assessment and ongoing supervision.

To read the Superfund guidance in full, please click here.

New Superfunds Guidance and Capital Release Expectations

In late July, TPR published a press release that sets out clear expectations for the release of capital from superfunds. This is designed to boost market innovation in the interest of savers.

The updated guidance states that capital can be released up to twice a year and when meeting a specific trigger and safeguards. This will make it more attractive for providers to enter the market because it will enable surplus above a healthy funding level to be taken ahead of buyout.

TPR also listened to industry when considering how superfunds and capital backed arrangements (“CBA”) could play a role in the case of schemes whose employers have become insolvent. Here trustees may decide to enter into a CBA or superfund on a reduced capital adequacy basis where the alternative is for the scheme to buy out on less than full benefits.

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TPR news (cont.)

Stop press - Pensions Dashboards Compliance and Enforcement Policy

TPR has published its new pensions dashboards compliance and enforcement policy, outlining its expectations for trustees and scheme managers regarding their pensions dashboards duties. The policy also details the actions TPR will take in cases of non-compliance.

Key Points:

Goal: To help schemes prepare for the pensions dashboards launch and ensure they provide accurate and timely data.

Approach: Risk-based and proportionate, focusing on education and support before resorting to enforcement

Enforcement actions: May include warnings, financial penalties, and legal action.

Policy aims: To encourage compliance and protect savers' interests.

Nina Blackett, Interim Executive Director of Strategy, Policy and Analysis at TPR, emphasizes:

- The importance of scheme preparation for a smooth dashboards launch;
- The policy's focus on education and support rather than punishment; and
- The potential for enforcement action in cases of non-compliance.

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TPR Statement of Strategy Guidance

On 5 March, TPR published a consultation document regarding proposals for the statement of strategy required under the new funding regime. The consultation, which ran until 16 April, looks at the format of the required submission together with the type and extent of information needed. This forms part of a suite of measures detailing the new funding regime.

The proposed approach requires information to be submitted in a standard format. To facilitate this, TPR will produce four templates covering differing scheme situations, i.e. for schemes using the Fast Track and Bespoke approaches and for schemes before or after a relevant date. Smaller schemes will be required to make reduced disclosures and some requirements differ depending on whether the scheme is following a Fast Track or a Bespoke route to compliance. TPR highlights in the consultation that proportionality was key in drafting the template proposals and notes an expectation that regulation will continue to evolve.

The new regime is expected to apply to valuations after 22 September 24.

The new regime requires the production of a funding and investment strategy (FIS) setting out how trustees intend the scheme to reach low dependency by the time it is significantly mature. The funding journey to low dependency will be included. Funding risk taken must be supported by the covenant and maturity of the scheme. A statement of strategy comprising two elements will follow the FIS. The first being the FIS (to which the employer must agree) and the second 'supplementary matters' (needing employer consultation) including consideration of the implementation of the FIS, risks faced and how they are managed. The statement of strategy must be signed by the chair of trustees. It is intended that the statement will become a useful planning tool for trustees and enable TPR to collate information for regulatory purposes.

The new regime will require submission of actuarial valuations and a statement of strategy, including an estimate of maturity at valuation and relevant date and the funding position at the relevant date on a low dependency basis. Assumptions for the valuation and the FIS should be consistent. Schemes in deficit will also need to submit a recovery plan and schedule of contributions. No summary of the valuation will be required

Section 2 of the consultation summarises the expected contents of the FIS and supplementary matters.

The FIS must include:

- the funding level on a low dependency basis and the investments planned for the relevant date,
- the funding position on a low dependency basis at the actuarial valuation date, and
- details of the journey plan to reach the intended funding position.

Supplementary matters must include:

- an assessment of the implementation of the FIS and whether this is successful,
- actuarial information,
- investment information, and
- the trustees' assessment of the employer covenant together with supporting information.

TPR will issue guidance considering the employer covenant.

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FCA framework for value in workplace pension schemes

On August 8th the FCA published a consultation covering proposals for a value framework for DC schemes. The framework, a joint initiative between the FCA, the DWP and TPR, is intended to provide greater transparency. The framework is intended to cover investments in default arrangements initially as these members are considered at risk of poor value as they are not engaging with their savings.

Metrics to be compared will focus on value holistically, looking at costs and charges (being service costs, investment charges and total costs and charges), investment performance (3 metrics are suggested being gross investment performance i) net of transaction costs only, ii) net of investment charges and iii) net of all costs and charges) and service quality (with metrics including qualitative factors as assessed by a series of defined indicators). Asset allocation disclosures are also proposed noting allocations to illiquids and UK based investments and whether this has affected performance. Metrics used will be common with the intention of harmonising the approach taken. Independent challenge on a consistent and objective basis will also be key. A red, amber, green (RAG) rating would then be given with poor performing schemes not offering value (those with a red or amber rating) being required to improve or transfer members to other schemes. The aim is to increase comparability to drive up long term value for members. It will also be possible to track performance against metrics over time.

The FCA note that 'We want to see a focus on long-term value, not just costs and charges'.

Nausicaa Delfas, chief executive of the Pensions Regulator, said: 'We want every pension saver to get value for money from their pensions. That means good investment returns, and high-quality services, for a competitive price. This is a great opportunity for the pensions industry to help to transform pension saving for millions, and to deliver greater value for their retirement.'

The current consultation covers the following areas:

- scope of the requirements;
- calculation and publication of the core metrics to be used;
- the process of independent assessment and comparison including how the RAG rating should operate;
- actions for those schemes deemed to be performing poorly; and
- publication requirements.

Responses to the consultation, due by 17 October 2024, are encouraged from interested parties and in particular, trustees of trust-based schemes. Whilst the current consultation is published by the FCA and focusses on contract based market, the intention in Government to extend this to TPR regulated trust-based schemes is clear.

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DC activity and reminders

An update of insights for DC schemes.

Proposed reforms

A press release from the Treasury on 2 March set out the Government's plans for reform to encourage investment in British business and enhance saver returns.

In summary,

- Defined Contribution schemes will be required to disclose how much is invested in UK businesses,
- poor performing schemes will be prohibited from taking on new business, and
- the changes align with Government's plans to improve outcomes and encourage pension scheme consolidation.

Public disclosure will increase scheme comparability and enable informed decision making. This sits alongside other reforms to improve value and consolidate the market.

The proposals will require DC schemes to disclose their investment in British businesses together with their costs and net investment returns by 2027, a public comparison of performance will need to be made against competitors, including at least two with at least £10bn assets and poor performers will be prohibited from engaging in new business from employers.

The Chancellor noted: "………………these new rules mean employers and savers can see how their money is invested and how the returns compare to other schemes".

"These requirements will help focus minds on how to improve overall returns and outcomes for savers."

Illiquids

In August 2023, TPR updated its guidance to help DC schemes comply with new regulations designed to ensure they consider all the investment opportunities available to achieve the best value for savers. From 1 October 2023 trustees must state their policy on investing in illiquid assets in the Statement of Investment Principles for their scheme's default arrangements. Trustees are also required to disclose the asset class breakdown for each of their scheme's default arrangements in the Chair's Statement.

The requirement to state the trustees' policy on the default arrangements investing in illiquid assets in the default SIP takes effect from the first default SIP produced after 1 October 2023. The default SIP must be updated to include this policy by 1 October 2024 at the latest.

If the policy is for a default arrangement to invest in illiquid assets, the default SIP must, for that default arrangement, describe:

- the age profile of the members for whom investments will be held in illiquid assets,
- whether the investments made in illiquid assets will be made directly in illiquid assets or via a collective investment scheme,
- the types of illiquid investments that will be held,
- why the policy is to invest in illiquid assets – including the advantages over other classes of assets, and
- whether there are plans to increase investment in illiquid assets in the future.

If the policy is for a default arrangement to not invest in illiquid assets, the default SIP must explain why, and whether there are any plans to invest in illiquid assets in the future.

The trustees must make the default SIP publicly available free of charge on a website.

Asset allocation

From the first scheme year ending after 1 October 2023, the annual Chair's Statement must disclose for each of the scheme's default arrangements the percentage of relevant scheme assets allocated to each of the following asset classes:

- cash,
- corporate bonds, UK government bonds and foreign government bonds,
- listed equity,
- private equity,

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DC activity and reminders (cont.)

- infrastructure that provides or supports public services including water, gas and electricity networks, roads, telecommunications facilities, schools, hospitals, and prisons,
- property/real estate (excluding property included under 'infrastructure'),
- private debt/credit (excluding debt investments included under 'bonds'), and
- other assets.

DWP's Statutory Guidance explains these asset classes in more detail, with advice on presenting this information for different age cohorts, and further detail on sub-asset classes to help member understanding.

Performance-based fees

New regulations from 6 April 2023, have removed a regulatory barrier that may have hindered trustees from exploring investment in certain funds that came with performance fees. Trustees have the option to exclude specified performance-based fees from the list of charges falling within the regulatory charge cap limit of 0.75% per annum. Schemes must disclose any performance-based fees incurred in relation to each of their default arrangements, calculated as a percentage of the average value of the assets held in those defaults in their Chair's Statement. Trustees must then assess the extent to which these fees represent good value for members alongside other costs and charges.

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TPR Review of ESG Compliance

In August, TPR published the outcome of a review of statements of investment principles ("SIPs") and implementation statements ("ISs") considering trustees' compliance with their ESG duties.

The overall conclusion was that while almost all schemes provided links to the necessary documentation, many offer only minimum disclosures required for compliance.

The review notes key findings as:

- 'Trustees often failed to demonstrate ownership of their policies or key activities in respect of ESG.
- Broadly, where trustees delegated activities to managers, trustees often failed to explain or demonstrate oversight of ESG activities.
- Where schemes are invested in pooled funds, a number of trustees highlighted they had limited ability to influence underlying managers on decisions related to ESG.'

TPR note trustees' fiduciary duty to consider financially material risks and opportunities which can be demonstrated through ESG disclosures.

The review was undertaken using three approaches. The first checking approx. 3,500 schemes to ensure that appropriate weblinks had been given, the second using machine-reading to pin point relevant ESG content as required by regulations and the third being a deeper dive into the SIPs and ISs of around 50 schemes.

Various recommendations are given.

1) 'Trustees should dedicate sufficient time and resource to preparing their SIP and IS' – many schemes gave only minimum disclosure to comply with requirements.
2) 'Trustees must take proportionate and appropriate action to mitigate risks' – schemes are urged to consider whether including the minimum needed for compliance is appropriate for their scheme. Consolidation is suggested for those schemes whose trustees do not consider that they have the expertise or scale to manage identified risks.
3) 'Trustees must take ownership of ESG activities' – trustees must ensure their policy in relation to engagement includes methods and circumstances under which they would monitor and engage with relevant managers. Where tasks are delegated, trustee oversight should be evident.
4) 'Trustees of schemes invested in pooled funds should review fund manager policies on ESG-related issues' – scheme specific disclosures on engagement and voting were often found to be poor. Trustees are encouraged to do more in this respect. Options for trustees of schemes investing in pooled funds are noted and include use of the UK Stewardship Code signatory list and reporting and Pension and Lifetime Savings Association Stewardship and Voting Guidelines as a benchmark, requiring asset managers to vote in line with trustees' set stewardship priorities and regular engagement with managers to discuss voting policies and issues before a new voting season.
5) 'Trustees should provide more detail on policy to show they are considering specific ESG-related risks to their scheme' – detailed and specific policies around ESG allowed trustees to demonstrate engagement.
6) 'Trustees should provide more scheme specific detail on voting activity' – Implementation statements should include a summary of voting on behalf of trustees and how asset managers' policies align to the interests of savers. Improvement in reporting on voting information including scheme specific voting is encouraged.
7) 'Trustees should provide more detail on asset management arrangements' – a more thorough approach to assessing asset managers is encouraged.
8) 'Trustees should consider going beyond climate change reporting' – trustees are encouraged to look beyond climate change with social factors and nature related reporting noted.

In conclusion, the review notes:

'Trustees should include appropriate levels of details in their reporting to demonstrate that they are effectively managing financially material ESG related risks. If trustees believe they lack the expertise or scheme governance scale to manage such risks effectively, they should consider whether consolidating their scheme could improve the way in which such risks are managed for their members.'

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ESG Essentials

There has been further activity relating to ESG themes. A selection of key issues is discussed below.

Trustee guide to ESG engagement with asset managers

The Society of Pension Professionals ("SPP") published a guide for trustees in June. The guide (which can be accessed here) covers disclosure requirements, including preparation of a Statement of Investment Principles ("SIP"), Implementation Statement and TCFD reporting. Checklists are included for trustees to ensure they have the information they need from asset managers to enable them to prepare the relevant documents. The guidance also looks at disclosure requirements for asset managers, engagement with asset managers and the role of the investment consultant.

Institutional Investors Group on Climate Change ("IIGCC") publication: Net Zero Investment Framework: 2:0 ("NZIF")

Rather than setting a standard, the framework offers guidance to investors to use as appropriate to their own circumstances. With a focus on 'asset alignment' investors are urged to use 'identified levers' to improve performance with reference to net zero pathways. Action points offer support towards achievement of goals and management of risks and opportunities presented. The NZIF supports investors in 'maximising their efforts to 'finance reduced emissions' rather than 'reduce financed emissions'.

The update, issued in June, revises terminology and criteria, offers refreshed guidance and a summary of best practices including action points and points to other guidance sources.

In summary, as noted by the IIGCC: 'From the beginnings of setting a net zero strategy through to objectives and target setting, analysing asset classes to engaging with assets, information is now more accessible, intuitive and coherent in NZIF 2.0.'

This was followed by guidance looking specifically at scope 3 emissions offering 'good practice guidance for investors concerning the Net Zero Investment Framework' and highlighting the need to understand complex value chain emissions to mitigate climate change risk.

TNFD Update

On 28 June, the Task force on Nature-related Financial disclosures ("TNFD") announced a 30% increase in adopters since January, bringing the total number of companies committed to nature-related disclosures to 416. New adopters will follow recommendations and publish disclosures for 2024 (or earlier) or 2025 financial year ends.

David Craig, Co-Chair of the TNFD, noted: "The ongoing uptake of the TNFD's recommendations is further evidence that the mindset in business and finance is quickly shifting to a recognition that accelerating nature loss is imposing costs and risks on society as a whole as well as to individual business models and capital portfolios."

Specific guidance, including recommended metrics, has also been issued focusing on the following sectors:

- Aquaculture
- Biotechnology and Pharmaceuticals
- Chemicals
- Electric Utilities and Power Generators
- Food and Agriculture
- Forestry and Paper
- Metals and Mining
- Oil and Gas
- Additional Guidance for Financial Institutions

In addition, additional guidance on value chains has been published supporting organisations in their approach to analysis of their value chains and address challenges faced.

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ESG Essentials (cont.)

TPR Review of climate disclosures by occupational schemes: Year 2

In April, TPR issued a summary of its conclusions following a review of the second year of climate reporting. 30 climate reports were reviewed with year ends from 1 Oct 22 to 30 Sept 23 covering a mix of first and second year reporting. The findings noted that just over 60% of reports had a goal of net zero by 2050.

TPR advocates continuous improvement and believes that the conclusions of the review will be helpful to preparers of TCFD reports, noting that:

'Climate reporting should be the output of the strategic decisions that trustees are making. Alongside ensuring trustees properly consider the impact of climate change on their own scheme, one of the purposes of climate reports is to drive improvements across the pensions industry through transparency and sharing good practice.

Climate change poses risks and offers opportunities to all pension schemes. Trustees of schemes not subject to the Climate and Governance Regulations, may also benefit from our findings which will help them improve their management of climate-related risks and opportunities.'

Several overall points are made.

- Inclusion of scheme information at the start of a report helped in putting the report into context.
- Explanation of the materiality of mandates noted in reporting aided understanding.
- Avoidance of generic wording and use of specific detail would improve reporting.
- TPR agrees that relevant re-use of prior year material is sensible but this should be brought up to date for the current year.
- The length of reports varied with 38 pages being the average and 94 the maximum. More concise reports were found to be better.
- Some reports made good use of plain English summaries for members.
- Action plans (with progress monitored and reported on) should follow any identified needs.

Several examples of actions which trustees have taken are noted. These include:

- inclusion of sustainable funds,
- exploration of opportunities such as forestry and green bonds, and
- working to obtain emissions data from relevant asset classes.

The report then goes on to look in more detail at each area of the required disclosures highlighting good practice, observed issues and points for improvement. Improvements noted included, inter alia, those noted below.

- Though governance was noted as a generally stronger section, possible improvements included ensuring all disclosure requirements were met and demonstration of strong oversight of delegated activities.
- In the strategy section, potential improvements included trustees forming their own views for the scheme and setting sufficiently long time horizons to reflect the length of the investment.
- Regarding scenario disclosures, consideration should be made of including qualitative analysis as an alternative to quantitative analysis if the latter is not yet available. Trustees should understand the limitations and assumptions behind a quantitative approach. Time should be allowed for interpretation of results which should be referred to in the report.
- TPR recommends inclusion of sufficient detail to demonstrate a 'robust and proportionate' risk management framework and use of stewardship as a 'risk management tool'.
- In relation to metrics, trustees are urged to extend emissions data with the potential use of estimates where data is not available and to use summarised or aggregated data to make it easier to understand. Metric results should be reviewed with commentary in the reporting.
- Reduction of carbon emissions from scheme assets was the most common target set. Trustees should consider using targets where their actions can manage risks and opportunities.

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ESG Essentials (cont.)

Several points of interest are also noted.

- Trustees' approach to consideration of climate risks and opportunities on the sponsor's covenant should be proportionate and clearly explained.
- Recent challenges to scenario analyses used by trustees indicate they may understate the risk and lack understandability. Trustees should understand the modelling used.
- Data coverage was generally lower for the new portfolio alignment metric.

The above presents a brief snapshot of some of TPRs findings. Please see the report for more detailed information.

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Climate Change Governance and Reporting: Understand and increase confidence in disclosures

Assurance plays an important role in building trust around the robustness of non-financial information.

What about assurance?

Assurance is all about demonstrating the quality of data. One of the TCFD's principles for effective disclosure is that "disclosures should be reliable, verifiable, and objective". Assurance can provide an independent review of this effectiveness, and although assurance is currently voluntary, we are nevertheless seeing businesses gain assurance over certain climate-related financial disclosures, and we expect market leaders to move towards comprehensive assurance over disclosures to provide maximum comfort to their investors.

Mandatory assurance appears to be the inevitable next step in the reporting process. Indications are clear that corporate reporting will face some sort of mandatory assurance over the next twelve to twenty-four months and, as a natural progression, pension schemes will undoubtedly follow. Not only does the assurance performed provide peace of mind for trustees in the early stages when data can be inconsistent, incomplete and unreliable, it can also help protect the reputation of pension schemes.

What are the benefits of assurance for trustees?

Enhanced creditability: A signal to stakeholders not only that the chosen metrics have been reviewed by an independent party, but also that the metrics are genuinely important to the trustees.

Drive improvement: In addition to an assurance opinion, improvement observations can be provided on the scheme's ESG processes and controls. This will focus on the quality of data which is frequently an area where management oversight and rigor is not as strong as for financial reporting.

Benchmark to best practice: Insight into disclosure seen elsewhere in the market and enhancement to the overall quality of non-financial reporting.

Regulatory readiness: Understanding and proactively managing the risks is key to developing a scheme that is 'regulation ready' and resilient to changing legislative demands.

Audit efficiency: There are a number of synergies to benefit from when those providing ESG assurance also provide the statutory audit.

Formal opinions over reported ESG metrics and disclosures can either be private or made public. These opinions are delivered in accordance with International Standard on Assurance Engagements ("ISAE") (UK) 3000 to either a limited or reasonable level of assurance (depending on stakeholder needs). Importantly, this will come with a private management feedback report with observations from the work. This service can be provided to audited entities and non-audit clients.

On 21 March, the FRC launched a study into the UK market for sustainability assurance services with the aim of ensuring the market is functioning properly and providing quality assurance. Conclusions are expected in early 2025.

This is a growing market and the FRC is keen to understand the implications for competition and resilience in the statutory audit market with many services supplied by major audit firms.

Key areas of focus will include choice, quality and competition, capacity and barriers, the impact of international regulation and the relationship between sustainability assurance and statutory audit markets.

If you are interested in finding out more about our ESG Assurance services, please either follow this link, or get in touch with your usual engagement lead.

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PPF response to DWP plans for a public sector consolidator and Superfunds update

Subsequent to previous the Government's Call for Evidence to enable greater flexibility to access DB Scheme asset investments, the DWP has proposed a public sector consolidator administered by the PPF to be in place by 2026.

Although commenting on the challenge of defining eligibility, DWP believes this would provide up to 2,300 schemes with an alternative option to the PPF, supporting circa 960k members and releasing £10bn for UK productive finance.

Such a consolidator would act as a pooled vehicle, with the link to the employer severed unless underfunded where contributions would be made on a 'run on' rather than 'buy out' basis.

Whilst external organisations have commented on concerns regarding subsequent impact upon UK insurance and superfund markets, initial estimates suggest 90% of the DB market would continue to be served by such institutions.

PPF Chair, Kate Jones commented: "The PPF's core mission is to protect DB members and, as we look to the future, member interests must remain paramount. To deliver the best possible outcomes for all DB members, choice, and timely, affordable access to endgame solutions is vital. Evidence, and stakeholder feedback, suggests more choice in the market is needed to capitalise on this window of opportunity with improved funding levels.
Our maturity and capabilities mean we can operate this new, separate fund – providing more choice for schemes and a secure home for transferring members – without affecting the continued successful delivery of our existing functions."

Whilst CEO, Michelle Ostermann said: "International experience shows that pension consolidation can drive better member outcomes and support productive investment.
There is a big opportunity in the UK to consolidate the highly fragmented DB landscape and make more of the £1.4 trillion in assets work harder for members and the UK economy.
To fully realise the potential of the new consolidator, we believe it should be open to all schemes who, without it, may struggle to get timely access to market solutions.
We remain confident that a well-designed PPF-run consolidator will complement commercial providers and ultimately support a thriving marketplace which delivers for all members."

In related news, Debenhams Retirement Scheme has become the second superfund transaction into Clara Pensions, securing 100% of benefits for 10,400 members with the transfer of assets totalling £600m, therefore exiting PPF assessment which commenced in April 2019 subsequent to Debenhams insolvency.

The Trustees confirmed this was, in their opinion after a robust process and input from PPF and TPR , the best possible option available to secure member benefits.

Clara was established in 2017 and completed TPR's assessment process for superfunds in November 2021. It is backed by global investment firm, Sixth Street.

Clara Pensions Chief Executive Simon True said "By injecting £34m of new capital we are making these pensions more secure and setting them on the path to an insured future in a few years' time. Joining Clara also means topping up the pensions of all members back to 100% of what was originally promised to them. With 20,000 members now in the Clara Pension Trust, we are firmly on the road to making British pensions safer and more secure."

This is the second such transaction in to Clara Pensions, with the first in November 2023 of £590m from Sears Retail Pension Scheme.

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Ending the proliferation of small pots: the multiple default consolidator model

On 22 November, the DWP issued a two-part document. The first part of this contained a response to their consultation which ran from 11 July to 5 Sept 2023 seeking views on proposals for a multiple default consolidator to 'sweep up' the current proliferation of small deferred pots.

The consultation, which received 55 responses, proposed automatically consolidating deferred small pots into one of a number of schemes authorised for this purpose. The second part of the DWP publication constitutes a call for evidence on the longer-term direction of occupational schemes – the so called lifetime provider or 'pot for life' model.

The DWP have concluded that the multiple default consolidator approach is the most appropriate and this will be legislated for when Parliamentary time allows. An industry delivery group has now been formed to delve further into complexities and issues to be addressed and allow further time for policy development.

A number of key issues are addressed in the DWP's response; these are explored below.

The need for a central clearing house

A mechanism is needed to let schemes know how to allocate member pots. The clearing house approach is preferred as it will offer an independent central point of contact for schemes and members, where members do not make any active choice. It is hoped that this will result in a low-cost system of benefit to members. The operation of the clearing house will be a priority concern for the industry delivery group.

Some members may express a consolidator of choice however it is likely that many will not. It is preferable that members are allocated into an existing pot with an authorised consolidator. For those who do not have such an existing pot, a carousel approach will be adopted allocating pots equally between authorised entities.

Authorisation to act as a consolidator

DWP aim for both trust-based and contract-based consolidators to be authorised and supervised. The response highlights certain authorisation criteria which include, inter alia:

- already undertaking same scheme consolidation,
- demonstration of good Value for Money,
- offering decumulation services including a default, and
- be of sufficient size to deliver value.

Eligible pot criteria

To be eligible for automatic consolidation, pots must be:

- created since the start of automatic enrolment,
- within charge-capped default funds within the automatic enrolment workplace market,
- have received no contributions for 12 months, and
- be valued at £1,000 or less (this criterion will be kept under review to ensure it remains valid).

Note that members will be able to opt-out of consolidation for example if they intend to return to the scheme in future.

The response also highlights key areas for the industry delivery group to consider. The group, launched in early 2024, will aim to give an update to Ministers in Spring / Summer 2024 and proposals in late 2024.

The second part of the DWP publication is a call for evidence looking at workplace pensions in the longer term, in particular whether a lifetime provider model would be beneficial in preventing further proliferation of small pots, how the Collective Defined Contribution ("CDC") market can be grown and whether the two issues are linked. The closing date for responses was 24 January 2024.

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Ending the proliferation of small pots: the multiple default consolidator model (cont.)

Changing work patterns mean that the traditional paternalistic model of occupational pension provision may no longer be appropriate. The creation of multiple pots brings difficulties for members in keeping track of their savings and increases the risk of small pots being 'cashed out', though the importance of dashboards in helping people see all their entitlements is noted. Small pots may also inhibit investment in productive finance, another of the Government's key initiatives.

DWP note that the lifetime provider model would reduce the number of pots and improve member engagement, schemes would have better data and access charges would be less. There may also be more opportunity to invest in illiquid assets which may result in higher returns for members.

The DWP are keen to understand how a central system to identify a lifetime provider can be operated such that choice for members can remain for those who are engaged but a default is embedded to capture those who do not make a choice. An interim step is proposed focusing on a voluntary, member-led model for those making choices. To facilitate this, changes would need to be implemented for example, to require employers to accede to payment of contributions to employees' scheme of choice.

The proposals will use policy developments in other areas to smooth the transition to a lifetime provider model with key elements being data standardisation, Value for Money, the multiple default consolidator model (including a central clearing house) and ensuring appropriate decumulation options (see article).

However, the DWP recognise that there could be challenges with a lifetime provider model. These include the impact on employers: specifically, would payment of contributions to varying different schemes affect the support provided to employees? Exemptions would also be needed where the scheme offered by the employer is better than the lifetime provider; adoption of minimum criteria for example in relation to fees and returns may be useful in understanding comparisons. There is also a desire to evolve the CDC market. Impacts are foreseen on payroll providers with a system like the banking 'BACS' system needed. The call for evidence discusses the need for the lifetime provider model to operate in conjunction with a policy consolidating existing pots and requests feedback on a 'whole system' approach vs adoption of a lifetime provider model solely for future accrual. Other considerations are also noted including, for employers, whether schemes would need to be offered at all, for the industry, impacts on differing business models and, for individuals, the flexibilities needed.

The Government are keen to promote improved security, returns and reduce risk for members. Decumulation risks including 'cashing out' and a lack of member understanding are discussed with reference made to proposals of a duty on trustees to offer suitable decumulation services (see article).

CDC is noted as a possible solution. Such schemes spread risk between the membership during the accumulation and decumulation phase, thus reducing the risk of investment shocks and reducing the need for lifestyling. Pooling enables investment in higher growth assets for longer leading to the possibility of higher returns. Views are sought on whether use of CDCs for accumulation in auto enrolment would bring benefits although this would be a significant change to the status quo and the impact on the market for Pension Freedom products would need to be considered. A range of issues are noted for further consideration, including member access, employer understanding, market impacts and transition.

Possible benefits of adoption of CDC and the lifetime provider model together are discussed: delivering savings in one place, a target income for life and enhancing outcomes with the potential for investment in productive finance through the decumulation phase. The default consolidator model could be used as a 'stepping stone' towards the use of CDCs and a lifetime provider. DWP are keen to understand the use of a CDC lifetime provider longer-term.

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Decumulation: Helping savers understand their pension choices at the point of access

On November 22 the DWP published a response to their consultation earlier in the year looking at supporting scheme members at the point of accessing their benefits.

Key proposals, recognising the role of trustees in supporting membership, include a requirement for all schemes to offer a decumulation option. The consultation ran between 11 July and 5 September 2023, receiving 70 responses.

The response concludes that the most appropriate measures are:

- To legislate to introduce a new duty on all trustees (to include the Nest scheme) to offer appropriate decumulation options at the right price. Whilst recognising that members with multiple pots may cause complexities, DWP believe these can be mitigated, notably through consolidation. Where schemes are not able to offer decumulation, then consolidation should be considered.
- To require provision of a default option. This may be done in partnership with other organisations. Members making no active choice will be defaulted into a solution which they will then need to 'opt out' of if desired. The DWP will be flexible around default design though member communications will be key. In connection with communications, work is being undertaken by DWP together with the FCA and His Majesty's Treasury ("HMT") around the advice/guidance boundary.
- Before any legislative requirement, decumulation options will be encouraged and supported by guidance from TPR. In an industry speech, TPR noted 5 principles to 'shape the conversation' on decumulation including value for money, helping savers with decision-making, putting the saver at the heart of decumulation, market innovation and support offered by schemes. This was followed by a blog highlighting 7 challenges to be addressed by schemes in ensuring good decumulation outcomes and becoming 'full-service providers'. If schemes are not able to do this, then consolidation should be considered.
- DWP will monitor measures put in place together with the potential role for CDCs in decumulation to ensure that they are advantageous to members and a more prescriptive approach may be taken if required. CDCs may result in preferrable member outcomes and DWP consider them a possible model for the provision of future pensions. The CDC market is developing with the introduction of multi-employer schemes.

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News in brief

FRC announces significant update to the UK Stewardship Code

In July, the FRC announced important changes to the UK Stewardship Code application process. In early 2024, the FRC worked with over 1,500 stakeholders across the UK to identify five priority areas of review for the UK Stewardship Code:

Purpose: The FRC will consider all stakeholder views and set out its expectation of what defines effective stewardship, what this looks like in practice, and how reporting against the Code can help to deliver this.

Principles: The FRC is considering what reporting will be necessary to deliver on a renewed purpose of the Code.

Proxy Advisors: The FRC will carefully consider how the Code might support greater transparency of their activities.

Process: The FRC will take forward proposals to reduce the reporting burden currently associated with being a Code signatory and ensure that information included in reports is useful and accessible to all underlying investors and other stakeholders.

Positioning: The FRC is working closely with other regulators such as the DWP, TPR and the FCA to support clarity in understanding the revised Code and its successful implementation. The Code will continue to support the objectives of those other regulators to avoid any confusion and duplication that signatories may encounter.

These five areas of review are designed to ensure that the Code remains effective, supports UK capital markets, and reduces reporting burdens on signatories.

Penalty for Breach of Chair's Statement Requirements: What Does 'Must' Mean?

The First-Tier Tribunal (“FTT”) case of James Caldwell (Trustee of the Smith & Wallace & Co 1988 Pension Plan) v The Pensions Regulator (TPR) has significant implications for TPR's power to impose penalties for breaches of its requirement to provide a Chair's Statement.

Key points:

- Mandatory Penalty: Regulation 28(2) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 mandates TPR to issue a penalty notice for failure to provide a Chair's Statement.
- FTT Interpretation: The FTT ruled that while the regulation is mandatory, it does not preclude TPR from considering explanations for the breach. TPR can be precluded from penalizing trustees in "wholly exceptional circumstances" where non-compliance is fully explained and excused, and imposing a penalty would be manifestly unjust.
- Review Provisions: TPR initially argued that it could not consider reasons for non-compliance during review. However, it later conceded discretion to review and revoke a penalty notice in specific circumstances:
  - No breach occurred.
  - Procedural unfairness due to TPR's actions.
  - Other extenuating circumstances making the penalty manifestly unfair.

Case Outcome: The FTT dismissed Mr. Caldwell's appeal, as the circumstances did not meet the "wholly exceptional" criteria.

Implications for TPR:

- Discretion in Penalty Imposition: TPR must consider explanations for non-compliance, even though the regulation is mandatory;
- Exceptional Circumstances Exception: TPR cannot penalize trustees in exceptional circumstances where non-compliance is fully explained and excused, and imposing a penalty would be unjust; and
- Review and Revocation Discretion: TPR has discretion to review and revoke penalty notices in specific circumstances, including procedural unfairness or extenuating circumstances.

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News in brief (cont.)

The Caldwell case clarifies TPR's penalty powers and introduces an element of discretion in applying the mandatory penalty provision. While TPR must generally impose penalties for non-compliance, it can consider explanations and exercise discretion in exceptional circumstances or during review processes.

Royal Mail Group Launches UK's First Collective Defined Contribution (“CDC”) Pension Plan

Royal Mail Group is set to launch the UK’s first CDC scheme on 7 October 2024, the scheme will be open to all Royal Mail employees with at least one year's service. Members will receive an automatic income for life and a cash lump sum. Employee contributions: 6% of pensionable pay. Royal Mail contributions: 13.6%. The plan will be governed by an independent board of trustees.

The launch of the Royal Mail Collective Plan represents a significant step forward in the evolution of UK pensions. This innovative model has the potential to improve retirement security for members while offering a sustainable and cost-effective solution for employers. The success of the Collective Plan will depend on effective communication, member engagement, and strong governance.

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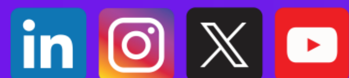

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