

UK PENSIONS – TIME FOR A COMPLIANCE HEALTH CHECK?

There has been a swathe of new legislation and regulatory developments impacting defined benefit pension schemes in the UK over the last few years.

And with further changes in the pipeline, employers need to ensure that their pension scheme's compliance is factored into their wider compliance and financial strategy. Now is also an ideal time for trustees to take stock and check if their pension scheme is **compliance-ready**.



EMPLOYER FOCUS



Focus area	Suggested action
<p>Pro-active management of pension liabilities and risks</p> <p>Pension scheme deficits are a key financial risk for employers. However, proactive management offers the opportunity to make an immediate improvement to an employer's P&L.</p>	<p>Consider:</p> <ul style="list-style-type: none"> - Streamlining arrangements (e.g. scheme mergers, asset pooling) - Liability management (e.g. pension increase exchanges/enhanced transfer values) - Contingent assets (e.g. asset-backed funding, guarantees, escrow/charged accounts) - RPI to CPI inflation switches <p>Horizon scan – development of commercial consolidator vehicles may offer further opportunities for employers to manage liabilities.</p>
<p>A tougher Pensions Regulator</p> <p>In the wake of recent high profile corporate collapses such as <i>Carillion</i>, the Pensions Regulator is now being "clearer, quicker and tougher" with employers.</p>	<ul style="list-style-type: none"> - Be prepared for more proactive Regulator involvement - Be prepared for robust negotiation from the Regulator and trustees (e.g. as part of scheme funding negotiations, M&A activity and, potentially, on payment of dividends) - Ensure pensions issues are considered at an early stage in any transactional activity where a DB scheme is involved <p>Horizon scan – further changes to the Regulator's powers are contained in the Pension Schemes Bill, including the introduction of criminal sanctions for directors who avoid their pension obligations, the introduction of significant fines, increased regulatory oversight of corporate transactions and enhanced investigatory powers for the Regulator.</p>
<p>Growing scrutiny of executive pension arrangements</p> <p>Executive pension arrangements are coming under increasing scrutiny by investors and regulators. Separately, tax changes mean that tax efficient management of executive pension arrangements is becoming more complex.</p>	<ul style="list-style-type: none"> - Companies should review executive pension arrangements to check that they are in line with new corporate governance requirements - Check tax efficiency of executive pension arrangements
<p>Is there miscategorisation of the workforce?</p> <p>Recent case law has required some employers to reassess how they are categorising their workforce, in particular whether individuals who have previously been treated as self-employed qualify as workers.</p>	<ul style="list-style-type: none"> - Where miscategorisation has occurred, employers will need to assess whether any breach of the UK auto-enrolment regime has taken place and take corrective steps where necessary
<p>Corporate governance compliance – schemes as a stakeholder</p> <p>New reporting requirements are being introduced as part of current corporate governance reforms. These are intended to increase engagement with key stakeholders, which is likely to include trustees of DB pension schemes.</p>	<ul style="list-style-type: none"> - Consider pension scheme trustees when reporting on key stakeholder relationships - Consider establishment of company governance committees to oversee global pension arrangements

TRUSTEE FOCUS



Focus area	Suggested action
<p>Increased focus on trustee governance</p> <p>The Regulator's focus on driving up governance standards is set to continue. Although most appropriately governed schemes should be well placed to continue to meet new regulatory expectations, there are still likely to be some areas which trustees will need to focus on.</p>	<ul style="list-style-type: none"> - Check compliance with minimum standards for trustees set out in the Regulator's 21st century trusteeship campaign - If appropriate, consider measures to increase diversity on trustee board (this is likely to be a key priority for the Regulator) - Check scheme documentation is up to date and fit for purpose - Consider whether an external board effectiveness review could be helpful - Ensure trustee training in place and adequately supported - Review and audit professional advisers' contracts and appointments <p>Horizon scan - Regulatory Codes of Practice to be revised and consolidated to address governance changes, with kick-off consultation expected in early 2020.</p>
<p>Are you discharging your compliance burden?</p> <p>The trend of increasing legal and regulatory burdens on trustees is set to continue, with a number of new legal requirements on trustees coming into force in 2019 and beyond. These include new mandatory tendering requirements when appointing fiduciary managers if certain thresholds are met, new requirements on trustees to set strategic objectives for investment consultants as well as new requirements on trustees to adopt and disclose policies on ESG investment and stewardship.</p>	<ul style="list-style-type: none"> - Talk to advisers to ensure compliance as new requirements come into force - e.g. content of SIP, policies and reports in areas of ESG/ stewardship and investment objectives <p>Horizon scan - The Pension Schemes Bill includes significant potential changes for trustees to implement, notably in the area of funding and investment strategy. Further regulations and consultation on a new DB Funding Code are awaited and expected in early 2020.</p>
<p>GDPR - Data protection challenges</p> <p>Breach of data protection rules remains a key risk area for trustees and pension schemes continue to be a target for cyber attacks.</p>	<ul style="list-style-type: none"> - Keep GDPR policies under review, including those focusing on cyber security systems and standards
<p>Innovation opportunities</p> <p>Advances in technology offerings may give trustees a number of opportunities to improve communication and engagement with members. Technology developments could also improve administrative efficiency within pension schemes.</p>	<ul style="list-style-type: none"> - Consider opportunities for using new technology to drive member engagement - e.g. phone-based apps - Check systems in place and investment levels in new technology where administration services being commissioned - Consider risks/opportunities related to updating in-house legacy administration systems
<p>New risk areas for potential member claims against trustees</p> <p>As the pensions landscape evolves, new potential risk areas are developing. Trustees need to proactively monitor and manage high risk areas such as DB to DC transfers and benefit adjustments.</p>	<ul style="list-style-type: none"> - Monitor emerging pension scam structures and implement measures to combat them in line with guidance - For DB to DC transfers, review/consider, potentially in conjunction with employer, support provided to members with their retirement choices to ensure risk of member complaints is minimised. Ensure level of support does not cross the line and become financial advice - Prepare for increased instances of overpayments and underpayments as a result of projects such as GMP equalisation and reconciliation <p>Horizon scan - Changes to transfer legislation now put forward in Pension Schemes Bill to assist trustees to combat scams.</p>

JOINT EMPLOYER AND TRUSTEE FOCUS



Focus area	Suggested action
<p>A new DB funding regime in 2020</p> <p>The Regulator will be issuing a new DB Funding Code in 2020 following consultation. The Regulator's 2019 Funding Statement made clear that trustees and employers will be expected to set long-term funding objectives and this is reflected in the Pension Schemes Bill.</p>	<ul style="list-style-type: none">- Start thinking about what a long term objective might look like in the context of your particular scheme- Review new funding requirements proposed in the Pension Schemes Bill with advisers and await further details of the new funding regime
<p>Active management of the trustee/employer relationship</p> <p>In the current economic and political climate, the value of a good relationship between trustees and scheme sponsors has never been more important. Employers will want to understand and support the needs of the trustee board.</p>	<ul style="list-style-type: none">- Implement appropriate information sharing protocols between employer and trustee- Where appropriate, consider introduction of dividend protocol- Ensure suitable trustee board make up, including consideration of a professional trustee appointment - consistent with Regulator's 21st Century Trustee guidance and governance expectations- Where appropriate consider trustee indemnity and insurance protection (including provisions in articles of association)- Review trustee remuneration policies
<p>How do we solve a problem like GMP equalisation?</p> <p>Following decades of uncertainty, the High Court has ruled in the <i>Lloyds</i> case that pension scheme benefits must be equalised as between men and women for the effect of guaranteed minimum pensions (GMPs). It has been estimated that this will cost the pensions industry c.£8bn, with the average cost being 0.7% of scheme liabilities for most schemes.</p>	<ul style="list-style-type: none">- Decide how to equalise GMP benefits at appropriate time and undertake preparatory steps such as data gathering and reconciliation <p>Horizon scan - Further Court hearing in 2020 and guidance anticipated.</p>



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Chambers UK, Pensions 2020

“...A very strong team with excellent communication skills.”

Legal 500 UK, Pensions 2020

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