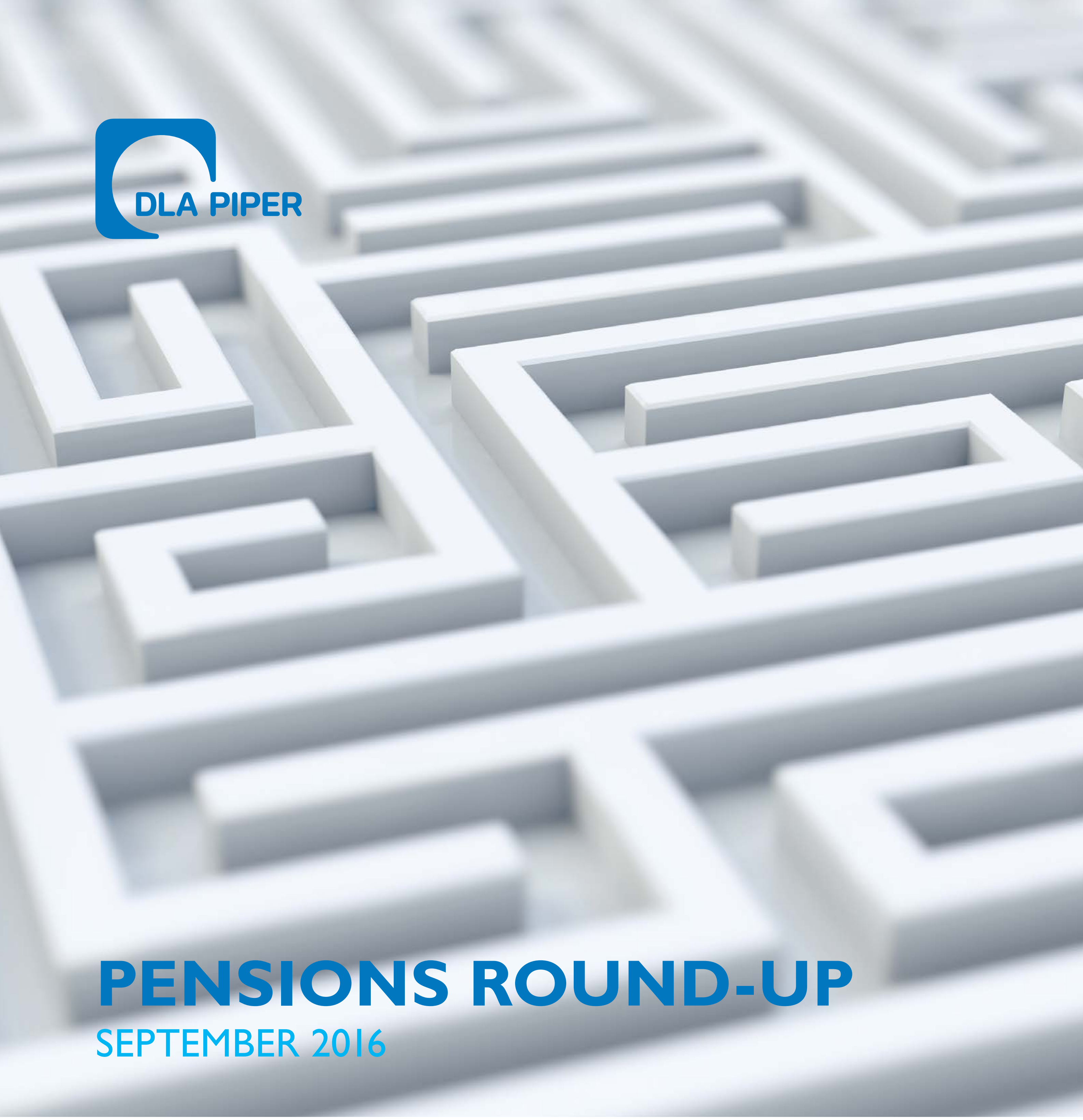


DLA PIPER

PENSIONS ROUND-UP

SEPTEMBER 2016

IN THIS ISSUE

INTRODUCTION

Welcome to the latest edition of DLA Piper's monthly newsletter – Pensions Round-Up – in which we provide an overview of developments in pension legislation, case law and regulatory guidance.

In this edition we look at key developments from September 2016 including the following.

- **Pension Protection Fund:** the announcement of the Levy Estimate for 2017/18 and the publication of the consultation in relation to the levy rules; and a consultation relating to the long service cap for PPF compensation.
- **Consultations and legislation:** a consultation and a call for evidence about the requirement that members take independent financial advice before transferring or converting safeguarded benefits to flexible benefits – the consultation relates to a particular type of benefit which falls within the definitions of both safeguarded benefits and flexible benefits and the call for evidence relates to overseas transfers; a consultation about the definition of financial advice; and the Finance Bill 2016 receiving Royal Assent.
- **HMRC:** a Brief from HMRC about VAT and DB pension schemes which extends the transitional period to the end of 2017; and HMRC's latest pension schemes newsletter.
- **Public service pension schemes:** the publication of regulations, guidance and a response to consultation about the Local Government Pension Scheme and investment; and responses to February consultations about reforms to public sector exit payments.
- **Other news:** guidance from the Pensions Regulator about automatic re-enrolment; an update about an appeal against a Court of Appeal judgment concerning survivors' benefits; the publication of the annual review for TPAS for 2015-16; the launch by TPAS of a 'trace a lost pension' tool; and an announcement about plans for the development of a pensions dashboard.
- **On the Horizon:** a timeline of some of the key future developments in pensions to help employers and trustees plan ahead.

If you would like further information about any of the issues raised in this edition of Pensions Round-Up, please get in touch with Cathryn Everest or your usual DLA Piper pensions contact. Contact details are at the end of this newsletter.

PENSION PROTECTION FUND

PPF LEVY ESTIMATE 2017/18

On 22 September the PPF published a consultation in relation to the 2017/18 levy (the final year of the current triennium). Alongside the consultation, the PPF published the draft levy Determination and accompanying appendices and guidance. The Levy Estimate for 2017/18 is £615 million which is the same as for 2016/17. In line with the PPF's aim to maintain stability in the way that the levy is calculated over a triennium as far as that is possible, the consultation reports that the Levy Rules for 2017/18 will be *"very substantially the same as for 2016/17 and, indeed, 2015/16"*.

The consultation reports that the most significant change proposed relates to the new UK accounting standard FRS 102. It sets out a proposed mechanism for stakeholders to notify Experian where the move to FRS 102 would otherwise cause an artificial movement in their rating. The proposals also include: (i) extending to 2017/18 the simplified requirements introduced in 2016/17 for schemes recertifying an asset backed funding structure; and (ii) that the deadline for the 2017/18 levy will be midnight on 31 March 2017 (this is in line with the change made to the measurement time in 2016/17 in order to eliminate differing deadlines between the PPF and the Pensions Regulator).

The consultation closes on 31 October. The PPF will finalise the rules and publish the Levy Determination in December.

SECTION 143 AND SECTION 179 ASSUMPTIONS

On 15 September the PPF published a consultation proposing changes to the actuarial assumptions used in section 179 and section 143 valuations. (Section 179 valuations are used to calculate scheme underfunding to determine the risk-based pension protection levy that a scheme should pay, and section 143 valuations are used to determine whether a scheme should enter the PPF following an insolvency event.) The PPF is considering making some updates to the assumptions to bring them into line with current market pricing. The proposed changes include updates to the mortality assumptions and changes to discount rates.

The PPF proposes to introduce these changes for valuations with an effective date on or after 1 December 2016, subject to broadly supportive consultation responses.

PPF COMPENSATION CAP

The Pensions Act 2014 makes provision to introduce a long service cap in respect of PPF compensation whereby the standard compensation cap will be increased by 3% for each full year of pensionable service above 20 years (that is, 21 years or more) subject to a new maximum of double the standard cap. These provisions have not yet been brought into force but in a consultation issued in September the DWP states that it is planned that they will come into force on 6 April 2017. The increased entitlement for those to whom the long service cap applies will begin from that date. The increased entitlement will not be backdated. The consultation relates to changes needed to secondary legislation to ensure that the long service cap will operate as intended in all situations.

The DWP also announced its intention to implement an equivalent cap for the Financial Assistance Scheme from April 2018. Regulations to implement this cap will be put before Parliament in due course.

The September consultation also seeks views on two further issues: (i) ensuring the legislation reflects the policy intention as to when tranches of PPF compensation should be added together; and (ii) whether the amount of money purchase rights the PPF can discharge should be increased from £2,000 to £10,000 in line with changes to tax legislation.

CONSULTATIONS AND LEGISLATION

THE ADVICE REQUIREMENT

In April 2015 when the new DC flexibilities were introduced, a statutory requirement was introduced so that members with safeguarded benefits (for example, defined benefits) have to take appropriate independent financial advice from an FCA authorised adviser before transferring or converting their safeguarded benefits to acquire flexible benefits (or, where applicable, directly accessing their safeguarded benefits flexibly). The exception to this requirement is where the member's safeguarded benefits under a scheme have a total value of £30,000 or less. In September the DWP issued a consultation and a call for evidence relating to this advice requirement.

Safeguarded-flexible benefits

Defined benefits are not the only type of safeguarded benefits, with the statutory definition covering benefits other than money purchase benefits and cash balance benefits. A consultation issued on 26 September relates specifically to the type of benefits which are defined contribution in nature but offer some form of guarantee in relation to the pension income that will be available to the member (for example, guaranteed annuity rates). The consultation uses the term "safeguarded-flexible benefits" to describe this type of benefit. Legislation currently requires safeguarded benefits to be valued using the method for calculating the cash equivalent of salary-related defined benefits. This can cause confusion in relation to safeguarded-flexible benefits because it means that members may receive two values for their benefits: (i) in order to determine whether the advice requirement applies – the estimated value of the pension the member could secure by exercising their guarantee; and (ii) a generally lower transfer value.

The consultation proposes changes to the legislation so that, for the purposes of the advice requirement, the value of benefits should be treated as equal to the actual transfer payment to which the member would have a statutory right. It is not intended that this would affect the valuation of defined benefits. The consultation also proposes changes to legislation to require ceding schemes to inform members with safeguarded-flexible benefits that they have potentially valuable guarantees by sending them risk warnings tailored to the nature of the guarantee.

The consultation notes that a large proportion of safeguarded-flexible benefits exist within contract-based arrangements. However, where occupational schemes do have this type of benefit, trustees should be aware of these proposed changes. Subject to parliamentary approval it is expected that the new legislation will come into force on either 6 April or 1 October 2017.

Overseas transfers

A call for evidence issued on 30 September notes that the Government has been made aware that the advice requirement has additional complexities for individuals who wish to transfer their safeguarded pension savings to a non-UK pension scheme. For example, members resident overseas may be financially disadvantaged by having to seek two separate sets of advice – one to meet the advice requirement and another from a local overseas adviser. The call for evidence seeks to gather information on how the advice requirement is working for overseas members and whether the current process should be maintained or adapted to work better for individuals who are moving or already resident overseas. It looks at: (i) retaining the existing requirement; (ii) removing the advice requirement for overseas transfers; and (iii) permitting overseas members to seek equivalent advice in their country of residence.

Points of particular note for trustees of UK occupational pension schemes include that option (ii) raises the question of how trustees would verify that the member has genuinely moved overseas and option (iii) raises the issue of how they would confirm that advice has been given by a financial adviser with the correct permissions. In relation to option (iii), it is also worth noting that the call for evidence also considers the issues of quality of advice and consumer protection including in relation to pension scams. The consultation closes on 23 December.

CONSULTATIONS AND LEGISLATION

DEFINITION OF FINANCIAL ADVICE

The Financial Advice Market Review (FAMR) published in March 2016 suggested that some consumers would benefit from high quality and more specialised and detailed guidance services but firms were reluctant to offer such guidance. A key reason for this reluctance was uncertainty about what constitutes regulated advice and the main reason for uncertainty is that firms face two definitions of financial advice - the definition in UK legislation and the EU definition in the Markets in Financial Instruments Directive (MiFID). In line with a recommendation of FAMR on this issue, on 20 September the Treasury published a consultation proposing to amend the definition of "regulated advice" in UK legislation to bring it into line with the definition in MiFID. This would mean that consumers only receive "regulated advice" when they are offered a personal recommendation for a specific product. The consultation seeks views on the potential costs and benefits of this change and any potential risks.

FINANCE ACT 2016

The Finance Act 2016 received Royal Assent on 15 September. Provisions in the Act in relation to pensions cover the following issues.

- Provision reducing the lifetime allowance to £1 million from 6 April 2016 and introducing fixed protection 2016 and individual protection 2016. The Act also provides for the amount of the standard lifetime allowance to increase in line with increases in CPI from 6 April 2018.
- In relation to bridging pensions, the Act removes existing references to the old State Pension. Regulations will follow to align the tax legislation with the legislation in relation to the new State Pension and allow the payment of bridging pensions to continue as previously provided.
- The Act introduces exceptions from the anti-avoidance calculations that must otherwise be carried out in respect of annual increases in dependants' scheme pensions where an individual who was entitled to a scheme pension dies having reached age 75.
- As announced at Budget 2016, amendments are included to ensure that the DC flexibilities operate as intended. For example, amendments are made so that serious ill health lump sums paid to members aged 75 or over will be taxed at marginal rate rather than 45%.
- Provisions to ensure that a charge to inheritance tax will not arise when a pension scheme member has unused funds in a pension drawdown fund when they die.

AUTUMN STATEMENT AND FINANCE BILL 2017

On 8 September the Chancellor of the Exchequer announced that he will present his Autumn Statement to Parliament on 23 November 2016. In September it was also announced that, following the Autumn Statement, draft clauses to be included in the Finance Bill 2017 will be published on 5 December 2016 and this consultation on the draft legislation will be open until 30 January 2017.

LIFETIME ISA

As reported in *Pensions Round-Up for March 2016,* one of the measures announced in the Budget was the introduction of a Lifetime ISA which will be available from April 2017. On 6 September the Savings (Government Contributions) Bill was introduced to Parliament which makes provision in relation to Lifetime ISAs including the payment of government bonuses and which withdrawals will not trigger a charge. It also contains powers permitting the Treasury to make regulations in relation to the Lifetime ISA. Also in September, the Treasury published a technical note confirming the design of the Lifetime ISA following detailed discussions with industry since the scheme was announced.

HMRC

VAT AND DB PENSION SCHEMES

Since a judgment of the Court of Justice of the European Union (CJEU) in 2013 there has been some uncertainty for employers about the extent to which they can deduct VAT on pension fund management costs. Prior to this judgment, HMRC had regarded administration costs as deductible by the employer but investment management costs as not deductible. Where a single invoice was received covering both administration and investment management services, a 70/30 split was assumed allowing the employer to claim 30% of the VAT as relating to administration.

In 2014 HMRC announced a change to its policy so that it would no longer differentiate between the administration of a pension scheme and the management of its assets but rather in each case the employer would potentially be able to deduct VAT if it receives the supply of services. In 2015 HMRC set a transitional period allowing employers and schemes to continue to use the VAT treatment in Notice 700/17 (that is, HMRC's previous approach) until the end of 2015. This was subsequently extended to the end of 2016. HMRC Briefs have also looked at possible ways to deal with this issue such as tripartite contracts (although in October 2015 a potential implication of this option for corporation tax was identified), the supply of scheme administration services by the trustees to an employer, and VAT grouping. Further guidance had been expected later in 2016.

Brief 14(2016)

However, on 5 September HMRC published Brief 14(2016) which explains that it is taking longer than expected to reconcile the CJEU decision with pension and financial service regulations, accounting rules and emerging case law. The transitional period during which taxpayers may continue to use the VAT treatment in Notice 700/17 has therefore been extended to 31 December 2017. HMRC states that, towards the end of this period, it will review the position and consider the need for a further extension if necessary. The Brief also states that:

- where taxpayers have already made changes, provided the employer and trustees agree and both apply the same treatment, they may continue with those arrangements, or may choose to revert back to the previous treatment during the transitional period; and
- the guidance HMRC was intending to publish has been put on hold whilst it considers the options but in the meantime VAT can be recovered on fund management costs in line with the guidance in previous Briefs. HMRC goes on to state that *"Taxpayers are advised, however, that adopting alternative structures to comply with the VAT requirements could have wider implications, in particular in respect of regulatory requirements and Corporation Tax deductions".*

We suggest that employers and trustees seek further advice from their usual DLA Piper pensions or tax contact about the implications for their circumstances of this latest Brief.

PENSION SCHEMES NEWSLETTER

HMRC's latest Pension Schemes newsletter includes the following updates: (i) HMRC has made some changes to the online service for members to apply for individual protection 2014, individual protection 2016 and fixed protection 2016, including the ability to save the online protection summary page as a pdf which can be provided to scheme administrators to confirm a member's protection. (ii) HMRC is currently working on a look up service for administrators to check the protection status of their members, and on an amend function so that members with individual protection can amend their protection details online. It had hoped to launch these in October but delivery has been delayed slightly, and they will be available later in the year. (iii) HMRC has launched a beta version of its new annual allowance calculator which includes the transitional rules for 2015/16 and also includes the current year. Launching it as a beta version means HMRC will review and improve the calculator.

PUBLIC SERVICE PENSION SCHEMES

LOCAL GOVERNMENT PENSION SCHEME

In the *November 2015 edition of Pensions Round-Up* we reported on a consultation on new regulations in relation to investment and the Local Government Pension Scheme. The Government response to that consultation was published in September and on 23 September the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 were laid before Parliament. The 2016 regulations come into force on 1 November 2016 and will replace the 2009 regulations. Key provisions of the 2016 regulations include that: (i) they remove some of the existing prescribed means of securing a diversified investment strategy and instead place the onus on administering authorities to determine the balance of their investments and take account of risk; (ii) they place an obligation on administering authorities to consult on and publish an investment strategy statement which must be in accordance with guidance from the Secretary of State (the guidance was also published in September) – the first statement must be published no later than 1 April 2017; and (iii) they give the Secretary of State power to intervene in the investment function of an administering authority if he is satisfied that it is failing to act in accordance with the regulations and guidance.

EXIT PAYMENTS

On 26 September responses were published to two consultations (reported on in the *February 2016 edition of Pensions Round-Up)* about measures to address exit payments in the public sector.

General consultation

The response to the consultation on options to make public sector exit compensation terms fairer, more modern and more consistent reports that Ministers remain of the view that it would be appropriate to reform exit payment arrangements across the public sector consistent with the proposals set out in the consultation. The Government has no plans to replace existing arrangements for determining exit compensation at workforce level with a single compensation scheme for all public sector workers at this point in time. Instead it proposes a common framework of upper limits to the main elements of compensation provision across the main public sector schemes.

The framework includes action to limit or end employer-funded early access to pension as an exit term. As part of an overall package the Government will consider proposals appropriate to each workforce, including to: (i) cap the amount of employer funded pension top-ups to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled; (ii) remove the ability of employers to make such top ups, or offer greater flexibility to employers to determine the specific circumstances in which they would be available; (iii) increase the minimum age at which an employee is able to receive an employer funded pension top up, so that this minimum age is closer to or otherwise linked more closely with the individual's normal pension age in the scheme in which they are accruing benefits or to which they would be entitled to belong if they were accruing benefits.

The Government expects departments to put forward proposals for reform within three months of this response being published. It expects the necessary changes to be made within nine months of this response being published.

Civil Service Compensation Scheme

The response to the consultation about the Civil Service Compensation Scheme states that the case for change still stands. It also states that the Government's intention has always been to agree a negotiated package of reforms. The response sets out the Government's formal offer to trade unions which includes: (i) only to allow employer funded top up to pension from age 55 and for this to track 10 years behind State Pension age; and (ii) to offer a partial buy out option for employees above minimum pension age where the cash value of the exit payment is insufficient to fully buy out the actuarial reduction or where the full exit payment is otherwise affected by restrictions in legislation.

OTHER NEWS

AUTOMATIC RE-ENROLMENT

The Pensions Regulator has published *"The essential guide to re-enrolment and re-declaration"* which explains how employers can prepare for their three yearly re-enrolment duties. It takes employers through the steps they need to follow to complete their duties and when they need to do them. The guide has sections on the steps of: choosing a re-enrolment date; assessing and re-enrolling staff; writing to staff who have been re-enrolled; and completing the re-declaration of compliance.

MASTER TRUST ASSURANCE

In May 2014 the Institute of Chartered Accountants in England and Wales (ICAEW) published an assurance framework in relation to master trusts to support trustees and the practitioners who are engaged to provide independent assurance reports. The Pensions Regulator keeps a list of master trusts which have been independently reviewed against the framework.

The assurance framework includes a set of control objectives which relate to the Regulator's DC quality features. In light of the fact that the Regulator's new DC code and guidance (which came into force on 28 July 2016) no longer refer to the DC quality features, the ICAEW and the Regulator have produced an updated version of the relevant framework document. The updates also take into account experiences from applying the framework together with the application of control objectives. The ICAEW is consulting on this updated version. It is proposed that the updated version will be effective for all Type 2 reporting periods commencing after 31 December 2016 (Type 2 reports consider a period of time) and Type 1 reports (which consider the position at a specified point in time) that fall after 31 December 2016.

CASE LAW - SURVIVORS' BENEFITS

In our *Pensions Alert dated 8 October 2015* we reported on the Court of Appeal judgment in the case of *Walker v Innospec and Others*. The Court of Appeal held that the exemption in the Equality Act 2010 which permits occupational pension schemes to limit pensions payable to surviving civil partners and same sex spouses to the member's period of pensionable service on and after 5 December 2005 is not incompatible with the relevant European Directive.

On 13 July 2016 the Supreme Court granted leave to appeal in this case. The hearing is expected to take place on 21 to 22 November 2016.

TPAS ANNUAL REVIEW

On 16 September The Pensions Advisory Service (TPAS) published its Annual Review for 2015-16. Points of note in the review include the following.

- This year TPAS achieved a huge growth in its customer volumes, with a 72% increase in direct customers and a 93% increase to customers who visited its website.
- In relation to dispute resolution, TPAS accepted 2,744 complaints for investigation. The cases that TPAS accepts for investigation are ones where it identifies grounds that require it at least to contact the pension scheme/provider for input.
- Of the 2,744 complaints accepted for investigation: 28% related to delays; 24% related to entitlement (meaning complaints about someone's rights and options whether derived from legislation or the scheme rules or terms); 19% related to mistakes; 11% related to complaints about decisions; 5% related to overpayments; and the remaining 13% were categorised in the report as "other".

OTHER NEWS

TPAS – TRACE A LOST PENSION

On 12 September TPAS added a news item to its website stating that, to help savers locate lost savings, it has developed a new 'trace a lost pension' tool which is available from its website. TPAS explains that this tool helps customers understand whether a pension is likely to be due to them and gives them tips on what they can do to find them. It also explains how TPAS can help.

PENSIONS DASHBOARD

In the Budget 2016 the Government announced that it will ensure the industry designs, funds and launches a pensions dashboard (whereby an individual can view all their retirement savings in one place) by 2019. In September the Treasury announced that it has secured agreement from eleven of the largest pension providers to build a pensions dashboard prototype by March 2017, and that the Association of British Insurers has agreed to manage the pilot project. The Treasury notes that, as well as allowing savers to see all their pension pots in one place and help them to plan for their retirement more effectively, the dashboard aims to provide a link to lost pension pots with previous employers, and could also prompt people to seek advice as to whether their pension savings are in the best place.

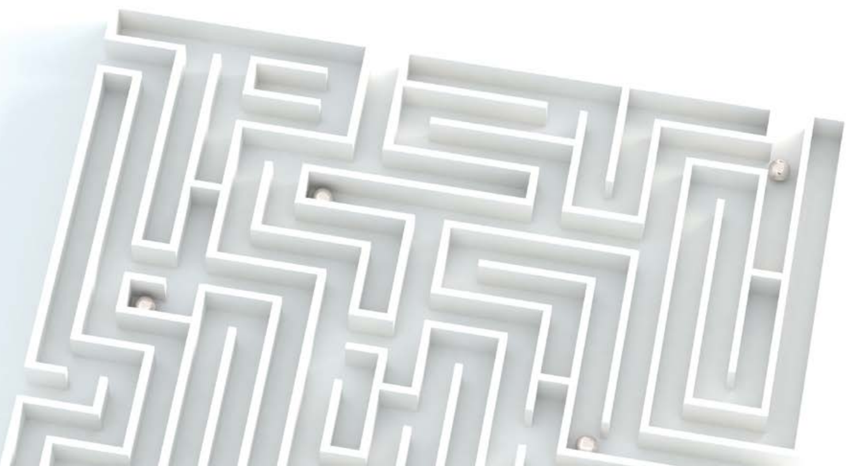
FCA – PENSION WISE

In September the Financial Conduct Authority (FCA) published a consultation on proposed changes to the standards applied to the Pension Wise designated guidance providers in light of the proposals to introduce legislation that will allow the development of a secondary annuities market. The consultation explains that the proposals aim to secure an appropriate degree of consumer protection for individuals and contingent beneficiaries who seek guidance from Pension Wise about whether to sell, or the impact of selling, the income from an annuity.

The FCA states that it is also taking the opportunity to make minor changes to some of the existing standards to reflect how consumers approaching retirement are using Pension Wise and how the service has evolved since it was established. The proposed changes, which will apply to both retirement guidance and guidance about selling an annuity income, include clarifying: (i) that the record of the guidance session need only include 'relevant' information provided by the consumer during the session; and (ii) that a Pension Wise 'session' can cover more than one appointment. The consultation closed on 4 October and the FCA will publish its final standards in a Policy Statement in December.

FCA - GUARANTEED INCOME BENEFITS

In the September edition of its "Regulation round-up" publication, the FCA reported that since the introduction of the DC flexibilities, it has seen an increase in customers with guaranteed income benefits in their pension arrangements giving them up to take alternative benefits. The FCA states that it is concerned that customers may not fully understand the nature and value of the guarantees they are giving up and it has therefore decided to conduct a small piece of work to review how adequate firms' customer communications in non-advised sales propositions and oversight activity are. The FCA will also look into what communications firms have made to customers with guaranteed income benefits ahead of the proposed introduction of the secondary annuities market.



ON THE HORIZON

DATE	DEVELOPMENT
Unknown	A consultation on revised regulations about **equalising GMPs** is expected in this Parliament.
	The reforms in relation to **Defined Ambition, Collective Benefits** and **automatic transfers of small DC pots** will be revisited once the market has had time and space to adjust to the other reforms underway.
2016	A final response is expected from the Board of the UK Statistics Authority in relation to the 2015 consultation on **consumer price statistics.**
	The Regulator intends to review its **guidance on transfers.**
	The Regulator intends to publish **guidance on DB scheme investment strategy.**
	A consultation is expected on extending the ban **on member-borne commission payments** in certain DC qualifying schemes to existing arrangements. The ban already applies to new arrangements entered into on or after 6 April 2016 and existing arrangements that are varied or renewed on or after 6 April 2016.
	A **Pensions Bill** is expected containing provisions in relation to the regulation of master trusts, the cap on early exit charges and restructuring financial guidance.
	In February 2016 it was stated that a new requirement would be introduced in the summer for trust-based schemes to **report regularly on their performance in processing transfers** but no further detail has yet been published in relation to this.
23 November 2016	The Chancellor of the Exchequer will present his Autumn Statement to Parliament.
Late 2016 or early 2017	A consultation is expected in relation to the **PPF levy rules** for the third triennium including any proposed changes to the insolvency risk model.
End of March 2017	The Government will place a duty on the FCA to **cap excessive early exit charges**. The FCA intends to implement its duty by the end of March 2017 and published a consultation on its proposals in May 2016. In parallel, the DWP is consulting on implementing a comparable cap for occupational trust-based schemes.
April 2017	Legislation to enable the development of a **secondary annuity market** is expected to be introduced.
	It is expected that a **pensions advice allowance** will be introduced allowing members to make specified withdrawals from their DC pension pot to redeem against the cost of financial advice.
2017	The measures on **DC charges and governance standards** will be reviewed.
End of 2017	The transitional period in which employers and schemes may continue to use the **VAT** treatment in VAT Notice 700/17 ends on 31 December 2017.
6 April 2018	The **lifetime allowance** is due to be indexed annually in line with CPI.
May 2018	The new EU General **Data Protection** Regulation will apply.
2018	The **IORP II Directive** is awaiting formal approval by the European Parliament and, after that, it will be published in the Official Journal and will officially enter into force. Member States will have 24 months to transpose the Directive into national legislation.
2019	The Government will ensure the industry designs, funds and launches a **pensions dashboard** by 2019. In September 2016 it was announced that eleven of the largest pension providers will build a prototype by March 2017.

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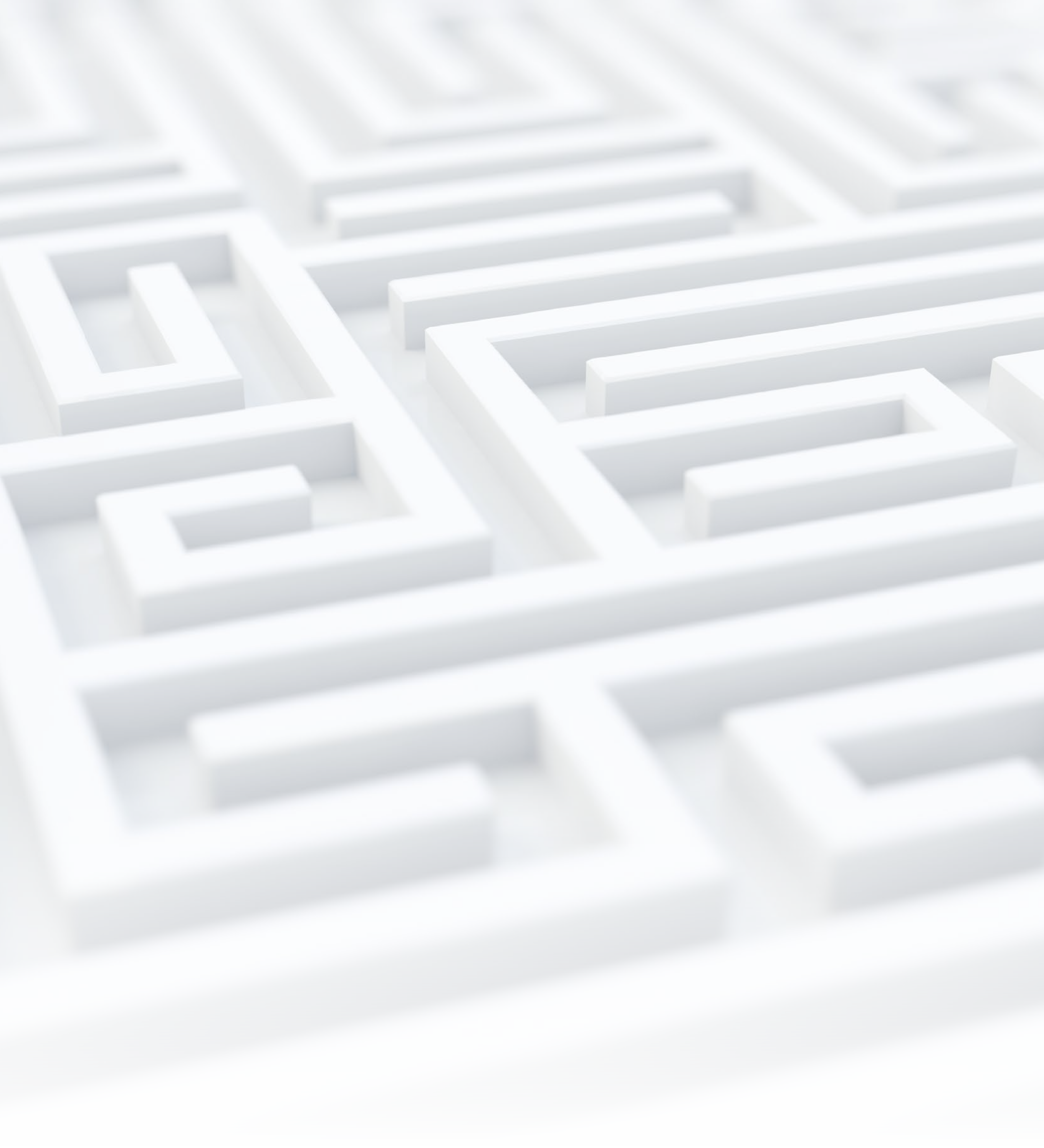

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