

Your World First

CMS Clarity Guides

Number 24: DC Governance



Welcome to our twenty fourth Clarity Guide. On 1 May 2017, CMS combined with Nabarro and Olswang. This transformational combination of three leading brands creates a modern, future-facing law firm that combines scale with an exceptional depth of sector expertise; a firm that is united in its focus on clients. The **Nabarro Clarity Guides** are renamed the **CMS Clarity Guides**.

The governance requirements relating to both trust-based and contract-based arrangements providing money purchase benefits have increased significantly in recent years. Some of the requirements apply only to arrangements used to comply with auto enrolment requirements. This Guide draws together the key DC Governance requirements for occupational arrangements that are currently in force (or will be in force shortly).

The Chair's Statement

From 6 April 2015, all occupational pension schemes providing money purchase benefits must prepare an annual Chair's Statement, unless the only money purchase benefits are additional voluntary contributions ('AVCs'). Certain small schemes and certain public service schemes are exempt from this requirement. The Chair's Statement must be signed within 7 months of the scheme's year ending and must be provided to members alongside the trustees' Annual Report. Failure to meet the deadline means a mandatory fine from the Pensions Regulator ('tPR') of at least £500 and up to £2,000, depending on the number of members affected, any previous breaches and whether there is a professional trustee.

The Chair's Statement must include prescribed information about the default arrangement, including its latest statement of investment principles, details of any review of the default arrangement during the previous year and any changes made as a result of the review (or if no review, the date of the last review); a statement about how the requirement to secure that core financial transactions are processed promptly and accurately has been met during the year (core financial transactions include the investment of contributions, transfers and payments to members); details of the level of charges and transaction costs for the default arrangement and any other fund in which assets relating to members are invested and the trustees' assessment of the extent to which the charges and transaction costs represent good value for members; a statement about how the trustee knowledge and understanding requirements have been met during the scheme year and how the combined knowledge and understanding of the trustees together with the advice available to them enables them properly to exercise their functions.

Master trust arrangements must also include a statement that the majority of the trustees are non affiliated and details of the arrangements in place to encourage the members to let the trustees know their views on matters relating to the scheme.

Identifying the default arrangement can be complicated and there may be more than one default arrangement. A default arrangement must be used to meet the employer's auto enrolment duties in relation to at least one employee and member contributions are directed to the fund without the member having to make a choice; or at least 80% of the employer's workers who are active members are contributing to the fund either on 6 April 2015 (or the employer's staging date if later); or where the fund first receives contributions after 6 April 2015 (or the employer's staging date if later), at least 80% of the employer's workers who are active members are contributing to that fund.

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Charge cap

From 6 April 2015, charges imposed in relation to default arrangements in schemes used for auto enrolment purposes were capped. The charge cap applies at individual member level so it cannot be smoothed across the default arrangement as a whole. There are three options: a charge of no more than 0.75%; a combination of a charge on contributions plus a percentage of funds under management; or a combination of a flat annual fee plus a percentage of funds under management.

Members' written consent must be obtained for any higher charges. The charge cap applies to costs and charges associated with scheme and investment administration but it excludes transaction costs, winding up costs, pensions sharing costs and costs associated with death in service benefits. Trustees must confirm each year that they have complied with the charge cap in relation to all relevant members and tPR can impose a fine of up to £5,000 on an individual trustee (£50,000 for a corporate trustee) for non compliance.

Active member discounts

From 6 April 2016, trustees of money purchase schemes used for auto enrolment (including those where AVCs are the only money purchase benefits) may not impose (or permit to be imposed), charges on a non-contributing member which are higher than those which would have been imposed had the member been a contributing member. This applied only to those members that were active members on or after 6 April 2016 and who subsequently become deferred members. Similar rules were introduced by the Financial Conduct Authority in relation to personal pension schemes.

Member borne commission

From 6 April 2016, a ban on member borne commission and the variation of any existing member borne commission arrangements was introduced. This applies to occupational pension schemes used as qualifying pension schemes for auto enrolment, even if the only money purchase benefits are AVCs and if the scheme ceases to be used for auto enrolment. It applies to all members of the scheme but in a multi-employer scheme it only applies to current and former employees of those employers using the scheme for auto enrolment purposes.

DC Code of Practice and Guidance

TPR published an updated DC Code of practice in July 2016. The DC Code is relevant for all occupational DC arrangements, including those arrangements where the only DC benefits are AVCs. The DC Code is supported by guidance from tPR on good practice in relation to six main areas: the trustee board; scheme management skills; administration; investment governance; value for members; and communicating and reporting.

Early exit cap

From 31 March 2017, early exit charges are capped at 1% of the value of existing contract-based personal pensions, including workplace personal pensions. Early exit charges that are currently set at less than 1% may not be increased. The cap applies to members who leave after age 55. It does not apply to administration charges or market value adjustments. No early exit charges are permitted on personal pension contracts entered into after 31 March 2017. The early exit cap is due to apply to occupational pension schemes with effect from 1 October 2017.

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