

Industry Update

Is the Regulator's Code of Practice on DC Governance Relevant to Defined Benefit Schemes?

This update will be of interest to Trustees of Schemes which contain Money Purchase benefits, especially Defined Benefit (DB) Schemes containing Money Purchase Additional Voluntary Contributions.

Updated Code of Practice no 13 came into force on 28 July 2016. During its finalisation the Code was re-named "*Code of Practice no: 13 Governance and administration of Occupational Trust-based schemes providing money purchase benefits*" to make it clear that it applies to all money purchase (defined contribution) benefits in occupational trust based schemes, except where expressly exempted.

The code itself says "This code applies to trustee boards of all occupational trust-based pension schemes with two or more members (whether active, deferred or pensioner) which offer money purchase benefits. This means that as well as applying to DC schemes and DC sections within schemes offering mixed benefits, it also applies to money purchase additional voluntary contributions (AVCs) within occupational defined benefit (DB) schemes, money purchase benefits with a DB underpin, and money purchase underpin benefits where these are provided by a scheme, insofar as the relevant legislation applies to them. Though some specific legal obligations do not apply where the only money purchase benefits provided are AVCs, other requirements do apply to AVCs. **Trustee boards of schemes in this category should consider the risks to members in the context of the significance of the value of AVCs relative to members' overall benefits in the scheme**, and where the law applies to AVCs, apply a proportionate approach to meeting the relevant standards in our DC code."

In fact, the only current clear exemption for DB Schemes which contain money purchase AVCs and no other DC benefits, is the exemption from the requirement to prepare an annual Chair's Statement. The Pension Regulator's (TPR) newly published discussion paper on 21st Century Trusteeship and Governance asks whether Chair's of Trustees of DB schemes should be required to give a statement.

Updated Code 13 only applies to the Money Purchase elements of a pension scheme. Where AVCs are the only money purchase element in a DB scheme tPR has acknowledged that to apply the whole code strictly would impose disproportionate efforts, but has given little guidance as to what would be a proportionate approach.



A proportionate approach may be adopted when addressing some requirements of the code, dependent on scheme size. It seems reasonable that these would also apply when AVCs are the sole DC element of a scheme.

Trustees should not lose sight of the fact that, in addition to the Code of Practice, other Legislation and Regulations will impose duties on trustees of DB schemes. Some legislative provisions already in force for DB Schemes are similar to items in the DC code and these, of course, are unaffected by the Code.

Examples from the Code of when a proportionate approach may be adopted

Updated Code 13 has six sections. Indications of how a proportionate approach may be used are found in a few sections of the Updated code as noted below.

In the Scheme Management section of the Updated Code it says “The type and extent of knowledge, understanding and skills needed, and the time required to fulfil your duties, will vary from scheme to scheme. In general, the time spent should be proportionate to the risks to the scheme and how well- managed those risks are.”

Clearly this is an area where proportionality may come into play for those schemes with few members and low funds invested in money purchase vehicles in a DB Scheme and TPR’s suggested formula of the risks to members in the context of the significance of the value of money purchase AVCs relative to members’ overall benefits in the scheme may work.

Another example of proportionality is given in the Administration section of the Updated Code where the approach to tracing members may be proportionate to the potential risks to members. TPR suggests that trustees may adopt a more stringent approach to tracing members with larger funds than those with smaller ones.

TPR suggests that when assessing value for members, less complex schemes with a small number of members may find that it is proportionate to take a simplified approach, but warns that whatever approach is chosen trustees must be prepared to show that a proper process, which has taken account of all the relevant facts, has been followed. This should include an explanation of how and why conclusions have been reached. TPR has updated the DC Governance Assessment Tool and this may be an appropriate place to record that a proper process has been followed.

When analysing data gathered for the purpose of assessing future trends, trustees should take a proportionate approach and consider the governance involved.

When assessing whether the benefits provided by the scheme’s services are suitable for, relevant to and valued by the members, the extent of the questions asked should be proportionate to the size and characteristics of the scheme.

What is a proportionate approach?

TPR feels it is up to each set of trustees to decide what is proportionate and the only guidance given is in **bold** in the quotation from the Code above.

In determining what is proportionate Trustees might like to consider:

- The total amount of AVCs in the scheme compared with the overall amount of the scheme funds;
- The number of members with AVCs in the scheme compared with the total number of scheme members;
- The cost of administering a particular aspect of governance for the AVC funds compared to the amount invested in AVCs and the value members perceive they receive from the ability to pay AVCs.

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