

Freedom and Choice



1. DB to DC Transfers

Individuals wishing to transfer 'safeguarded benefits' (broadly speaking, DB benefits) into 'flexible benefits' (broadly speaking, DC or cash balance benefits) now need to take financial advice where the benefits are worth at least £30,000. Trustees need to check that advice has been taken from an FCA authorised adviser. The FCA's rules on the advice requirement are not scheduled to be finalised until June 2015 - so members may encounter problems in obtaining advice in the interim. This is one of several areas where new member advice/guidance requirements have been introduced.

See our Blog on [Advice](#), [Advice](#), [Advice](#)!



2. Flexible access

Trustees wishing to allow members to take advantage of the new DC flexibilities should ensure that their actions are permitted either by overriding legislation or by the pension plan rules. The overriding legislation is narrowly drafted and in many cases a rule amendment will be preferable either using the statutory power for trustees to modify by resolution (with employer consent) or through the pension plan's amendment power.

"The main consideration is whether to offer the flexibilities internally under the trustees' oversight or externally in the 'open market'."



3. Flexibility disclosure requirements

Pension plans that choose to offer DC flexibility are subject to new disclosure requirements to provide members with information about their benefit options and the availability of Pension Wise. The Pensions Regulator's essential guide on this subject also encourages trustees to provide generic risk warnings to members about the main retirement options, whether or not these options are offered by the plan. The Regulator recommends that members are asked to sign a statement confirming whether they have received advice and read the risk warnings. Trustees should review their retirement communications and processes.

See the Regulator's [guide](#).

Tax and National Insurance



4. VAT recovery

HMRC has changed its stance on an employer's ability to deduct VAT paid on fees incurred in connection with the administration of a DB pension plan and the management of plan investments. An employer can now recover VAT incurred in relation to both of these services if it can demonstrate the services are provided to the employer and, in particular, the employer is a party to the contract for those services (most likely a tripartite contract between service provider, employer and trustees) and has paid for them. Sponsors of DB pension plans should consider restructuring service provider contracts now to improve and protect their VAT recovery.

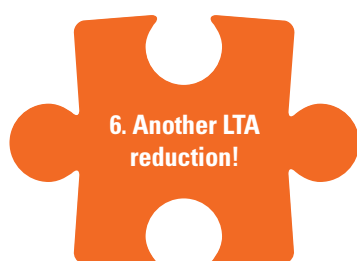
Look out for our VAT publication for more information!



5. Cessation of contracting out

Sponsors of open DB plans who wish to offset the increase in their National Insurance contributions when contracting out is abolished next year can use a statutory power to amend their pension plan rules from 6 April 2016 to increase member contributions or decrease future member benefits (or a combination of both). This is a unilateral employer power, which requires actuarial certification and does not utilise the pension plan's normal amendment process. We recommend that employers seek legal advice on the options open to them and trustees engage with the employer about its plans. Some employers may take the opportunity to engage with the trustees regarding more significant pension plan changes.

"Items 2 and 5 are both examples of amendment being possible under a statutory override."



6. Another LTA reduction!

This year's Budget seemed pretty uneventful in comparison with last year's! However, the proposal to reduce the Lifetime Allowance to £1m from April 2016 has been widely condemned. The LTA is becoming increasingly relevant to middle income workers as well as the high earners it was originally intended to catch. An LTA reduction would presumably result in another system of 'protections' for those members impacted. Meanwhile employers are increasingly looking at unregistered pension plans or excepted life policies to deliver benefits to employees who would otherwise be caught by the LTA.

"All main parties made proposals for cutting pensions tax relief in their election manifestos but there was little indication of longer term plans for pensions."

Compliance



From 6 April 2015, trustees must ensure that the 'default arrangements' of qualifying schemes (for auto-enrolment purposes) satisfy the charge cap requirements. The definition of a 'default arrangement' is complicated and does not purely refer to a fund that contributions are allocated to when members have not made an active DC investment choice. The pensions industry has called for clarity on a number of charge capping issues so that trustees can clearly identify the default funds in their pension plans. Trustees should also note the new governance requirements and in particular the need for the Chairman to sign off an annual governance statement.

See our recent [DC communication](#) and our [Blog on 'Capping and Mapping'](#).



Pension plan trustees must act quickly if they wish to preserve the ability to repay to sponsoring employers any 'surplus' which may arise in the future – by passing a resolution in line with statutory requirements, after giving 3 months' written notice to members and employers. Failure to take this action could lead to surplus monies being trapped in the fund which, in turn, may impact on a company's accounts. Some trustees will already have passed the required resolution. If not, the statutory deadline for doing so is 5 April 2016 which should not be overlooked, particularly given the 3 months' notice requirement.

See our [Blog](#) for more details.



Recent guidance issued to the actuarial profession concludes that pension scheme actuaries are likely to be 'data controllers' for certain purposes. Actuaries are adopting different approaches and some are seeking to amend their terms of appointment. Trustees should seek legal advice on this matter. On a separate issue, the introduction of the 'freedom and choice' reforms may present new opportunities for pension scammers, and there have been press reports of pensions data being sold cheaply to 'cold call' organisations. Trustees are advised to treat data security as a key risk area and to ensure that adequate measures e.g. password protection and encryption are in place.

"Studies show that it would take 106 years to crack a 10 character password that contains a mixture of numbers and upper and lower case letters."



The pensions industry voluntary code of good practice on pension scams has been issued. This code is aimed at trustees, administrators and providers and sets out industry standard due diligence to follow when considering dubious transfer requests. The code encourages trustees to raise member awareness of pension scams, to have robust but proportionate processes in place, and to be aware of the known current strategies of pension scammers. We encourage trustees to seek advice on their legal duties and to ensure that transfer discharge forms offer sufficient protection.

See the [Code of Good Practice](#).

We can offer tailored training and private exam sittings for trustees wishing to sit the PMI Award in Pension Trusteeship. See our [flyer](#) or ask us for further details.

Our [Compensation and Benefits Blog](#) contains regular pensions news. We invite you to take a look and subscribe to receive email alerts.

Further Information

For more information about any of our hot topics please contact any of the lead partners listed or your usual contact in the Squire Patton Boggs pensions team.

Catherine McKenna

T +44 113 284 7045

E catherine.mckenna@squirepb.com

Wendy Hunter

T +44 20 7655 1119

E wendy.hunter@squirepb.com

Charmian Johnson

T +44 161 830 5047

E charmian.johnson@squirepb.com

Anthea Whitton

T +44 113 284 7364

E anthea.whitton@squirepb.com

Matthew Giles

T +44 121 222 3296

E matthew.giles@squirepb.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.