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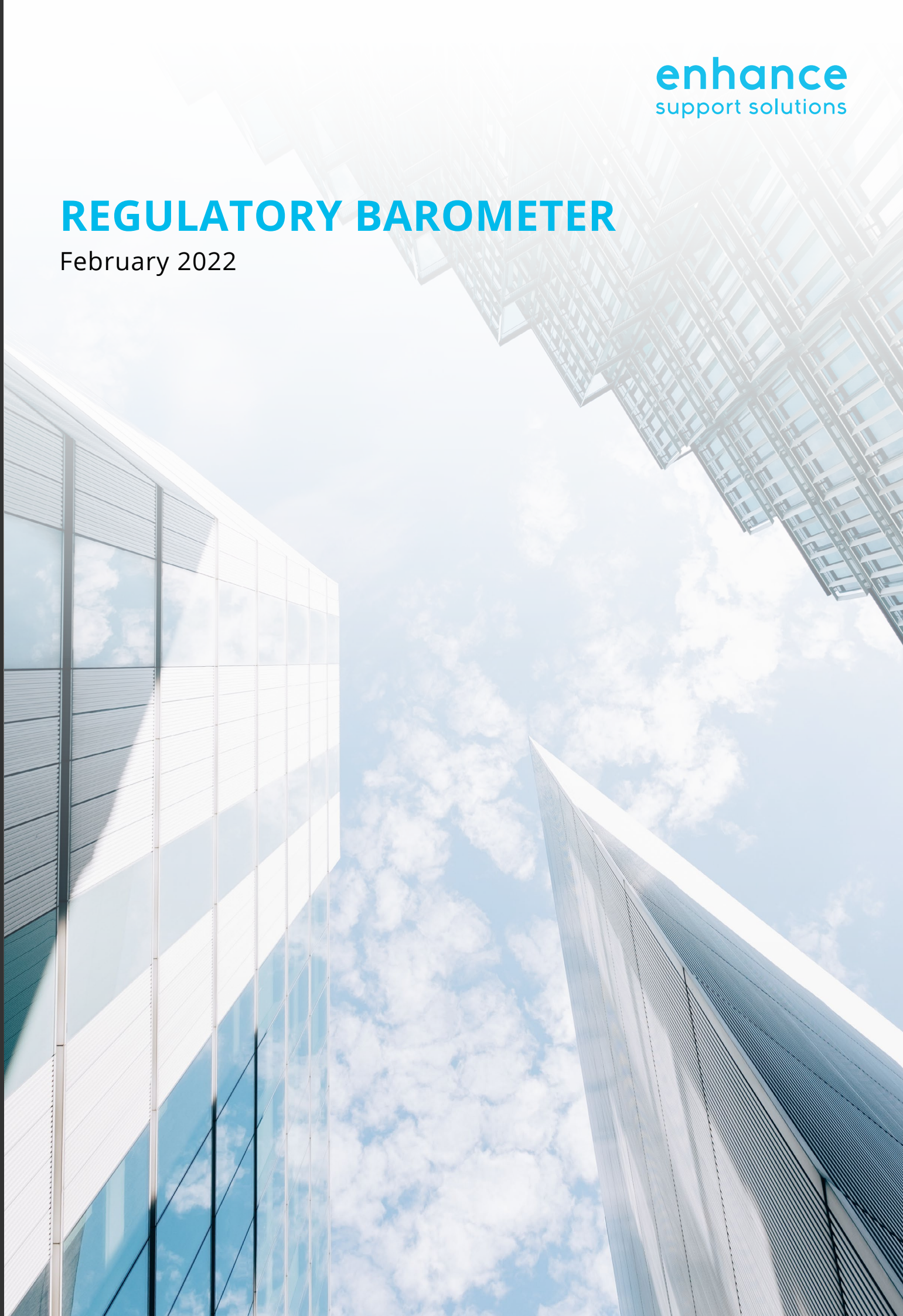
REGULATORY BAROMETER

February 2022



ABOUT THIS DOCUMENT

The purpose of this document is to provide an overview of current and upcoming regulatory matters that may be of interest to the Operators/Administrators of personal pension schemes (and in some matters, the Administrators/Practitioners of SSASs). For each item there is a brief summary including the source (i.e. regulatory/legislative changes) along with the relevance to firms, timelines and suggested actions the firm may wish to consider.

The symbols (below) are RAG-rated to indicate the impact of each of the items:

- Red = High impact
- Amber = Medium impact
- Green = Low impact.

Where applicable, also included is a reference to where further information can be obtained. Where used, the symbols (below) are RAG-rated to indicate the impact of each of the items - red = high impact / green = low impact. The RAG-ratings are purely indicative and it will be for firms to decide the relevance and impact based on their circumstances.

SOURCE ACTION RELEVANCY TIMELINE FURTHER INFO

This document is high-level and is not a substitute for taking relevant professional/legal advice. Rather, we hope this document will be useful in assisting firms in their regulatory planning and our aim is to provide updates on a periodic basis.

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Overview

As always, 2022 promises to be be another busy year with progress being made in a number of 'live' regulatory matters.

In the October Regulatory Barometer we covered the FCA's 2021/22 Business Plan and we highlighted relevant items flowing from the the FCA's Consumer Investment Strategy. Work on these is gathering pace with consultations issued by the FCA in relation to the Consumer Duty Principle and default funds for non-advised workplace pensions. While the Consumer Duty Principle does not take effect until April 2023, there is probably sufficient detail within the associated consultations to enable firms to start planning now. The most recent Consumer Duty consultation was issued in December. In the case of the 'Improving outcomes in non-workplace pensions' the Policy Statement will be issued later this year, however firms may wish to think about whether they fall within scope of the proposed rules, and therefore start contemplating what needs to be done if a default fund is required. Definitely on the horizon is the 'Stronger nudge to pensions guidance' for which the rules take effect from 1 June 2022, prior to which, firms will need to take action to refine their processes. All of these matters are covered later.

A speech by Sarah Pritchard, the FCA's Executive Director, Markets, to the Pension and Lifetime Savings Association outlined some priorities and predictions for the pensions market. As this speech was made shortly after we issued our October edition we have included a link to the speech below:

https://www.fca.org.uk/news/speeches/partnerships-priorities-predictions-pensions

For most (Core) firms, it is now over two years since the Senior Manager & Certification Regime took effect. It is expected that the FCA will at some point start to evaluate how SM&CR has taken root in firms hence we would not be surprised to see the FCA undertake some thematic work in this area. We have included a page in this edition of the barometer covering some suggested SM&CR considerations for 2022.

There are items that we have archived in this edition that nonetheless remain live – this includes the FCA's focus on vulnerable clients, which also runs through the Consumer Duty consultation. Items are 'archived' to allow this to remain a succinct document. The Archive section states whether the item is 'Ongoing' (which most are) along with the Regulatory Barometer edition where more details can be found.

Stronger Nudge to Pensions Guidance

The FCA has made changes to the retirement risk warning rules in COBS 19.7 to include a requirement for firms to offer to book a pension guidance appointment for an individual when accessing their benefits or transferring for the purpose of taking benefits. Enhance have issued a recent update providing more details of these new requirements.

These rules apply to all operators of personal pensions and include online and paper based benefit payment processes. From a pension provider perspective, firms are reminded that the new rules apply to both non-advised and advised clients.

The new rules take effect from 1 June 2022.

Firms will need to build this step into existing processes for payment of benefits; and, for transfers in and out where the member is transferring with a view to accessing their pension benefits – in essence the FCA have stated anyone transferring from aged 50 or over will fall into this category. Where applicable, this will include verification that the individual attended the pension guidance where an appointment was booked and keeping records of the options chosen by the individual. Staff will also need to be trained on these new requirements. Given the range of clients that these new rules will affect, it is anticipated that personal pension providers will need to rework their processes.

PS 21/21 The stronger nudge to pensions guidance:
https://www.fca.org.uk/publications/policy-statements/ps21-21-stronger-nudge-pensions-guidance-feedback-cp21-11-and-final-rules-and-guidance

Enhance update: '202201 Consumer duty, pensions nudge and non workplace pension update'

Consumer Duty

The FCA have commenced consulting on a new consumer duty. The first consultation paper was published in May 2021 and the second was published in December 2021, Enhance have recently issued a regulatory update setting out the details of the second consultation. As set out in the FCA's business plan this is one of their consumer priorities for the 2021/22 year and also links into the FCA's consumer investment strategy. Within the consumer duty, the FCA are proposing a new consumer principle setting out the overall standard of behaviour that the FCA want to see from firms supported by cross cutting rules and four outcomes. The proposed wording for the consumer principle is 'A firm must act to deliver good outcomes for retail clients' and the second consultation includes draft rules and non-handbook guidance which set out the FCA's proposals for what they expect from firms.

These will be high level rules and guidance that will affect all regulated firms including operators of personal pension schemes. The Consumer Duty expands on FCA Principles and 'acting in the client's best interests' rule (concepts that have become often used by the FOS in support of complaint decisions), and arguably adds some narrative as to how a firm may demonstrate (or not) that they have met their obligations to a consumer.

The aim is for the policy statement and new rules to be published by 31 July 2022 with implementation from 30 April 2023 for all firms. The second consultation closes on 15 February 2022.

As this is in consultation phase there is currently no action required from firms. However it is clear from the business plan and consumer investment strategy that this is core to the FCA's future regulation and a higher standard of care and expectation will be required from firms. It is therefore something that firms should be aware of and consider in ongoing business planning.

- **CP 21/13 A new Consumer Duty:** https://www.fca.org.uk/publications/consultation-papers/cp21-13-new-consumer-duty
- **CP 21/36 A new Consumer Duty: Feedback to CP21/13 and further consultation** https://www.fca.org.uk/publications/consultation-papers/cp21-36-new-consumer-duty-feedback-cp21-13-further-consultation
- **Enhance updates:** '202105 Regulatory Update CP21-13 A new Consumer Duty' and '202201 Consumer duty, pensions nudge and non workplace pension update'

Improving outcomes in non-workplace pensions ("NWPs")

This is another item that falls within the FCA's business plan and builds on the FCA's concerns that there is limited consumer engagement with their pension arrangements. This includes lethargy in relation to making investment decisions due to the myriad of choice available which in turn leads to uninvested funds languishing in cash. Consequently, the FCA have issued a Consultation Paper CP21/32 that proposes requirements to offer a default investment strategy to non-advised members of NWPs, along with requirements to issue periodic cash warnings. In essence, this is similar in concept to the Investment Pathway process for decumulation, however amended for accumulation (for example, having one investment option rather than the four IP options).

The proposals only impact on non-advised members and furthermore, there is an exemption carved out for SIPPs where the member knows what they want to invest in. However, where a personal pension, including a SIPP, offers a wrapper where there are predetermined investment choices (such as access to limited funds, or a platform service) then the default investment strategy applies. The cash warnings are proposed to apply to both advised and non-advised members.

The consultation period ends on 18 February 2022 with the final policy statement later in 2022 with implementation 12-months later.

Accepting this is only a consultation at this stage, firms may wish to consider whether and the extent to which they may be in scope for the default investment strategy. For example, it may be that different product lines/Sipp-wrapper variants may fall in or out of scope. That said, no immediate action is required. The cash warnings will apply to all NWP providers. Firms may wish to respond to the Consultation Paper, especially given the potential scope of the proposals and in particular the consequences this may have on firms with different product lines.

Further information sources include:

- **FCA Consultation Paper:** https://www.fca.org.uk/publication/consultation/cp21-32.pdf
- **Enhance update:** '202201 Consumer duty, pensions nudge and non workplace pension update'

Senior Manager & Certification Regime ("SM&CR")

There is no specific FCA update, consultation or policy change on this item. Rather, we have suggested this item on the basis that it is just over two years since the SM&CR took effect for Core, solo-regulated firms such as most non-insured personal pension providers. It is possible therefore that the FCA may seek to evaluate how SM&CR has been implemented. This could include information requests and/or onsite audits.

This is likely to be relevant to all firms reading this update. It is anticipated that most readers will be Core firms who became subject to the SM&CR in December 2019, hence the associated rules and principles should be embedded within firms. However, it may be that since the activity to implement the SM&CR - for example, allocating responsibilities and delivering Conduct Rules training - with all else that has been going on since, there has not been time to take a step back to evaluate how in practice the SM&CR is working within the firm; and, whether anything needs to change.

There is no specific timescale allocated to this item – it is merely a suggested task firms may wish to consider.

Tasks that firms may wish to consider includes, but is not limited to, reviewing:

- Statements of Responsibility – when were these drafted or reviewed, and do they still reflect the responsibility areas among the senior manager team? How, if at all, are the principles flowing from the Consumer Duty obligations going to be implemented and does this feed into the responsibilities? To what extent do senior managers have line of sight on their responsibility areas? Is this documented and supported by management information?
- Conduct rules – while these will have no doubt been briefed to personnel in the firm, does this require refreshing? Thinking about practical application, if an individual from outside the firm asked the senior managers about what the firm does in practice in order to meet the Individual Conduct Rules, how would this be demonstrated? And then, if the same external individual asked for example, members of the administration team the same question, perhaps with a supplementary question of *'show me an example in your job where you have taken account of the client's interests and treated them fairly'* how would they answer?
- Competence – based on their job roles and areas of responsibility, how are the senior managers and where applicable, certified personnel, demonstrating their competence for the role

The above are suggestions. Additional areas to consider can be found within the PRA Evaluation Report below.

The PRA published an Evaluation of the SM&CR – this was primarily to understand at a high-level how dual-regulated firms were implementing the SM&CR, however some of the questions and metrics [see p.31] may be useful for firms to consider in their own circumstances.

PRA Evaluation of the SM&CR: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/report/evaluation-of-smcr-2020.pdf?la=en&hash=151E78315E5C50E70A6B8B08AE3D5E93563D0168

Normal minimum pension age ("NMPA") (further update re cut off date)

In the October 2021 issue of the Regulatory Barometer we updated details of the the Treasury consultation to increase the NMPA to 57 from 2028. This included an update that the deadline for joining a scheme with an unqualified right to an age-55 retirement age, thereby protecting the age-55 minimum retirement age was proposed as being 5 April 2023. However, in a surprise move, the Government revised this date to 4 November 2021.

The effect of this change of date is that where there was an unqualified right, scheme members who are eligible for an age-55 protected pension age ("PPA") can now be identified.

The revised NMPA does not take effect until April 2028, however the date of 4 November 2021 means that save for updating systems to identify 'age-protected' members/benefits (see below), there is no further action required.

Firms will need to ensure their records can identify members with a PPA. In addition a member will be able to protect their PPA on transfer and so schemes that don't have a unqualified right may receive transfers in with a PPA attached to the transfer. If not already included, it is also suggested that within client literature firms start referring to the 2028 increase in the NMPA.

Further information can be found at:

- **House of Commons background document:** https://commonslibrary.parliament.uk/research-briefings/sn05847/ [para 3.2 explains the rationale for the change of the date]
- **HMRC updated policy paper:** https://www.gov.uk/government/publications/increasing-normal-minimum-pension-age/increasing-normal-minimum-pension-age

Simpler annual pension benefit statements

The Government has published its response to their consultation on simpler, two-page, annual benefit statements linked to auto-enrolment ("AE") schemes. This links to the wider strategy of improving consumer engagement with their pension funds. The Government's proposals will ultimately be incorporated into legislation via an amendment to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

The amended regulations will apply solely to defined contribution schemes used for AE. That said, the Government are encouraging the "trustees and managers of schemes not already in scope of the Amendment Regulations to use discretion that they already have when designing their statements to apply the same principles of brevity and simplicity set out in the statutory guidance". A link to the guidance, which includes a template, can be found in the 'Information' section below.

AE schemes will be required to issue the simplified annual benefit statements from 1 October 2022.

The providers of AE schemes will need to ensure they are complying with the Amendment Regulations from 1 October 2022. For other DC schemes, firms may wish to consider voluntarily amending their benefit statements, although there is no requirement to do so at present.

The background documents, including a suggested template, cam be found at:

https://www.gov.uk/government/consultations/simpler-annual-benefit-statements-draft-regulations-and-statutory-guidance

2021 Pension transfer regulations

The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021/1237 ("transfer regulations") took effect on 30 November 2021. As readers will be aware, this introduced among other things certain conditions that require to be satisfied before a transfer can be made. We have included this item by way of a reminder that these regulations are now in force.

The transfer regulations apply both in terms of pension providers receiving transfers; and, when making transfers to other schemes. The transfer regulations were widely publicised and in broad terms impose a 'first' or 'second' condition applicable to transfers. Where the conditions are not met, the trustees can refuse the transfer. The first condition is that the receiving scheme is: a public service scheme; a Master Trust scheme; or, a collective money purchase scheme. For all other schemes, the second condition applies which is broadly that there are no 'red flags'; or, where there is a presence of certain specified 'amber flags', the scheme member has not taken pensions guidance. As a reminder, amber flags include amongst other things, a lack of an employment link to the receiving scheme; absence of a residency link; high-risk and/or unregulated investments within the destination scheme; high fees; complex or unorthodox investment structures; overseas investments; and, anomalous volumes or trends linked to transfer requests to a particular scheme and/or an adviser.

The regulations took effect on 30 November 2021.

Firms may be impacted both in terms of ceding schemes sending transfers to the firm's personal pension, SIPP or SSAS; and, undertaking checks prior to implementing a transfer-out request. It seems that based on some early initial feedback, there may some delays where the pension provider receiving the transfer is perhaps a new entrant to the market. This is perhaps unsurprising - given the additional obligations placed on the scheme managers/trustees, they naturally will undertake more checks and exercise more caution where the destination scheme or circumstances are outside the norm. In terms to adapting transfer-in/out processes, it is suggested that as part of the transfer request, firms could provide background information to ceding schemes in order to (maybe) provide some comfort; and, ensure processes are in place to check there are no red or amber flags in relation to transfer-out requests.

Background information can be found at: https://www.gov.uk/government/consultations/pension-scams-empowering-trustees-and-protecting-members/outcome/government-response-the-occupational-and-personal-pension-schemes-conditions-for-transfers-regulations-2021

This TPR link also provides useful information: https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/administration-detailed-guidance/dealing-with-transfer-requests

ARCHIVE

Archived items – these are items included in previous issues of Enhance's Regulatory Barometer which are either ongoing or complete

Item	Issue	Status
FCA 2021/22 Business Plan	October 2021	Ongoing – we are still within the period covered by the FCA's business plan. Many of the pension-related matters covered by the plan are covered elsewhere in these Regulatory Barometers – for example the stronger nudge to pensions guidance, default funds within non-workplace pensions and Consumer Duty are all listed as separate items within the January 2022 barometer.
Consumer Investments: Strategy and Feedback Statement	October 2021	Ongoing – many of the items covered by this strategy have or are taking shape as standalone items, hence where applicable are covered individually within the Regulatory Barometer.
Vulnerable clients	October 2021	Ongoing – this will likely remain at the forefront of the FCA's focus. It is also embedded within the FCA's proposed Consumer Duty Principle.
Transfer of data - EU	October 2021	Complete – this item confirmed that the EU confirmed the UK's 'adequacy' in relation to data protection and the flow of data between the UK and the EU.
Landline telephones – switch from analogue to digital	October 2021	Ongoing – while it is likely that most firms have already switched to a digital service (especially in light of the past couple of years), this item reminded firms of the Government's intention to switch off the analogue system by the end of 2025.

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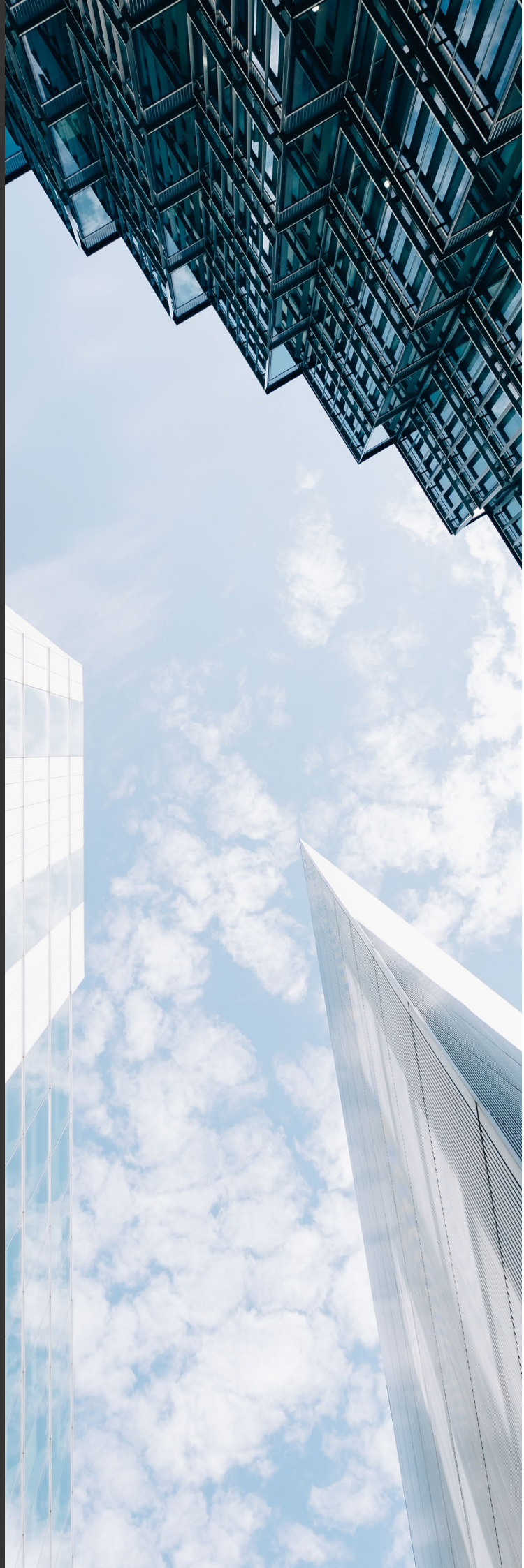
Item	Issue	Status
Investment Pathways (data collection)	May 2021	Ongoing - Investment pathway regulations are in force and firms should now be collecting data as per guidance provided by the FCA
Drawdown pensions - annual statements	May 2021	Ongoing – firms should be issuing annual drawdown statements with the required disclosures
SM&CR - Conduct Rules	May 2021	Ongoing – all relevant staff should have completed training on the conduct rules and SMFs should, on a continuing basis, ensure that proper conduct is embedded into the firm's culture
Covid-19 Resilience testing/analysis	May 2021	Ongoing – firms should continue to monitor service delivery and consider evaluating what worked well/not so well during the height of the pandemic
Managing Pension Schemes Service	May 2021	Ongoing - Providers should ensure that they have signed into Pension Schemes Online for all scheme administrator IDs that they use. The list of schemes that will need to be migrated onto Managing Pension Schemes Service will be available from 19 October 2021
Pension Schemes Act 2021	May 2021	Keep a watching brief on the requirements with regards to the Pensions Dashboard



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