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Current issues

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Articles this month:

New investment rules for DB & DC schemes

Trustees of private-sector occupational pension schemes will need to comply with new shareholder-engagement obligations, beginning in October 2020.[1] They will have to update their statements of investment principles (SIPs) to incorporate information about asset-management agreements and engagement policies. Trustees of defined benefit schemes will join those that provide money purchase benefits by having to publish their SIPs online. Trustees of both types of scheme will have to make statements, annually, about their adherence to the engagement policies, giving details of voting behaviour, and make that material openly available.

Background

The Department for Work and Pensions (DWP) has introduced new Amendment Regulations to comply with the re-cast EU Shareholder Rights Directive (known as 'SRD II').[2] As a result of the extension of the 'Article 50' period for the UK's withdrawal from the EU, the UK was obliged to transpose SRD II into its domestic legislation by the 10 June 2019 deadline. The DWP did not consult publicly on the necessary amendments, but it did seek input from some industry representatives.[3] The changes will not affect public service pension schemes or those with fewer than 100 members.

Earlier legislation already requires that trustees set out their engagement policies within their SIPs, with effect from 1 October 2019.[4] Schemes that provide money purchase benefits will, with some exceptions[5], be required to make those SIPs freely available, online, from the same date; they must then make annual statements about their practical implementation of the SIP, and publish them online, from 1 October 2020.

Changes to statements of investment principles

Trustees will have to revise their SIPs, on a 'comply or explain' basis, to include the following information about their policies on arrangements with asset managers:

- how they incentivize the manager to align its investment strategy with their own;
- how they incentivize the manager to assess investee companies' medium-to-long-term financial and non-financial performance, and engage accordingly;

[1] The *Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019* (SI 2019 No. 982) <www.legislation.gov.uk/uksi/2019/982/made>.
[2] Directive 2007/36/EC, as amended by Directive (EU) 2017/828.
[3] See the Explanatory Memorandum to the Regulations <www.legislation.gov.uk/uksi/2019/982/pdfs/uksiem_20190982_en.pdf>. An Impact Assessment is also available <www.legislation.gov.uk/ukia/2019/130/pdfs/ukia_20190130_en.pdf>.
[4] The *Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018* (SI 2018 No. 988).
[5] Notably, public-sector schemes and those that derive their only money purchase benefits from additional voluntary contributions.

- how the method and time horizon for evaluating the manager's performance, and the basis of its remuneration, are aligned with the trustees' other investment policies;
- how turnover within the investment portfolio, and the associate costs, are defined and monitored; and
- the duration of the arrangement.

Trustees will also have to update their SIPs to explain their policies on how they monitor and engage with organizations (such as the companies in which they invest, investment managers, and other stakeholders) about investee companies' capital structure, and how they manage of conflicts of interest.

These policies must be prepared by 1 October 2020.

Changes to disclosure requirements

The new policies from the SIPs must be included in trustees' annual reports. The annual report will also have to contain a statement about how the trustees implemented their shareholder engagement policies during the year. This implementation statement will need to describe the trustees' voting behaviour (or that of those voting on their behalf) over the same period. These requirements will apply from 1 October 2020.

Some information will have to be made freely available, online. The trustees of a DB scheme will have to publish their SIP online from 1 October 2020, but they will not have to publish their first implementation statement on the Web until 1 October 2021. For money purchase benefits, online publication of the first year's information about capital structure and management of conflicts, and the statement about voting behaviour, will also be postponed until 1 October 2021.

These additional changes in regulation will bring the disclosure requirements for DB schemes in line with those that were already in place for money purchase benefits, whilst expanding the scope of the information that must be published. The prospect of public scrutiny of policies and implementation activities challenges decision makers to approach responsible investment as more than just a tick-box activity. When considered in conjunction with proposed changes to the UK Stewardship Code, which is likely to define standards of best practice, it pushes pension scheme trustees at all levels to improve their responsible investment behaviours.

CMA order changes to investment consultancy & fiduciary management

The Competition and Markets Authority (CMA) has finalized an Order that gives legal effect to its remedies for problems that it found in the market for investment consultancy and fiduciary management services.[6] The changes include restrictions on marketing by firms that offer both services, mandatory competitive tendering for fiduciary management, new rules on disclosure of information about fees and past performance, and a requirement for trustees to set strategic objectives for their investment consultants.

Background

In 2017, the Financial Conduct Authority (FCA) initiated an investigation by the CMA of the markets for the investment consultancy (IC) and fiduciary management (FM) services supplied to institutional investors such as pension scheme trustees. The CMA determined that there were features of those markets that had adverse effects on competition, and which it should try to alleviate.

Adverse effects on competition

In the case of IC services, the CMA concluded that some trustee boards have low levels of engagement, and that they have insufficient information with which to assess their chosen consultant and the value that it provides in comparison with its competitors. It found evidence of similar ills in the FM market; however, it was particularly concerned about the position of firms that offer both IC and FM services. Such 'IC-FM' firms are, it said, able to

[6] The *Investment Consultancy and Fiduciary Management Market Investigation Order 2019* <assets.publishing.service.gov.uk/media/5cfdfa86e5274a090f9eef8e/Order_investment_consultants.pdf>.

influence their IC customers to appoint them as fiduciary managers, and that once trustees have a fiduciary manager there are factors that deter its replacement.

Remedies

The CMA's Order gives legal effect to several remedies for the adverse effects on competition that it identified. Some parts come into force on 10 June 2019, when the Order was made, and others six months later; additional transitional arrangements apply in some cases. What follows is a summary of the main provisions.

Scope

Whilst the draft Order that was published in February 2019 excluded all public service pension schemes from its reach, the final Order appears to apply to Local Government Pension Scheme (LGPS) funds. Exceptions are made for 'in-house' investment advisory or FM functions.

Competitive tendering for FM

Trustees will be prevented from obtaining, or continuing to receive, FM services unless they have gone through a competitive tendering process. More specifically, the prohibition will apply when the proportion of the scheme's assets that are covered by an FM mandate (or mandates) reaches twenty per cent of the total value of the assets amenable to FM. The trustees will have to invite at least three fiduciary managers to bid for the work. These requirements will come into effect on 10 December 2019. In cases in which the twenty-per-cent threshold had already been exceeded, without competitive tendering, by 10 June 2019, the trustees will have to put the service(s) out to tender within five years of the original FM agreement, although an additional 'grace period' will mean that no trustees in this position are required to conduct a tendering exercise before 11 June 2021. Fiduciary managers will be under a corresponding obligation (also from 10 December 2019) to refrain from providing their services unless the trustees have confirmed in writing that the FM was selected through a compliant tendering process or that no tender was required.

Separation & identification of FM advertisements

Providers of IC-FM services will, from 10 December 2019, be prohibited from mixing advice and FM marketing within the same document. All FM marketing by IC-FM firms will have to be prominently labelled as such and display standard wording about the nature of the material and the competitive-tendering requirements.

FM fee information requirements

Fiduciary managers will have to comply with new rules on fee disclosure to existing and prospective clients. Existing clients will have to be given regular (at least annual), itemized fee statements. During tender processes, potential clients will have to be given a breakdown of the likely costs and charges. These requirements are effective from 10 December 2019.

Past performance of FM services

The FM industry (working with representatives of pension schemes) is required to come up with a standardized method and template for providing details of past performance of FM services to prospective clients. The standard must be submitted to the CMA for approval, and be in place by 10 December 2019. If the FM industry fails in this task the CMA will appoint an independent person to provide the necessary impetus.

Objectives for investment consultants

Trustees will be prevented from obtaining or continuing to receive IC services unless they have set strategic objectives for their consultants.[7] This applies from 10 December 2019.

[7] Note that, under section 36(3) of the *Pensions Act 1995*, trustees cannot invest without obtaining and considering investment advice. Compliance with the CMA Order will therefore be imperative.

Past performance of recommendations

Both investment consultants and fiduciary managers will have to meet minimum standards when providing information to prospective clients about the past performance of their recommended asset managers, in-house funds, and financial instruments. For example, comparisons must be meaningful and fairly presented; data sources and the key facts and assumptions must be disclosed; the performance indication cannot be made too prominent; and there must be a conspicuous warning that past performance is not a reliable indicator of future results. The requirements will come into force on 10 December 2019.

Compliance reporting

Trustees and service providers will have to submit annual compliance statements in respect of the foregoing obligations. The deadline for the first compliance statements will fall a year and four weeks after the relevant obligation comes into force (the additional four weeks is designed to allow time for preparation of the statement following the end of the one-year reporting period). They will be expected to notify the CMA about any compliance failures on their own part, within fourteen days of becoming aware of them, describing the actions taken to deal with the omissions.

The future: legislation & guidance

The Order will remain in force until equivalent provisions are made by the responsible organizations. The Department for Work and Pensions (DWP) will pass the legislation necessary for the Pensions Regulator to oversee the new duties on trustees.[8] This is expected to have effect in 2020, following a consultation exercise later this year.

The Pensions Regulator has agreed to produce guidance to help trustees run competitive tendering processes for FM services, as well as broader advice about effective engagement with investment consultants and fiduciary managers. It expects to begin the process of consultation on the guidance during the summary of 2019.

The CMA also recommended that the remit of the Financial Conduct Authority (FCA) be extended to encompass the services provided by investment consultants. Her Majesty's Treasury has said that it will consider the recommendation and consult '*in due course*' (but observes that there are competing priorities for both the Government and the financial services sector—surely referring to Brexit concerns).

The CMA has set clear standards for the investment consultancy industry. We already help clients to set strategic objectives and are happy to be measured against them. It should be standard practice.

The relevance of the FM provisions to LGPS pooling arrangements is unclear at present. It may depend on the details of the arrangements, such as the legal structure of individual pooling vehicles and their relationships to administering authorities.

[8] *Correspondence: Investment consultants market investigation* <www.gov.uk/government/publications/investment-consultants-market-investigation-response/investment-consultants-market-investigation>.

Public pensions progress précis

This article summarizes consultation proposals affecting public service pension schemes and employers. They include suggested changes to the Local Government Pension Scheme (LGPS) valuation cycle and the payments falling due when employers exit that Scheme, and plans to cap public sector severance packages.

LGPS: valuation-cycle change & management of employer risk

The Ministry of Housing, Communities & Local Government (MHCLG) is seeking views on proposed amendments to the rules of the LGPS in England and Wales.[9]

Valuation cycle

It suggests that administering authorities (AAs) be required to obtain actuarial valuations of their funds every four years, rather than every three years. The aim is to align the valuation cycle at the local level with that of the national-level valuations conducted on behalf the MHCLG, which recently moved to a quadrennial pattern (matching that of the other public service schemes). The current round of valuations as at 31 March 2019 would proceed as usual. The transition to the new local valuation cycle would be accomplished by having valuations as at 31 March 2022, as per the existing arrangements, and then another round of valuations as at 31 March 2024 (i.e. a year earlier than would otherwise have been the case); from then on, valuations would be undertaken every four years.

The Government proposes to allow AAs to conduct interim valuations. This power would not be unfettered, however: it would be possible to undertake an interim valuation only for reasons set out in the authority's funding strategy statement or, exceptionally, with the permission of the MHCLG (which would also have power to *impose* an interim valuation on authority in some circumstances). The authority would also have to seek the views of its actuary and local pension board.

The MHCLG suggests that AAs could be allowed to make interim adjustments to employer contribution rates, outside of the new four-year cycle. The change would have to be justified by changes in the deficit recovery period or funding target level (or both) for an employer or employer group, and necessary to protect other employers or the solvency of the fund. It would be possible to reduce an employer's contribution rate in return for a deficit-reduction payment, or in response to a significant change in the composition of its workforce. Employers would be able to request (and pay for) a review of their contribution rates. This proposal is expected to be of most relevance to admission bodies; the AA would be expected to express its policy on the matter in its funding strategy statement.

The LGPS Scheme Advisory Board would be expected to provide guidance to AAs about their policies on interim valuations and contribution reviews.

Exit payments & credits

The MHCLG proposes to allow any 'exit payments' that fall due from exiting employers to be paid in instalments where it is in the interests of the administering authority and the remaining employers.[10] Exit payments are the LGPS equivalent of 'section 75' employer debts in the private sector, arising when there is a funding shortfall in respect of the employer's past and present employees at the time of its exit.

More radically, an exiting employer could be allowed to defer any immediate exit payment provided that its covenant is sufficiently strong. It would become a 'deferred employer', and would be required to continue to meet its share of the fund's ongoing funding and administration costs. As with the analogous 'deferred debt arrangements' in the private sector, the deferral agreement would terminate on the occurrence of certain 'relevant

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[9] *Local government pension scheme: changes to the local valuation cycle and management of employer risk* <www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk>.

[10] We note that the ability to allow payment '*over such period of time as the administering authority considers reasonable*' is already part of the definition of '*exit payment*'. See regulation 64(8) of the *Local Government Pension Scheme Regulations 2013* (SI 2013 No. 2356).

events', including insolvency proceedings involving the employer, or when the AA concludes that the employer has failed to comply with its obligations.

Administering authorities will be expected to declare their policies on deferred employers in their funding strategy statements, following consultation with employers and their local pension boards. The Government and the Scheme Advisory Board are expected to provide guidance.

Since 14 May 2018, exiting employers have been entitled to an 'exit credit' if an actuarial valuation discloses a funding surplus in respect of the employer's past and present employees. Concerns have arisen about how the exit credit provision might operate in conjunction with 'pass through' agreements between third-party service providers and AAs. The Government proposes that when such an agreement is in place, limiting a contractor's exposure to pension risk, it will be taken into account in the calculation of the exit credit (so that, if the service provider bore none of the risks or costs of membership during the lifetime of the contract, it would not be entitled to an exit credit at its conclusion). The change would be retrospective to 14 May 2018.

FE, HE & sixth-form college corporations

The MHCLG proposes to remove the requirement for further education corporations, sixth form college corporations and higher education corporations in England and Wales to offer membership of the LGPS to their non-teaching staff. Those already employed by such corporations and entitled to LGPS membership would retain that right for so long as they remain continuously employed by the corporation or its successor. The Welsh Government does not intend to apply this change to FE and HE corporations in Wales, so they will continue to be required to offer LGPS membership to non-teaching staff.

Consultation arrangements

Responses to the MHCLG's proposals should be submitted by 31 July 2019.

The proposed changes are, generally, reasonable. Stretching the LGPS's valuation cycle to match that of other public service schemes feels a little bit like the tail is wagging the dog. There are good reasons why a funded scheme should have a shorter valuation cycle than an unfunded one: it allows better management of risks related to market volatility or changes in employer circumstances. The ability to have interim valuations in a broader range of circumstances than at present will help with this risk management.

Restricting exit payments

The Government has dusted off old plans to impose a £95,000 cap on exit payments made in connection with termination of public-sector employment.[11][12] Most of the possible components of severance packages, including any additional employer contribution required to cover the cost of early retirement with an unreduced pension, will be included within the cap.

Recap

The legal basis for the restrictions on public sector exit payments is to be found in the *Small Business, Enterprise and Employment Act 2015*, as amended by the *Enterprise Act 2016*. The Government published 'indicative' draft implementing Regulations in November 2015, and re-published them with minor revisions in March 2016, but they were quietly shelved.[13]

[11] *Restricting exit payments in the public sector* <www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>.
[12] Other than the regrettable duplication of terminology, there is no connection to the sorts of exit payments that may fall due from employers leaving the LGPS, as discussed earlier in this article.
[13] *Consultation on a Public Sector Exit Payment Cap* <www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap>.

The 2016 Act also contains amendments to the LGPS legislation for England and Wales that have not yet been brought into force. They would permit partial reduction of scheme benefits to keep exit payments within the cap, and allow scheme members to pay the extra costs of unreduced early retirement from their own resources.

Re-hash

The consultation papers now released by the Government include draft implementing Regulations. They appear significantly different from the 'indicative' drafts published in 2015 and 2016. The underlying policy remains the same, but there have been some changes, such as the exemption of contractual payments in lieu of notice that do not exceed one-quarter of the person's salary (as well as any death-in-service benefit—which, admittedly, is the ultimate exit payment). The consultation package also includes draft guidance, and mandatory directions from Her Majesty's Treasury about the circumstances in which the exit payment cap is to be relaxed.

The draft Regulations would apply mainly to public sector employments in England and Wales. However, the Scottish Government has said that it will introduce a cap on exit payments via an administrative (non-legislative) approach.[14]

Responses to HM Treasury's proposals should be submitted by 3 July 2019.

We remain concerned by the proposal to include the additional costs associated with unreduced early retirement. In the LGPS, for example, early retirement is compulsory in cases in which the employment of a person aged 55 or over is terminated on grounds of redundancy or business efficiency, and the £95k cap will affect lower-paid staff simply by virtue of length of service (whilst leaving higher-paid individuals with less service relatively unscathed).

Pensions Regulator's 2019-22 Corporate Plan

The Pensions Regulator has published its Corporate Plan for the three years to 2022.[15] It comes at a time when the Regulator continues to change the way that it works including the development of a '*clearer, quicker and tougher*' intervention regime.

Pensions and risk landscape

The Regulator has identified the core risks that could threaten achievement of its desired regulatory outcomes. These risks include defined benefit (DB) schemes not being funded to a level to ensure that members' benefits will be paid in full; employers being required to fund pension scheme deficits at the expense of investing in the growth of their business; poor governance, administration or trustee decision-making resulting in poor member outcomes or loss of benefits; and employers not complying with their automatic enrolment duties. It says its priorities for next year will be based on an analysis of these risks as well as the expected impact of wider economic and financial markets

The Regulator sets out the key trends it sees in the pensions market. It expects the defined contribution (DC) market to start to mature as all employers are now required to offer a workplace pension. This will increase the significance of risk in this market as an increasing number of savers will rely on benefit payments from DC schemes. As the membership of DC schemes rises there is also the danger that savers make poor decisions due to lack of engagement, lack of knowledge and poor advice which can lead to inadequate retirement benefits. On scheme consolidation, the Regulator welcomes the trend towards consolidation in DC schemes e.g. into master trusts. It says that there is less evidence of concentration among DB schemes although this may change with the introduction of superfunds.

Poor governance and poor decision-making by trustees are major risks to member outcomes according to the Regulator. Over the last five years, one in seven schemes has closed resulting in a reduction in the number of

[14] *Severance Policy in Devolved Public Sector in Scotland* <consult.gov.scot/financial-strategy/severance-policy-in-devolved-public-sector>.
[15] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/corporate-plan-2019-2022.ashx>.

trustees but there are still currently approximately 16,000 trustees in total (excluding small self-administered schemes and executive pension plans). Only 4% of trustees identified as professional trustees; each is likely to act for several schemes and so the percentage of schemes with professional trustees will be much higher. The Regulator says it will act to raise governance standards given there are still so many trustees. It will increase its engagement with pension service providers who are more likely to be used by trustees of smaller schemes to support scheme management. The Regulator has also identified poor administration as another risk that could result in inferior outcomes for savers. Administration is often a low priority for schemes and pension administration service providers operate with low profit margins which makes it difficult to invest in new systems. The quality of record-keeping is now being monitored through scheme returns, and the master-trust authorization requirements should improve standards in the future.

Priorities

The Regulator has identified six priorities for the next three years, and some specific activities for 2019-20.

Extended regulatory reach with a wider range of proactive and targeted regulatory interventions

New regulatory initiatives on governance, administration, DB funding and savers' decision-making are being introduced. The Regulator is developing strong, two-way relationships with schemes it deems to be strategically important and a '*targeted supervision model'* is being developed so that individual schemes will be supervised when needed in response to potential risks or events. The Regulator will also be in contact with more schemes than ever before, making sure trustees are aware of the standards it expects and tackling risks early. Trustees will be written to initially to remind them of their obligations and required actions; continued non-compliance will result in a full investigation and potential enforcement action.

To address the low levels of saver understanding and engagement, the Regulator and the Financial Conduct Authority (FCA) will launch a joint review of the '*consumer pensions journey*' looking at how the information savers receive from their schemes and providers combines with guidance and advice to help them make well-informed decisions. It will also work with the FCA and the Money and Pensions Service to look at DB to DC transfers.

Clarifying, promoting and enforcing high standards of trusteeship, governance and administration

This year the Regulator will be more proactive on improving standards, especially with smaller schemes where trustees are likely to be less engaged or lack the necessary skills. It will concentrate on reducing the number of poorly run schemes by consulting on a range of proposals to improve standards and encourage trustees who cannot meet them to consider transferring members to better-run schemes. Its approach will include developing a new governance code of practice; consulting on the future of trusteeship and trustee standards; developing guidance for trustees to help them comply with the new governance requirements resulting from the Competition and Markets Authority's investment consultants market investigation; and concentrating on schemes that fall short of the governance requirements.

Many schemes, especially those in the public sector, continue to have problems with data quality. The Regulator expects the position to improve through its use of thematic reviews and tailored communications.

Finally, it will continue to tackle pension scams by working along with other regulators, law enforcement agencies and industry stakeholders.

Intervening where necessary so that DB schemes are properly funded to meet their liabilities

The Regulator will continue with its segmented and proactive approach to risk and intervention, focusing on covenant and sufficient deficit-repair contributions (DRCs).

It will be contacting more schemes than previously to ensure that savers are treated fairly and that excessive dividends are not being paid at the expense of DRCs. This includes contacting the trustees of certain schemes before their upcoming valuation where the Regulator has concerns.

The Regulator refers to the improvements and clarifications to the funding framework set out in the White Paper[16] and to the new DB funding code that it is working on. It also mentions the new DB scheme consolidators and collective defined contribution schemes and the work it will be doing over the next year to put the necessary member protections in place.

Ensuring staff have an opportunity to save into a qualifying workplace pension through automatic enrolment

Action will be taken where appropriate against employers that fail to meet their obligations, and there will be ongoing engagement with certain employers to ensure compliance with the requirement to report of late payment of contributions.

Enabling schemes to deliver their benefits through significant change, including responding to Brexit

The Regulator will work with the Government and other regulators to help pension schemes during this period of significant change. It will also consult on a new code of practice on scheme governance this year, to replace *Code of Practice No. 9: Internal Controls*, as part of the UK's plans for meeting the enhanced scheme governance requirements of the IORP II Directive.[17]

Building a capability to meet future challenges

The Regulator will continue to develop its systems and ways of working to allow it to contact more schemes than ever before over the next year with the aim of influencing behaviours and improving outcomes for savers.

Evaluation framework

The Regulator has developed an evaluation framework including the longer-term outcomes it wants to achieve. They cover increasing participation in workplace pensions; protecting members and the Pension Protection Fund (PPF); holding those it regulates to account; and increase people's confidence in their pension savings. It has also developed a range of indicators it will use to demonstrate its progress in delivering these outcomes.

It has also developed a range of key performance indicators it will use to demonstrate its performance against its corporate priorities. These priorities include targeted regulatory interventions; high standards of trusteeship, governance and administration; properly funded DB schemes; auto enrolment; enabling schemes to cope with significant changes; and building the capacity to meet future challenges.

Structure

The number of full-time equivalent staff is expected to increase from 660 in 2018-19 to 774 in 2021-22 reflecting the Regulator's increased responsibilities and to implement its new regulatory approaches.

Regulator's latest Compliance & Enforcement Quarterly Bulletin

In its latest Compliance and Enforcement Quarterly Bulletin, the Regulator focuses mainly on recent successful enforcement cases, a number involving the use of some of its powers for the first time.[18] It includes the Regulator's first fraud conviction and its first custodial sentence.

The Regulator says that it will work with schemes to increase deficit repair contributions and reduce the length of recovery plans. Since the last Bulletin, its supervision team has succeeded in encouraging several employers to do

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[16] *Protecting Defined Benefit Pension Schemes* <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693655/protecting-defined-benefit-pension-schemes.pdf>.

[17] Directive (EU) 2016/2341.

[18] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/compliance-and-enforcement-quarterly-bulletin-january-to-march-2019.ashx>.

this. It provides a case study of a scheme with significant covenant and governance risks. The Regulator's intervention has resulted in improvements at the scheme including a new recovery plan of a £10 million up-front payment and an extra £2 million per annum for half the original length. It also resulted in a restriction on the dividends payable by the company. The Regulator's message to trustees and employers is that they should take an integrated approach to risk management.

During the first quarter of 2019, the Regulator's intervention led to a trustee being jailed for more than three years after he fraudulently took more than £290,000 from the pension scheme. The Regulator reminds trustees that it will act if they abuse their position of power.

For the first time, the Regulator used its powers to appoint an independent trustee because of the lack of competence of the existing trustee board of a defined contribution (DC) scheme. It also used its powers for the first time in a DC master trust case during engagement in preparation for authorisation and supervision. This led to a corporate professional trustee firm receiving the largest DC scheme fine to date for multiple breaches of pensions law. Trustees are reminded that running a scheme well is essential to protect savers and achieve good outcomes.

Finally, the Regulator successfully prosecuted an in-house accounts manager for submitting false declarations of compliance with the automatic enrolment requirements, resulting in a fine. Advisers are reminded that, as well as a possible conviction and fine, the provision of false information to the Regulator could result in a criminal conviction.

The Regulator demonstrates that it is prepared to act following the introduction of its 'clearer, quicker, tougher' intervention regime.

Scams Code revised

The Pension Scams Industry Group has updated *Combating Pension Scams*, its Code of Good Practice.[19] Although the Code has no statutory authority (compliance is voluntary), it has been mentioned by the Pensions Ombudsman as a source of guidance on due diligence.

Combating Pension Scams: A Code of Good Practice was first published in 2015, and was revised in 2018. The latest changes take account of developments in the intervening period, such as the coming into force of the ban on 'cold-calling' in connection with pensions, the Pensions Ombudsman's determination of complaints about transfers (one that proceeded to the member's detriment, one that was refused, and one where the transferring scheme's caution was deemed excessive), and the evolution of fraudsters' tactics (including their use of 'international SIPPs' as a scam vehicle).

The PSIG expects that the Code will need to be revised again within the next year, to take account of anticipated changes (perhaps including promised amendments to the statutory right to transfer).

[19] <www.plsa.co.uk/Portals/0/Documents/Policy-Documents/2019/Combating-Pension-Scams-Code-of-Good-Practice-2019.pdf>.