BARNETT WADDINGHAM
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AUTUMN 2022 NEWSLETTER

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The elements that you need to know

Stay up to date with elements relevant to your defined contribution (DC) arrangement.

Trustee elements

Stronger nudge to pensions guidance

Following consultation last year by the Department for Work and Pensions (DWP) and its response in January 2022, trustees are required to deliver the 'stronger nudge' in relation to applications to transfer or start receiving DC benefits received on or after 1 June 2022. TPR's communication and reporting guidance reflects the new requirements.

Trustees should explain that free, impartial guidance on their retirement options is available from Pension Wise and must also offer to book an appointment. Trustees must not proceed with a member's application until they have confirmation that the member has received guidance or opted out from receiving guidance. We expect administration service providers to have appropriate processes in place.

There are exemptions from the stronger nudge requirement when a member applies to transfer their DC benefits, e.g. if the member is under the age of 50 or the member is transferring into a contract-based scheme with a Financial Conduct Authority (FCA) regulated provider.

Similar changes introduced by the FCA also came into force on 1 June 2022 for contract-based schemes.

The DWP has committed to giving consideration to an additional exemption to cover Additional Voluntary Contributions and small DC pots under schemes providing Defined Benefits.

Helping savers understand their pension choices

On 14 June 2022, the DWP published a call for evidence to find out what information and support members of occupational pension schemes need to help them make informed choices about how to use their pension savings. It also sought to understand from occupational pension schemes what support they currently offer to their members in this area and what they are considering offering their members in the future.

Predictably, research by the FCA found that many pension savers choose the 'path of least resistance' when it comes to accessing their pension savings, e.g. taking annuities from a holding insurer without shopping around. The FCA introduced measures for contract-based schemes aimed at supporting savers to get the most out of their pension savings and we support the DWP's wish to similarly improve outcomes for members of occupational pension schemes.

The call for evidence closed on 25 July 2022 and we await the DWP's response (no date given), which we expect to outline the direction it will be taking its policy.

Pension scams

On 15 June 2022, The Pensions Regulator (TPR) published a summary of its pension scams threat assessment. The findings from the assessment show that the threat continues to diversify, both in terms of the methods used to access pension savings and the tactics used.

In broad terms there are three categories of harm to members:

- **pension liberation** – members under 55 persuaded to transfer to unlock savings, often resulting in total loss of assets and a large tax bill;
- **pension-related investment scams** – members that access pension savings, are already drawing funds or have retirement savings outside of a pension product are potentially at risk from a wider increase in investment scams; and
- **poorer outcomes** – linked to high costs and charges and unsuitable advice.

Trustees, administrators and service providers' observations and reporting improve understanding of the current threat and provides TPR with an early warning of changes in scammers' tactics, allowing the right interventions to be made at the right time. TPR will continue to work closely with partners as it monitors trends in scam activity and feeds into wider legislative developments that may help to combat pension scams.

On 3 August 2022, TPR published its new **strategy to combat pension scams**, as increases in the cost of living may leave pension savers potentially more vulnerable to scammers. The strategy comprises:

- educating savers on the risk of scams;
- encouraging higher standards that prevent practices leading to saver harm; and
- fighting fraud through the prevention, disruption, and punishment of criminality.

The strategy sets out TPR's actions in each area over the next three years and TPR plans to track and measure its success against desired outcomes. For the issues beyond its control, TPR will work in partnership with others, especially the multi-agency taskforce Project Bloom (to be renamed the Pension Scams Action Group).

Guidance on DC scheme return

TPR updated its information and resources to help with completing DC scheme returns.

There are a number of new questions for some (mainly larger) DC schemes and Hybrid (mixed benefit) schemes this year. For these schemes, the scheme return will be issued in two parts - the first containing new questions via an online form and the second containing the rest of the questions to be completed via Exchange.

The new questions will require trustees to confirm, where relevant:

- information about the more detailed value for members (VFM) assessment for smaller schemes;
- website address where extracts from the chair's statement have been published;
- the website addresses where the scheme's statement of investment principles (SIP) and implementation statement have been published; and
- the website address where the scheme's climate change report has been published.

New VFM requirements for smaller DC schemes

On 30 June 2022, TPR published a press release reminding trustees of DC schemes with less than £100 million of assets to ensure they are ready to meet new, more detailed VFM requirements.

This followed the results from TPR's annual survey of DC schemes, which showed that trustees of most schemes with fewer than 100 members were unaware of the new VFM requirements.

Cyber Risk Made Simple Guide

In June 2022, the Pensions and Lifetime Savings Association published its Cyber Risk Made Simple Guide. The guide introduces the nature of cyber threat and suggests a cyber framework and actions for pension schemes to deal with this growing and evolving crime.

Social risks and opportunities

On 15 July 2022, the DWP published a response to its call for evidence on consideration of social risks and opportunities by occupational pension schemes. The DWP concluded that it is up to schemes to determine how to consider financially material social risks and opportunities and whether to take an integrated approach to Environmental, Social and Governance (ESG) factors or create standalone policies covering specific social factors.

To ensure focus of social factors continues to grow, the DWP proposes to set up a taskforce on social factors (TSF). This will lead work to identify reliable data sources and other resources, which could be used by pension schemes to identify, assess and manage financially material social risks and opportunities.

Equality, diversity and inclusion

TPR has published an action plan to support governing bodies to improve their diversity and inclusion practices. TPR will work with the Diversity and Inclusion Industry Working Group to publish equality, diversity and inclusion guidance for trustees and employers by the end of the 2022/23 financial year.

Climate reporting

From 1 October 2022, schemes with £1bn or more in relevant assets came within scope of the climate reporting requirements. Trustees must put in place governance arrangements to manage climate-related risks during the first scheme year ending after 1 October 2022 and must publish a compliance report within seven months of the scheme year-end. The report must be available free of charge on a publicly available website.

Also from 1 October 2022, for all schemes within scope of the climate change reporting requirements, trustees must include measuring and reporting on the extent to which a scheme's investments are aligned with the 'Paris Agreement'.

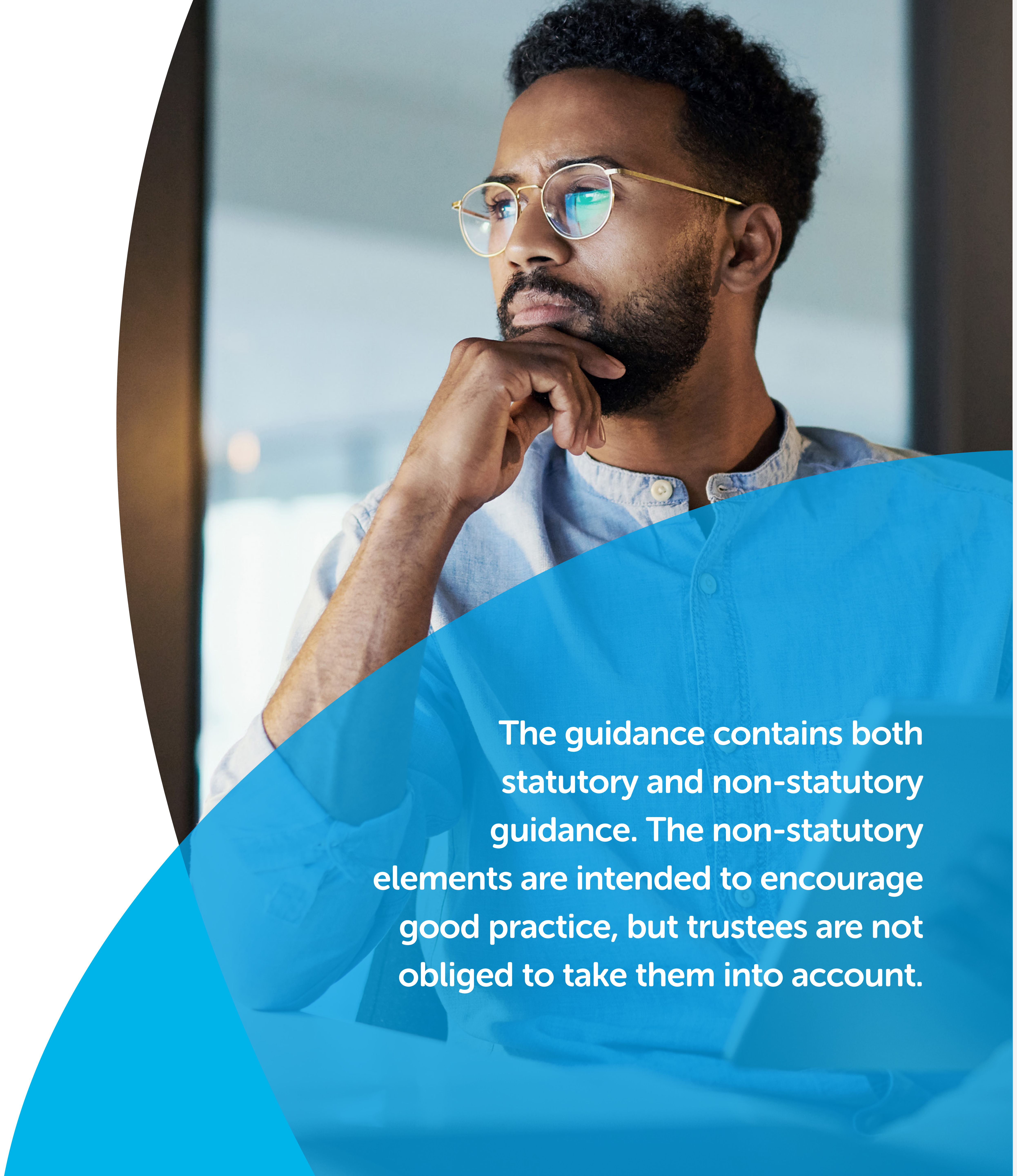
Investment consultancy and fiduciary management services

On 1 October 2022, requirements for trustees to carry out a tender process for fiduciary management services and to set objectives for their investment consultants were brought into pensions law. Going forwards, compliance will be overseen by TPR rather than the Competition and Markets Authority (CMA).

The regulations are intended to broadly replicate the previous CMA 'Order', so there are no immediate actions for the majority of trustees. However, where the objectives for investment consultants were set before 1 October 2022, trustees must complete the first review of the objectives within three years of the date they were set under the CMA Order. In addition, trustees that had a fiduciary manager in place, without a competitive tender, should refer to guidance to consider when they need to carry out a competitive tender.

Reporting on stewardship and other topics through the SIP and Implementation Statement

From 1 October 2022, trustees must have regard to guidance when preparing Statements of Investment Principles (SIPs) and Implementation Statements (ISs) in respect of scheme years ending on or after this date. The guidance focuses on the areas where existing policies and reporting appear to be weakest – stewardship and consideration of financially material ESG factors and non-financial factors.



The guidance contains both statutory and non-statutory guidance. The non-statutory elements are intended to encourage good practice, but trustees are not obliged to take them into account.

Simpler annual benefit statements

From 1 October 2022, trustees of DC schemes used for auto-enrolment must issue simpler annual benefit statements within 12 months of the end of each scheme year. Trustees should have regard to statutory guidance.

This outlined that trustees must present the statement in a format that does not exceed one double-sided sheet of size A4 paper when issuing a paper statement and the equivalent length when the information is printed, if issuing an email or online statement. There are limited exceptions to this requirement.

Other elements

Auto-enrolment compliance

On 26 September 2022, TPR published a press release warning employers to ensure they are complying with their ongoing automatic enrolment duties after inspections of more than 20 large employers found a number of errors.

The inspections to check employers are complying fully with workplace pensions law were carried out earlier this year. They showed a number of common errors in respect of calculating pensions contributions, e.g. using incorrect earnings thresholds, and communications to staff.

Pensions dashboards progress

Recent activity on pension dashboards includes:

- On 22 June 2022, TPR published initial guidance to help trustees prepare for dashboards, to be updated when final regulations are published later in 2022. Trustees should check their connection deadline (dependent on scheme size and type) and begin liaising with their administrators.
- On 28 June 2022, the DWP published further consultation on two specific issues, including the point ('Dashboards Available Point') at which dashboards will be made available to the public.
- On 14 July 2022, the DWP published a response to consultation on a range of policy areas relating to the creation of the dashboards system, as well as on draft regulations. Connection deadlines for the first two cohorts, large master trusts and large DC schemes used for auto-enrolment, will be deferred by two months to 31 August and 30 September 2023 respectively.
- On 19 July 2022, the Pensions Dashboards Programme (PDP) published a consultation on draft standards, to ensure the security, stability and effective operation of dashboards, and on guidance. On the same date, the PDP also issued a 'call for input' on the design standards for dashboards.
- On 21 September 2022, TPR published a podcast, covering what trustees need to do to meet their connection deadlines and how non-compliance will be tackled.

Protecting pension savers

On 30 September 2022, the Work and Pensions Committee published its third and final report on protecting pension savers. The report concludes that, while auto-enrolment has been successful in increasing participation in workplace pension saving, it is time to address the challenges that mean many people are unaware they are not saving enough for an adequate income in retirement. The Government's response to the report is due by 30 November 2022.

Performance-related fees

On 23 September 2022, the Government's 'Growth Plan' announcement included an intention to accelerate legislation which would remove certain performance-related fees from the DC charge cap. This follows consultation earlier in the year and aims to improve access to illiquid assets for DC scheme investment.

On 6 October 2022, the DWP published a consultation on draft regulations and statutory guidance on the exemption of performance-based fees from the regulatory charge cap. The consultation included the Government's response to 'Disclose and Explain Policy' proposals, designed to ensure that schemes are giving full consideration to their policy on illiquid investment in a timely manner, and draft regulations and guidance to achieve the policy intent. The consultation closes on 10 November 2022 and the regulations are expected to be effective from 6 April 2023.

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Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact Mark Futcher, Partner and Head of DC, via the following:

mark.futcher@barnett-waddingham.co.uk

0333 11 11 222

www.barnett-waddingham.co.uk