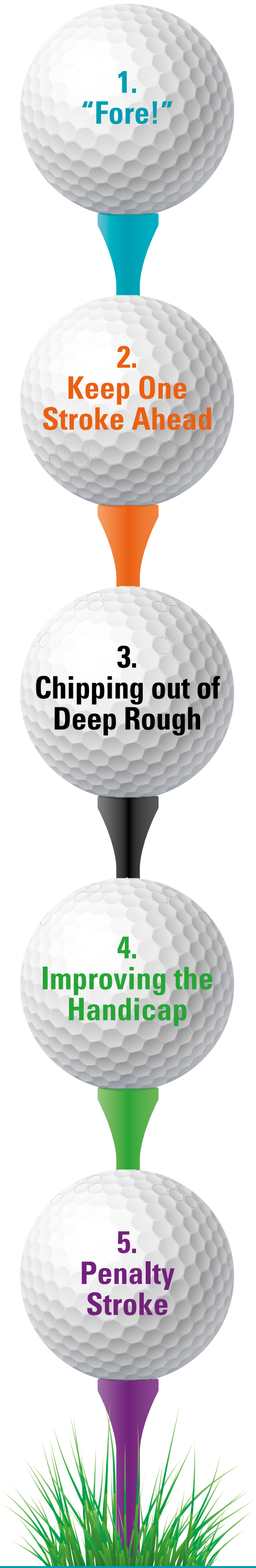
SQUIRE PATTON BOGGS

Hot Topics in Pensions
Autumn 2016

Buoyed by the success of our Olympians in Rio, the UK Pensions team now focuses its attention on the Ryder Cup and the hope of a golfing victory for Europe against the USA.

Will the luck of the Irish be with Rory? Will Justin outplay Dustin? Will the Spaniards castanet over Love's hopes? We hope you enjoy our golf themed Hot Topics.



Teeing off With Europe

"Fore!" – Be Warned of Growing Deficits

Total deficits in defined benefit (DB) pensions are reported to have reached £1 trillion. This is in part due to the reaction of the Bank of England to the Brexit vote. Whilst reducing interest rates in August, the Bank also announced further quantitative easing by way of additional monetary stimulus. This will involve the purchase of £60 billion of UK government bonds, which has already begun and is driving down gilt yields. The unintended victims of this policy are DB pension plans whose liabilities are measured by reference to gilt yields. The result is higher liabilities and increased pension plan deficits.

This places a further unwelcome strain on DB sponsoring employers.

Keep One Stroke Ahead – A Post-Referendum Action Plan

There are numerous actions that trustees should consider in light of the Brexit vote. Trustees are legally required to review their statement of investment principles when there is a material change in economic circumstances, and it would be sensible to classify the Brexit vote as a material change. Trustees could ask for details from their investment managers of how they are reacting to Brexit and discuss the adequacy of their approaches with their investment consultant. Trustees should be particularly aware of any "gating" clauses in investment funds which can be activated by fund managers to suspend redemptions; these clauses exist to protect investors but also impact on liquidity.

See our blogs on investment action and investment gates.

Chipping out of Deep Rough – The Regulator's View on Brexit

The Regulator has issued a statement warning trustees against knee jerk reactions to short term market volatility associated with Brexit. The Regulator urges trustees to be alert to matters that may impact upon their pension plans but remain focused on the long term. DB trustees should, in particular, review their employer covenant, speak to the sponsoring employer about the impact on trading, consider the effect of market volatility on the plan's funding position, and assess whether contingency plans are still appropriate. DC trustees should review the suitability of investments made available to members and particularly the default fund.

Trustees should consider appropriate member communications.

Avoid the Bunkers!

Improving the Handicap – New DC Code and Guidance

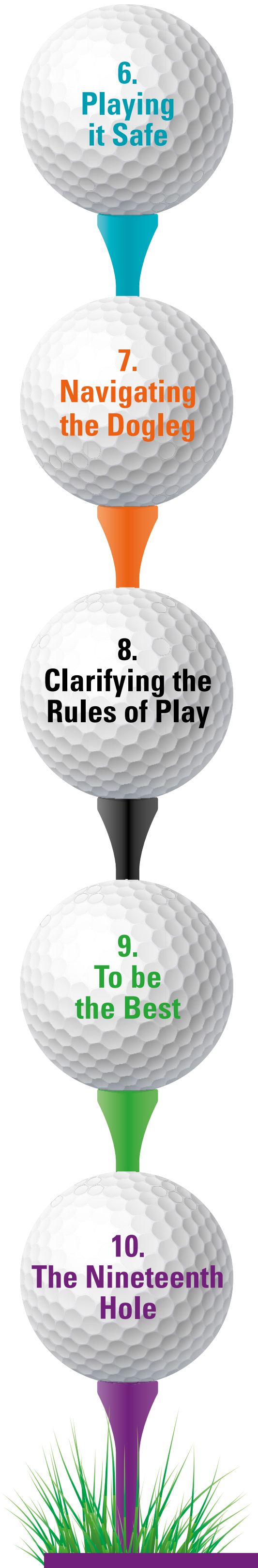
The Pensions Regulator's revised code of practice on the governance and administration of DC trust based pension plans came into force on 28 July 2016 accompanied by guidance setting out "best practice". Trustees still face a difficult decision to determine what constitutes a "proportionate" approach to DC governance (including additional voluntary contribution arrangements). Particular challenges arise in the context of establishing security of assets and whether the pension plan offers "value for money". We recommend that trustees consider the new scheme assessment template and assess the need for further action, concentrating first on areas presenting the greatest risk.

All of the relevant material can be linked from the Regulator's press release.

Penalty Stroke – Fines for Late Chair's Statements

A number of fines have now been issued by the Pensions Regulator to trustees who failed to produce an annual governance statement. These fines act as a salutary reminder of the legal requirement applying to DC pension plans. The governance statement must be prepared within seven months of the scheme year end or a mandatory fine of up to £2,000 will be imposed. It is not always clear when the legal requirement applies – for example, where a DB plan has a money purchase underpin, the Regulator expects that a statement will be produced if the underpin applies in relation to one member.

Trustees should seek legal advice if they are unclear on whether this requirement applies.



Keeping on Par With Tax

Playing it Safe – Excepted Life Policies

There has been a distinct increase in interest from employers in establishing excepted life policies to provide death in service lump sums. Excepted life policies operate under a different tax regime to registered pension plans, and benefits do not count towards the lifetime allowance. Specific criteria must be met, including that one of the main purposes of putting the policy in place is not to avoid tax. However, there is uncertainty about how the main purpose test applies in practice and a current HMRC anti-avoidance consultation proposes increased penalties in this area. Employers should seek legal advice and non-statutory clearance may be necessary.

Employers and trustees should periodically review life cover arrangements and insurance policies.

Navigating the Dogleg – Change or Stability?

How will pensions policy develop with a new Chancellor of the Exchequer and a new economic plan? Will pensions still be seen as a soft target with the favourable tax treatment of pension saving being gradually eroded to boost treasury coffers, or could we see the beginning of a much needed period of stability? And will the triple lock on increases to the state pension, introduced from April 2011 to boost pensioner incomes, last much longer given the demands to downgrade it to a double lock? Will the Lifetime ISA proceed as planned? We await the Autumn Statement with interest and a certain amount of trepidation!

Some providers have commented that the Lifetime ISA legislation will be in place too late for them to have a product ready for April 2017.

Clarifying the Rules of Play – HMRC Updates

In Newsletter 78 HMRC clarifies the circumstances in which a pension plan should provide a member with a pension savings statement for 2016 to 2017 onwards – pension savings statements are unaffected by the introduction of the tapered Annual Allowance (i.e. the £40,000 limit still applies). The online application process is now available for members to apply for Individual Protection 2016 or Fixed Protection 2016. HMRC asks trustees to encourage members who used the interim application process before August 2016 to complete the full online application but there will be no tax consequences for individuals who fail to do so.

"Lifetime allowance look up service" for pensions administrators should be available later this year.

Still a Fairway to go

To be the Best – 21st Century Trusteeship

The Regulator's discussion paper on 21st Century Trusteeship asks how to raise standards of governance and administration in occupational pensions. This could be a catalyst for change in the constitution of future trustee boards. The discussion points include: whether trustees should be required to have qualifications, whether the chair of trustees should meet minimum standards, and whether new trustees should be required to pass all relevant models in the trustee toolkit within six months of appointment. The Regulator is also exploring solutions for pension plans where trustees are unwilling or unable to deliver good governance and good member outcomes.

Our blog on 21st Century Trusteeship contains more comment.

The Nineteenth Hole – Consultation, Consultation, Consultation…

Amongst the many government consultations in progress, trustees should watch out for the outcome of: the British Steel consultation, in which a legislative change to pensions inflation measures was considered; the consultation on capping early exit charges for pension plans providing money purchase and cash balance benefits; and the secondary market for annuities consultations, which potentially affect any pension plan with annuities. We also await the outcome of the UK Statistics Authority's consultation on inflation measures.

Consultation on the Pension Protection Fund's levy rules and estimates for 2017/18 is expected in the autumn.

AWARD
Pension Law Firm of the Year 2016 (Pension & Investment Providers Awards – FT Group)

TRAINING
We can offer tailored training and private exam sittings for trustees wishing to sit the PMI Award in Pension Trusteeship. See our flyer.

BLOG
Our Compensation and Benefits Blog contains regular pensions news. We invite you to take a look and subscribe to receive email alerts.

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