STEPHENSON HARWOOD

pensions law group

CLEAR VIEWS

Quarter three 2023 update

June 2023

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OVERVIEW

Priorities for trustees this quarter are to:

- understand further practical implications of the Lifetime Allowance (**LTA**) changes, in particular in respect of members with enhanced or fixed protection and tax changes on lump sum payments;
- consider the guidance issued by the Pensions Regulator (**Regulator**) on the practical steps trustees should be taking to manage risks when using leveraged liability-driven investments (**LDI**). In particular, LDI arrangements that trustees are investing in should have a market stress buffer of at least 250 bps;
- consider the guidance the Regulator has issued to improve equality, diversity and inclusion (**EDI**) in the appointment of trustees; and
- be aware that the Defined Benefit Funding Code of Practice (**Code**) has been delayed until April 2024.

In addition, trustees should be aware that:

- the Regulator is undertaking a new initiative to check that trustees of defined contribution (**DC**) schemes with assets under management of less than £100m are complying with new value for member regulations that came into force in October 2021; and
- the Regulator is going to check that trustees of schemes with 100 or more members are complying with their reporting obligations around environmental, social and governance (**ESG**) considerations.

KEY DEVELOPMENTS

Development	Date of change	Links to further information
Changes to the Lifetime Allowance We have further clarity on how the changes to the LTA will work in practice: • Accrual for persons with protection – individuals with enhanced or fixed protection in place on 15 March 2023 can recommence pension accrual should they wish without jeopardising their protection; • Continuing need for protections - despite the removal of the LTA tax charge on excess savings over the LTA, enhanced and fixed protections remain valuable because of the access these protections give to increased tax-free lump sums; and • Tax charges on lump sums - testing against the LTA for serious ill-health lump sums or a defined benefit lump sum remains necessary. The value of such	6 April 2023	Further information on this topic can be found in our briefing here.

payments in excess of the LTA will be subject to income tax at the recipient's marginal rate.		
Regulator issues guidance to trustees on steps to take when using leveraged LDI The Regulator has issued guidance on practical steps trustees should be taking to manage risks when using leveraged LDI (that is, LDI that requires collateral to be provided to counterparties as security). The Regulator reminds trustees that the investment of scheme assets remains ultimately the responsibility of the pension scheme trustees. Trustees must ensure they have robust processes in place to ensure their scheme is resilient to market shocks. There are four main areas trustees need to consider: • Investment strategy – trustees should review their investment strategy on a regular basis as well as where there have been significant changes to the scheme's circumstances or market conditions. Trustees should consider the advantages and disadvantages of LDI in the wider context of the scheme. Whilst LDI is useful for managing volatile funding deficits, trustees must be aware that it will require the scheme to maintain a certain level of liquidity to meet collateral calls. • Collateral resilience – trustees should ensure that any LDI arrangements they are invested in are resilient to short-term adverse market changes. The Regulator notes that in addition to the operational buffer operated by the LDI fund, an LDI arrangement should also have a market stress buffer of at least 250 bps. • Governance – trustees need to understand the role and responsibilities of their advisers in respect of LDI and ensure that the level of delegation and monitoring is appropriate and set out clearly in service contracts. • Monitoring – trustees should also ensure processes are in place for monitoring the resilience of the LDI arrangement.	Now	The Regulator's guidance is available here. Further information can be found in our May snapshot here.
The Regulator issues guidance on improving equality, diversity and inclusion amongst trustees The Regulator has issued guidance to trustees and employers to improve EDI in the appointment of trustees. Many schemes may be reviewing their policies and appointment processes as part of their general code of practice compliance review. It may therefore be the optimum time to consider EDI and ensure that any policies	Now	The guidance for trustees is available here. The guidance for employers is available here.

are updated to take into account the Regulator's expectations in this area.		Further information can be found in our May snapshot here.
Delay to Defined Benefit Funding Code of Practice At the time that the Regulator published the Code, it was intended that it would be in force by October 2023. However, in its Corporate Plan for 2023 – 2024, the Regulator has noted that the Code will now be delayed until April 2024. The industry considered that the initial timeframe for the Code was ambitious. Against a backdrop of discussions over the role that the Regulator should take regarding the supervision and regulation of pensions schemes and their use of LDI, it is perhaps not surprising that this has been pushed back.	April 2024	The Regulator's corporate plan 2023-2024 can be found here. Further detail on the Code can be found in our briefing here. Further information can be found in our May snapshot here.
The Regulator undertakes new initiative to check members are getting value from their pensions The Regulator has stated that under this initiative it will be checking that trustees of DC schemes with assets under management of less than £100m are complying with new value for member regulations that came into force in October 2021.	Now	The initiative can be found here. Further information can be found in our May snapshot here.
Why trustees must be ready to step up on ESG and climate reporting A blog has been published by the Regulator emphasising the importance of trustees complying with their ESG and climate reporting duties in 2023. The Regulator will check that trustees of schemes with 100 or more members have published a statement of investment principles (**SIP**), which details the policies for how a scheme invests, including consideration of financially material ESG factors. These trustees must also publish an	Now	The blog is available here. Further information can be found in our May snapshot here.

implementation statement which shows how the principles in the SIP have been implemented.		

The Stephenson Harwood pensions law group has been promoted to tier 1 and tier 2 by the Legal 500 for pensions disputes and pensions advisory work. Please see the Legal 500 website here for more information.

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