

Background

The Pensions Regulator's revised and updated code of practice on "[Governance and administration of occupational trust-based schemes providing money purchase benefits](#)" came into force on 28 July 2016 and replaces the previous code. The new code sets out the Regulator's expectations of how trustees can meet the legal requirements applying to a money purchase pension plan or money purchase section of a pension plan. The code is accompanied by six separate pieces of [guidance](#) which set out "best practice" requirements in key areas and give more information and examples of how trustees can meet the required standards. A template "[tool to help trustees to assess their scheme](#)" has been issued to help trustees work their way through the new standards.

In summary, the new code and guidance provide a consolidation of existing material, updates to reflect recent legislative developments and clearer statements of the Regulator's views on "best practice".

When viewed online, the code has hyperlinks to the relevant areas of the guidance, which is a much more helpful way of presenting the material, as trustees will generally wish to explore individual topic areas rather than reading all of the 150+ pages from cover to cover.

Post-Consultation Amendments

As a result of the consultation response, the guidance has been amended in a number of areas. For example:

- There is greater recognition of the employer's role in trustee selection and the need for trustees and employers to work together in order to establish a trustee board with a diverse skill set that is best placed to deliver the overall objectives of the pension plan.
- There is more comment on what may constitute a "proportionate" approach to good governance, although we anticipate that the question "how much is enough?" will continue to be a difficult one for trustees to answer.
- There is increased focus on the need to involve legal advisers in investment governance, for example, to review the terms of investment agreements and to assist in the negotiation of investment contracts.



- The section on "security of assets" has been rewritten to emphasise that the protection offered by the Financial Services Compensation Scheme is a "last resort" and can only be established on a case-by-case basis. Establishing the level of asset protection in the event of an adverse occurrence "is not a straightforward task... You may wish to include questions on asset security when tenders for new investments are issued, and seek contractual commitments from the provider to keep that information up to date."

The Regulator has chosen not to provide specific comment on the approaches that should be adopted for money purchase Additional Voluntary Contribution (AVC) arrangements, saying in its response to consultation that the "approach taken should be proportionate to the significance of the value of AVC's relative to the members' overall benefits in the scheme (as opposed to the size of the AVC arrangement relative to the scheme overall)."

Comment

We welcome the Regulator's expanded guidance on assessing "value for members", although devising an approach that is sufficient and meaningful whilst at the same time maintaining a sense of proportion still remains a tough judgement call for trustees. Communicating the outcome of the assessment in the Chair of Trustees' statement (where trustees are required to produce such a statement) may also be a challenge in some cases.

Of further note, the Regulator offers comment on the attributes that make the Chair of Trustees an "effective leader". The role of the Chair has come under increased scrutiny from the Regulator and we can expect this to continue following the recent release of the discussion paper "[Raising the bar – what makes a good 21st century trustee?](#)"

Final Words of Caution

Trustees should understand whether the requirement to produce a Chair's statement applies to their pension plan, as the failure to produce a statement will result in an automatic fine being levied on the trustees by the Regulator. This is not always clear, for example, where a pension plan has a money purchase underpin, the Regulator expects that a statement will be produced if the underpin applies in relation to at least one member. If in doubt, trustees should seek legal advice on whether a statement should be produced.

We have witnessed an unprecedented amount of change in the occupational money purchase landscape since April 2015 and more is expected as developments in charges and transparency emerge. We anticipate that some trustees may require assistance to (a) fully appreciate the difference between legislative requirements and "best practice" and (b) form a view on whether they have adopted a "proportionate" approach. We are happy to advise on these issues or to provide workshops/training sessions to assist.

Next Steps

We recommend that trustees work through the code and guidance, using the "scheme assessment template" as appropriate, focusing first on the areas that they feel present the greatest risk in the context of their pension plan, or areas that have not received sufficient attention in the recent past.

Please contact any member of our Pensions team for further information.

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