XPS Pensions Group

XPS Insights
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Pensions Regulator issues guidance for those considering a superfund

What you **need to know**

- On 21 October 2020, **The Pensions Regulator (TPR) issued guidance to trustees and employers** who are considering transferring their members' benefits to a defined benefit (DB) superfund.
- A superfund allows an employer to make a clean break from its DB liabilities. It consists of a consolidating pension scheme backed by a capital buffer.
- 'Clearance' is required from TPR for each and every bulk transfer to a superfund. As part of obtaining clearance, trustees need to demonstrate that all three of TPR's '**gateway principles**' are met (**see table below**).
- Trustees may take a degree of comfort that TPR will only grant clearance if it considers that, in addition to the gateway principles, the superfund also meets TPR's June 2020 guidance; i.e. that the superfund is capable of being supervised by its trustees, is run by fit and proper persons, has effective governance, is financially stable and has sufficient administrative systems and processes in place.
- TPR has stated that it believes moving to a superfund can be a good option for some schemes. The next step is formal TPR approval of specific superfunds, allowing them to operate. Once approval is complete, TPR will maintain a list of the successfully assessed superfunds on its website.

Actions you can take

- **Include superfunds as a possible end-game option** when setting strategy and journey plans.
- **Understand** the different superfund offerings and how they compare to other risk transfer options.
- **Identify** actions you need to take if considering a transaction. This will include cleaning data, confirming benefits, managing investment risk, obtaining superfund and comparator insurer pricing and how to measure the employer covenant.
- If transacting, **consider** appointing a professional trustee to support and whether additional specialist advice is needed.

TPR's gateway principles if considering a superfund

Principle to meet	TPR's position	Required analysis
1. Buyout not affordable now	Superfunds do not provide the same level of security as an insurer (and therefore an insurer is preferable if affordable).	Buyout estimate or actual insurer quotation.
2. No realistic prospect of buyout in forseeable future	If a scheme is in reach of buyout, it is unlikely that transferring to a superfund is beneficial to members. The forseeable future is up to five years, depending on employer circumstances.	Projected buyout position, allowing for the ability of employer to pay contributions.
3. Improves the chances of members receiving full benefits	Trustees need to demonstrate that the superfund is a safer solution for members than staying with the current sponsor. Trustees must take account of any additional contributions and security they could get from the current sponsor.	Robust assessment of chances in scheme versus superfund, reflecting employer position.

The finer detail: TPR's guidance to trustees and employers on superfunds

TPR type A clearance

TPR expects the ceding employer to apply for clearance in relation to a transfer from their scheme to a superfund, as this represents a new category of 'type A' event. The trustees and the proposed superfund will be included in clearance documents as a 'directly affected party'.

TPR asks to be notified several months in advance of any transaction. If a transaction proceeds, it should take place within three months of TPR issuing its clearance statement.

TPR's superfund assessment regime

In its June 2020 guidance, TPR set out how it will assess each superfund in respect of governance and financial stability, prior to further legislation being enacted (which is expected to be in about 3 years' time). TPR is currently assessing two superfunds, Clara Pensions and the Pension SuperFund, and will confirm their approval status on its website. TPR will only grant clearance for transactions to superfunds that continue to meet its required governance and financial stability criteria.

Gateway principles for trustees

✓ A transfer to a superfund should only be considered if a scheme cannot afford to buyout now.

✓ A transfer to a superfund should only be considered if a scheme has no realistic prospect of buyout in the foreseeable future (generally three to five years), given potential employer cash contributions and the insolvency risk of the employer.

✓ A transfer to the chosen superfund must improve the likelihood of members receiving full benefits.

These principles require the trustees to undertake a covenant assessment of their employer and, potentially, also modelling advice on the relative risk of the superfund to fail to provide full benefits, given its investment strategy and capital buffer.

The trustees should demonstrate they have considered past significant corporate activity to identify any material detriment and whether this will be mitigated by the proposed transfer.

Role of employer

Although the trustees take the final decision on whether to transfer, the employer also has a role, including to:

- Provide access to financial information and the business strategy, so that trustees can understand the covenant being given up.
- Provide any additional funds needed for the transfer to the superfund and to meet expenses.

Role of trustees

In addition to taking advice on conflicts, actuarial and investment matters, covenant and ensuring legal duties are fulfilled trustees should:

- Provide evidence to TPR that the gateway principles are met.
- Request the summary outcome of TPR's assessment of the superfund. This will have assessed whether the superfund is capable of being supervised by its trustees (and therefore by TPR), whether it is run by fit and proper persons, whether it has effective governance, if it is financially stable and if it has sufficient administrative systems and processes in place. Trustees should consider any additional due diligence they will need in this area.
- Ensure members receive clear information so that they have no concerns and do not feel the need to take a transfer to DC (or retire) when they would not otherwise have done so.
- Consider the position of any members or risks that are not transferred to the superfund.

For further information, please get in touch with Harry Harper or Paula Haughton or speak to your usual XPS Pensions contact.

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