Consultation response

Improving outcomes for members of defined contribution pensions schemes

30 October 2020

Introduction

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We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Pensions Law Sub-committee welcomes the opportunity to respond to the UK Government’s consultation on *Improving outcomes for members of defined contribution pensions schemes*.[[1]](#footnote-2) We have the following comments to put forward for consideration.

Response to questions

**Q1: We would welcome your views on the reporting of net returns – how many past years of net returns figures should be taken into consideration and reported on to give an effective indication of past fund performance?**

We consider that five years would offer appropriate benchmark. A shorter period could be insufficient to understand market volatility. Where the relevant funds have been in place for less than five years, consideration should be given to the returns to be reported: evolution of default funds, for example, may necessitate some manipulation of return information to provide a meaningful comparison against the chosen benchmark. The choice of the five-year period could be mandated (eg tax years) to provide consistency between schemes’ reporting information, allowing for easier comparison.

**Q2: Do you think that the amending regulations achieve the policy aims of encouraging smaller schemes to consolidate into larger schemes when they do not present optimal value for members?**

Forcing trustees to carry out a more detailed Value For Members test, assessed against clear criteria and published in the chair’s statement and online will help focus trustees’ minds on whether consolidation would lead to better member outcomes. This should help move assessment of DC sections up the trustee agenda, although it should be noted that these agendas are becoming increasingly crowded for small schemes with lower governance budgets and lack of access to proportionate cost-effective advice. The process of winding up a DC section is not always straight forward, can require a significant amount of time and advice (and therefore cost), which is not always readily available for smaller schemes. This should be reflected in how these regulations are policed in the case of trustees who are taking positive steps to address sub-optimal DC arrangements, even if it takes longer to complete the exercise. The success of this policy aim will also rely heavily on their being sufficient appetite among Mastertrusts to take on very small (by number of members) DC arrangements in a cost-effective way.

The proposed threshold of £100m should apply to the DC assets alone, rather than overall scheme assets as many schemes provide both DB and DC arrangements within the same trust. An “overall” threshold would potentially miss a number of small DC sections which could be providing poor value for members.

**Q3: Do you believe that the statutory guidance increases clarity about the minimum expectations on assessing and reporting on value for members for specified schemes? Are there any areas where further clarity might be required?**

The draft guidance is quite comprehensive and provides much needed clarity over minimum expectations. However, it would be helpful to state explicitly that where the scheme in question is hybrid, and in particular where DC benefits are being provided under the same trust as DB benefits, that the assessment considers specifically the management of DC benefits in isolation especially with regards to metric V.

**Q4: Do the draft regulations achieve the policy intent of providing an easement from the prorating requirement for performance fees which are calculated each time the value of the asset is calculated?**

No comment.

**Q5: What should we consider to ensure a multi-year approach to calculating performance fees works in practice?**

No comment.

**Q6: We are proposing a five-year rolling period. Is this appropriate or would another duration be more helpful?**

No comment.

**Q7: We are proposing offering a multi-year option as an alternative to an in-year option for schemes. Do you have any suggestions for how to improve this offer?**

No comment.

**Q8: To what extent will providing a multi-year smoothing option give DC trustees more confidence to invest in less liquid assets such as venture capital?**

No comment.

**Q9: Do the draft regulations achieve the policy intent? Do you have any comment on the definitions used?**

No comment.

**Q10: Do you believe that the updated statutory guidance increases clarity about the minimum expectations on both the production and publication of costs and charges information? Are there any areas where further clarity might be required?**

No comment.

**Q11: We propose that where the default arrangement includes a promise, the trustees of the scheme should be required to produce a default SIP.**

**We propose that this should be produced within 3 months of the end of the first scheme year to end after the coming into force date.**

**(a) Do you agree with this policy?**

Yes. However, consideration should be given as to exactly which types of scheme will fall within the scope for this policy – for example, where a defined benefit scheme has a defined contribution underpin that is not expected to bite, would this fall into scope?

**(b) Do you agree that the legislation achieves the policy?**

No comment.

**Q12: We are proposing that, for relevant schemes, charges and transaction costs should be disclosed for any fund which members are (or were) able to select and in which assets relating to members are invested during the scheme year.**

1. **Do you agree with this policy?**

Yes, it is best practice that all charges and costs are disclosed for funds that were utilised by members within the year. **(b) Do you agree that the legislation achieves the policy?**

It could be interpreted that only funds that were available for selection within the year in question, perhaps include “ever” after were.

**Q13: Do you agree with this proposed change? Do you have any other comments on this topic?**

Yes. It appears reasonable that wholly-insured schemes should be exempted.

**For further information, please contact:**

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1. <https://www.gov.uk/government/consultations/improving-outcomes-for-members-of-defined-contribution-pension-schemes> [↑](#footnote-ref-2)