IAPF PENSION SCHEME TRUSTEE TRAINING

TRUSTEE REFRESHER COURSE

Part 2

18th June 2020

WELCOME BACK & INTRODUCTIONS

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APT Workplace Pensions

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AGENDA - REFRESHER TRUSTEE TRAINING

Recap - Part 1

- **Trustee Governance**
  - Trustee Duties – A recap
  - Legislation and good governance
  - IORP II – Pensions Authority Guidelines

Today - Part 2

- **Covid 19 - Pensions Authority Guidelines**
- **Investment**
  - Statutory Responsibilities
  - Fundamentals
  - Changing Environment
  - Volatile Markets - Crisis Management
- **Mobile Workers Directive**
- **Recent Case Law**

HOUSEKEEPING

- Event Format – timings and break

- Quick onscreen introduction from Delegates – alpha order first name – umute sound

- Q&A sections - Use raise hand function in participants icon at bottom of screen. Chair will take note and then will ask you by name to ask your questions in turn. State who the question is for. Or unmute yourself and ask question.

- CPD and Certificate available only to those who complete part 1&2 of the course

- If having tech issues, contact info@iapf.ie or call 087 613 7351

Delegate Introduction

First Name	Last Name	Company
Ann	Garrigan	Irish Life Assurance
Avril	Doyle	Allianz Group Pension Scheme
Brendan	Healy	Irish Life Assurance
Bríd	Horan	Bank of Ireland Group
Carol	Pemberton	Irish Life Assurance
Claire	Cunneen	Aviva Investors
Daniel	Watters	Arthur Cox
David	Brennan	National Lottery
Fidelma	Wimberger	Irish Life Assurance
James	Lidierth	Ulster Bank Pension Scheme (ROI)
John	Smartt	Irish Life Assurance
John	Walsh	Roadstone Pension Trust Ltd
Kate	Kelly	Mundipharma Pharmaceuticals Ltd
Liam	Delaney	Irish Life Assurance
Martin	Dobey	KPMG
Paul	O'Herlihy	Port of Cork Company
Paul	Webb	Trident Consulting
Paula	Martin	Irish Life Corporate Business
Sean	Bradley	Keelings
Tomás	Morrissey	Mundipharma Pharmaceuticals Ltd

- State Name & Company and/or Scheme
- Years of experience as a Trustee
- Any issues you would like to discuss

Peter Griffin QFA FLIA FIIPM

Director – APT Workplace Pensions

COVID 19 – PENSIONS AUTHORITY GUIDELINES

Covid 19 – Pension Authority Guidelines

The primary function of the Pensions Authority is to oversee compliance with the Pensions Act

- It does not have power to waive obligations imposed by the Act.

Many obligations of pension scheme trustees and sponsoring employers are set out in scheme rules and employment contracts

- Pension Authority does not have power to override employer obligations or Scheme Rules.

The Covid-19 crisis has created significant challenges for pensions scheme trustees, sponsoring employers and for the pensions industry. The Pensions Authority has set out some guidelines and advice on how to deal with the most immediate issues.

Covid 19 – Pension Authority Guidelines

The Pensions Authority acknowledges that the crisis creates practical difficulties for the completion of many tasks and responsibilities on time, and that it can be difficult to convene meetings of trustees and to issue documents to members and to others.

The Pensions Authority will take into account current circumstances when assessing the trustees' compliance with their obligations. However, the Pensions Authority expects that reasonable efforts are made and that the trustees and their service providers are proactive and member focussed and to be able to demonstrate that they made reasonable efforts to meet their statutory obligations.

Covid 19 – Pension Authority Guidelines

Trustees and service providers

If they have not been in communication, trustees should immediately contact their administrators and service providers to assess the effect of the Covid-19 crisis on the operation of the scheme. In particular they should confirm the following:

- that pension payments to retired members are paid as they fall due
- that other benefits are paid in a timely manner
- that contributions paid by members and employers are remitted promptly to the scheme.

Trustees are also reminded of their obligations to inform members of material changes to their pension benefits and should, where practicable, communicate with their members on relevant developments in relation to members' pension benefits during what can be a worrying time for pension scheme members.

Covid 19 – Pension Authority Guidelines

Investment

The recent sharp falls in investment markets have a direct impact on defined contribution savers and will make it harder for defined benefit schemes to provide the benefits set out in the scheme rules.

However, markets are volatile and unpredictable, and the Pensions Authority cautions against making any immediate investment decisions unless absolutely necessary.

Pension scheme members should contact the trustees of their scheme if they have any questions about their pension investments.

Trustees of defined benefit schemes should engage with their advisors to consider the impact of the current market conditions on the funding position of their scheme and any actions that need to be considered.

Covid 19 – Pension Authority Guidelines

Pension scheme contributions

The Pensions Authority has received a number of queries about whether it is permissible to suspend contributions to pension schemes for the duration of the crisis.

Most importantly, any occupational pension contributions deducted from employees' pay must be remitted to the scheme within the statutory deadlines. Failure to do so is a criminal offence and the Authority will pursue such cases actively.

The separate question of suspending pension contributions is primarily governed by the contracts of employment and pension scheme rules.

Covid 19 – Pension Authority Guidelines

Suspension of employer contributions

The Pensions Authority have received enquiries about possible temporary suspension of employer pension contributions during the business disruption caused by Covid-19.

In many cases, employers have retained employees on their payrolls with the assistance of the Temporary Wage Subsidy Scheme (TWSS).

An employer's obligations to make pension contributions is governed by employment contracts, pension scheme rules, and in some cases, specific sectoral legislation. The Pensions Authority does not have the power to override these obligations.

Covid 19 – Pension Authority Guidelines

Suspension of employer contributions

The following is a non-exhaustive list of matters that should be considered by employers/trustees with the support of their service providers/advisers in relation to a possible contribution suspension:

- scheme rules, in particular in relation to contribution cessation or reduction and notice periods
- provisions of employment contracts relating to pensions
- the obligation under section 58A of the Pensions Act to make any employer defined contribution payment due
- possible impact on death in service benefits
- possible impact on insured defined contribution schemes if regular contributions cease
- engagement with/communications to affected employees.

Covid 19 – Pension Authority Guidelines

Suspension of employer contributions

There are a number of issues that are specific to defined benefit schemes, including:

- the effect of any suspension on the ability of the scheme to meet its benefit obligations
- the contributions required under a funding proposal
- whether ongoing contributions are necessary to meet current pension payments
- whether a suspension of contributions would unfairly affect a particular class of members.

Many employers are faced with very serious challenges. Nonetheless, employers must be aware that any decision about whether to temporarily suspend pension contributions is not straightforward. The Pensions Authority strongly advises them to consider the relevant employment and scheme issues before making a decision.

COVID 19 – PENSIONS AUTHORITY GUIDELINES

Q&A

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3. Use chat function to ask presenters direct question.

Please state who the question/comment is for

INVESTMENT DB/DC

Ollie Fahey FCCA,FIIPM, APA

Chairman Investment Strategy Group –
APT Workplace Pensions.

AGENDA

- Trustee responsibilities
- Asset Classes
- Asset Characteristics
- Types of investment management
- Investment Styles
- Investment Management Structure
- Investment Framework
- SIPP

TRUSTEE RESPONSIBILITIES

- Invest in accordance with the powers vested in them under the trust deed
- Subject to a duty of care (prudent person) to members and to sponsoring employer
- Requirement to obtain expert advice

STATUTORY INVESTMENT RESPONSIBILITIES

- “to provide for the proper investment of the resources of the scheme in accordance with regulations…and the rules of the scheme”

- Regulations prescribe rules to be followed by trustees consistent with requirements of EU Directive (IORPS)

INVESTMENT REGULATIONS 2005

- Ensure the security, quality, liquidity and profitability of the portfolio…having regard to the nature and duration of the expected liabilities of the scheme
- Similar to trust law obligation
- Invest *predominantly* in regulated markets
- Assets must be properly diversified
- Investment in derivatives only allowed if it reduces risk or contributes to efficient portfolio management
- Prohibition on borrowing
- Exemption for one member arrangements only

Additional requirements to be introduced under IORP II.

TRUSTEES INVESTMENT DUTIES

Trustees are responsible for the investment of scheme assets. This can be undertaken directly by the Trustees but must have a “Suitably Qualified” individual on Trustee Board.

Typically Trustees appoint fund managers who have been selected from a list or “Beauty Parade” put together by their Investment Consultants or use the Delegated Services provided by their Investment Consultants.

Under either option Trustees remain responsible for Investment of assets under their stewardship.

ASSET CLASSES

- Equities
- Bonds
- Property
- Cash
- “Alternatives” including:
  - Diversified Funds
  - Liability Driven solutions
  - Hedge funds
  - Venture capital
  - Derivates
  - Commodities

TYPES OF INVESTMENT

- **Direct investment in Equities, Bonds, Property etc - Segregated investment**
  - an individual portfolio of securities managed directly on behalf of the trustees and held by custodian.

Used in some large DB Schemes

- **Managed Funds – Mutual Funds / Unit Linked Funds**
  - Portfolio of assets selected and managed by investment managers
    - Equities / Bonds / Property / Mixed / Diversified
  - Trustees appoint Managers
  - Used in both DB and DC – can be Active or Passive management

    Volatility / risk depends on asset class and diversification.

TYPES OF INVESTMENT

- **Multi-Asset Funds / Risk Tolerance Funds**
  - Made up of a combination of asset classes and are designed with different asset allocations to create a range of low-to-high risk offerings.
    - Equities / Bonds / Property / Alternatives
  - Trustees appoint Managers
  - In DB mainly used to implement Funding Proposals
  - In DC used to provide member choice and for 'glide path'
  - Usually blends both Active and Passive styles of management – volatility risk depends on asset class and diversification.

Traditional Trustee Driven Investment Process –
Trustees make investment decisions with assistance of investment Consultants

Set investment objectives/ determine long term investment strategy

Decide on investment management structure

Select investment managers

Monitor performance

Delegated Investment

– Delegated investment management combines strategic advice <u>and</u> implementation.

– Trustees appoint a Delegated Manager to undertake the day to day decision making and oversight of the scheme assets.

– Ongoing management of Scheme assets and the decisions and timing of manager / asset mix are delegated to the investment consultants / delegated manager.

– Objectives and risk level set and monitored regularly by the Trustees.

– Historically used in DB scheme to add efficiencies in decision making and timing of investments, now becoming common in DC.

TYPES OF INVESTMENT MANAGEMENT

- Active management
- Passive Management
- Socially Responsible Investing
  - ESG
    - Environmental
    - Social
    - Corporate Governance

Active Management

The fund manager chooses securities to invest in and strategically decides when to buy and sell them

Aims to outperform market average / index

- Various active manager styles
  - Growth manager
  - Value manager
  - Thematic manager
  - Small Cap
  - Income Investing

- Top Down
- Bottom up
- Contrarian

Active Management

- Analysis
  - Fundamental
  - Quantitative
  - Technical

- Can outperform benchmarks however also a risk of underperformance
- Greater volatility of returns
- Key skills:
  - effective research capabilities
  - stock selection skills
  - Conviction

Passive Management

The fund manager builds a portfolio whose holdings mirror the securities of a particular **index**.

- Types of passive or index funds:-
  - Global Equities
  - Reginal Equities (eg US, UK, Eurozone)
  - Emerging markets Equities
  - Eurozone Bonds
  - Quality, Values, Low Volatility, RAFI

- Aims to match a specific index return
- Minimises risk of underperforming the benchmark
- Lower charges
- Key skills:
  - technical capabilities
  - efficient management of cash flows

Environmental, Social and Governance - ESG

- Growing evidence that ESG factors, when integrated into investment analysis and decision making, can offer investors potential long-term performance advantages.

- An investment methodology which uses ESG factors as a means of helping to identify companies with superior business models.

- Does not just mean excluding securities but also as a process to identify winners in the changing investment and environmental universe.

- Incorporates ‘Responsible Investing’ or ‘Sustainable Investing’ or perhaps ‘Ethical Investing’.

- IORPS II focuses with incorporating ESG factors in decisions

ESG and IORP II

- Article 19 of the IORP II Directive will add a further element for trustees to consider in making an investment decision.

- The Article provides that pension scheme investments should be made in accordance with the ‘prudent person’ rule.

- Within that rule, pension schemes are permitted to focus on the long-term impact of their investment decisions on ESG factors.

ESG and IORP II

- Article 19 requires that Member States do not ban the consideration of ESG factors when investment decisions are being made.

- The consideration of ESG factors is not mandatory. It is enough for trustees to explain in a scheme’s statement of investment policy principles that ESG factors have not been taken into account and why that approach has been adopted.

- It can be stated, for instance, that those factors were simply not considered or that the costs of monitoring and reviewing ESG factors are disproportionate to the size of the fund.

STATEMENT OF INVESTMENT POLICY & PRINCIPLES (SIPP)

- A SIPP is a written statement
    - Prepared and reviewed at least every three years by the trustees
    - For pension schemes with more than 100 members (active <u>and</u> deferred)
    - Sets out the main investment objectives and strategies being pursued by the trustees.

- SIPP must include:
    - – investment objectives
    - – investment risk measurement methods
    - – risk management processes to be used
    - – strategic asset allocation with respect to nature/duration of liabilities (DB)
    - – Member choice (DC)

SIPP

- Introduction
  - A brief synopsis of the Scheme

  - Statement that the SIPP is prepared in accordance with Section 59 of Pensions Act

  - Statement that the SIPP is consistent with the powers set out in the Trust Deed & Rules

  - Trustees' have obtained independent professional advice when reviewing investment objectives, strategy and managers, and in drafting the SIPP have retained XYZ Consulting

  - [DC –The Trustees wish to invoke the protection afforded by Section 59(2)of Pensions Act]

SECTION 59(2) -TRUSTEE INDEMNITY

“Safe Harbour”

- If Scheme rules allow member investment choice,

AND

- Trustees offer members a choice of appropriate funds,

AND

- Trustees have a default option in place,

AND

- Trustees provide sufficient information to members to enable them to make informed decisions,

THEN

- Trustees will be **exempt from any liability** for the consequences of the members’ investment decisions.

DB INVESTMENT JARGON

- Liability Driven Investment (LDI)
  - LDI is a framework for understanding the nature of liabilities and adopting an investment strategy with an overall objective linked to these liabilities.

DC INVESTMENT JARGON

- Investment Strategies
- Lifestyle Strategies
- Glidepath
- Default Strategy
- Member outcomes

Investment Strategies

An **investment strategy** is a set of rules, behaviours or procedures, designed to guide an investor's selection of an Investment Portfolio.

Individuals have different objectives and risk tolerances.

Investment strategies can take into account these requirements

By blending various funds and / or managers possible to create strategies appropriate to certain broadly defined risk categories – High / Medium / Low

An appropriate investment strategy enables DC members to select funds or eliminate the need for an individual to make an investment decision.

Lifestyle Strategies

What are Lifestyle Strategies?

In addition to individuals having different objectives and risk tolerances, members also have different timelines to retirement – lifestyle strategies address this:-

- A life style strategy automatically moves members investments over time to ensure they are invested in appropriate funds as they get nearer retirement.
- Eliminates the need for the member to make an investment decision.
- Reduces risk.

Typically used as part of Default option

"Lifestyle glidepath"

Growth Phase

Invests in growth assets
- Multi- Asset Funds
- Managed funds
- Equities

From age 20 to age 55/60

Consolidation Phase

Cash

Annuity Fund

ARF Fund

From age 55/60 to retirement
Typically 5 to 10 years

Defined Contribution Default Investment Strategy

All DC Schemes must have a “Default Option”

The majority of DC members invest their Retirement Accounts via the Default Option

- By choice or
- By not making a choice

Trustees number one priority should be to ensure that the Default Option is fit for purpose

PA – Governance code: –
Particular emphasis is placed on the need to ensure that the default investment strategy is suitable based on the requirements and demographic profile of the members.

PA – Focused on member outcomes

Member Outcomes

- The way in which members will use their retirement account is an individual decision.
- It varies from person to person, depending upon length of service in employment and salary
- Many different outcomes can occur

Potential outcomes	Up to 1 ½ times final remuneration Tax Free Cash & balance buys Annuity
	25% Cash & 75% ARF
	Or Multiple other variations based on members circumstances. E.g. all as Tax Free Cash

Depends on individual circumstances

Annuity as Default

- Assets move from growth phase to a glidepath that lands in a mix of Cash and Bonds
- Only option for DC Schemes prior to 2011
- Suitable where member wants guaranteed income at retirement – annuity purchase
- No decisions required by members post- retirement
- Very expensive currently
- Dies with the member / spouse

Approved Retirement Fund as Default

- Assets move from growth phase to a glidepath that lands in a mix of cash (25%) and multi-asset funds of an appropriate risk rating.
- Available in respect of DC Funds (incl. AVCs) since 2011
- Funds continue to grow tax-free post-retirement
- Funds can be drawn down at any time (subject to tax) but subject to annual imputed income by Revenue of 4% of ARF value
- Member retains responsibility for investment strategy & cashflow management
- Personal asset - balance forms part of estate on death
- When it’s gone, it's gone !

Trustees role in decision making process

- Is advice available to members at retirement?
- Cost of advice ?
- Financial literacy of the member?
- Continuing competency of ARF holder
- Mix ARF & annuity?

Effective communication with members at all points of the retirement journey are critical.

Trustees – Plan of Action in Volatile Markets
Covid 19 Impact on Markets

Volatility is normal in the world of Stock Markets.

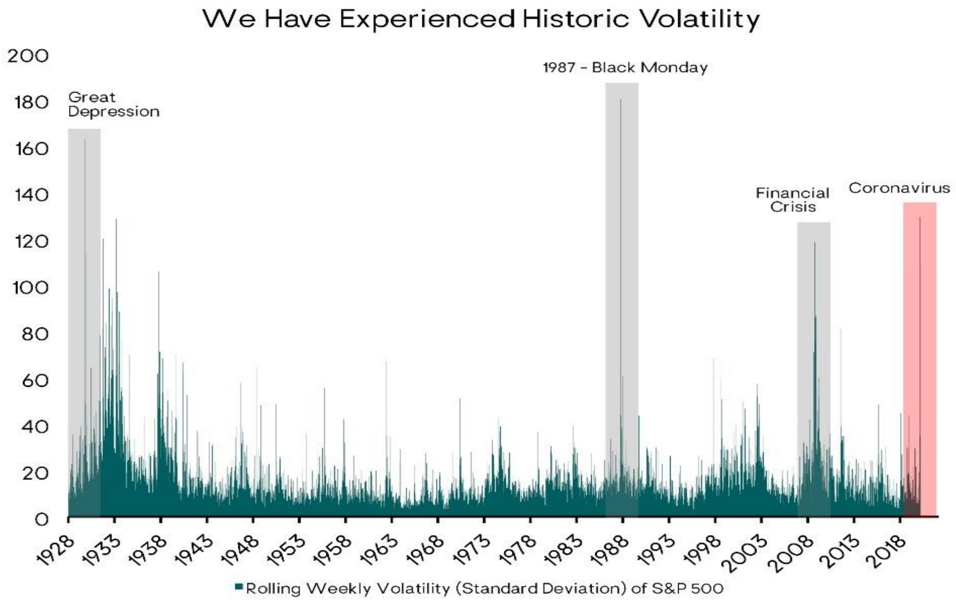
Pensions savings are a long term investment and require appropriate strategies and de-risking glidepaths at the right time.

Sudden stock market corrections do happen, Trustees need to be confident that their investment strategies take into account the volatile nature of equity markets and that they do not panic or feel forced to make short term decisions that are not in the best interest of the scheme in the long term.

Sometimes doing nothing is the correct course of action!

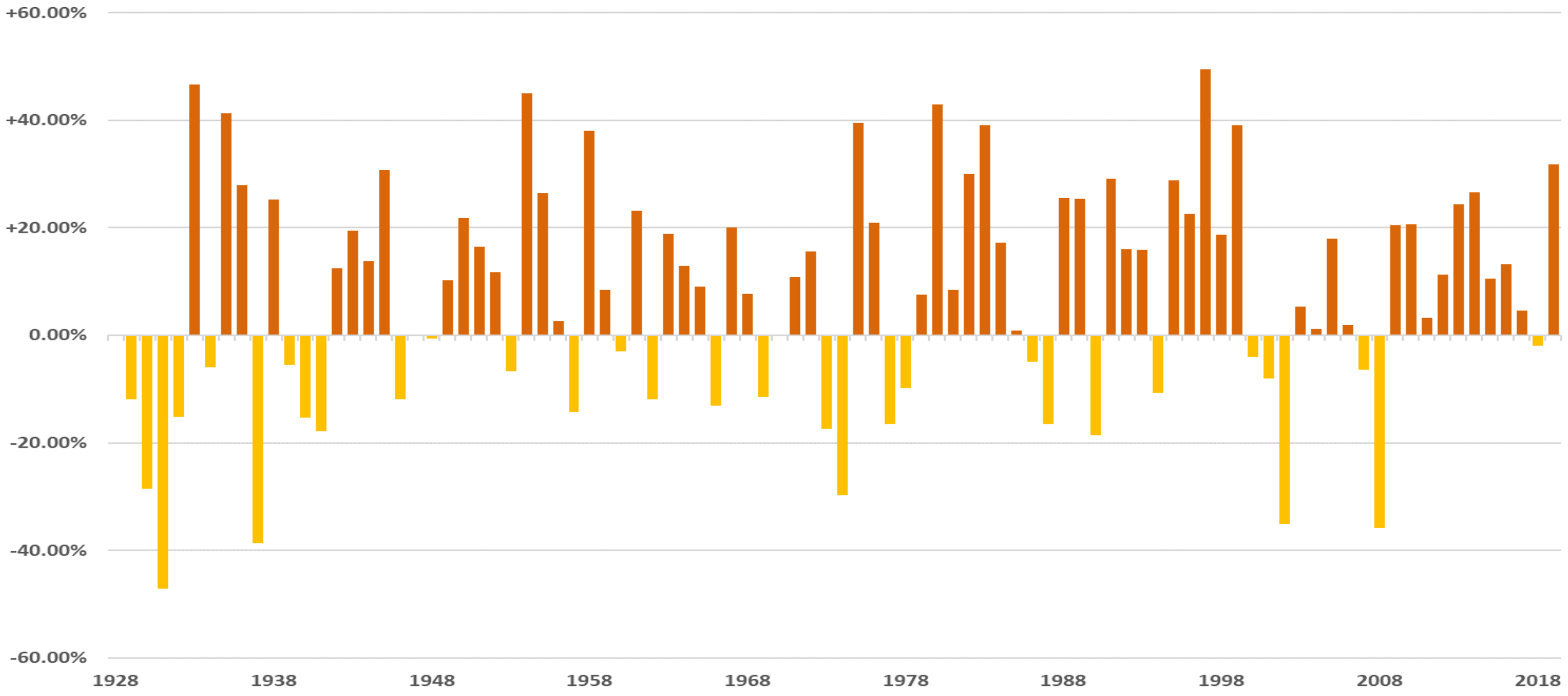
Trustees – Plan of Action in Volatile Markets
Covid 19 Impact on Markets

March 2020 was the most volatile month ever in stock markets as equities averaged a daily move, in either direction, of more than 4.8%



Over shorter time periods, investing may feel turbulent

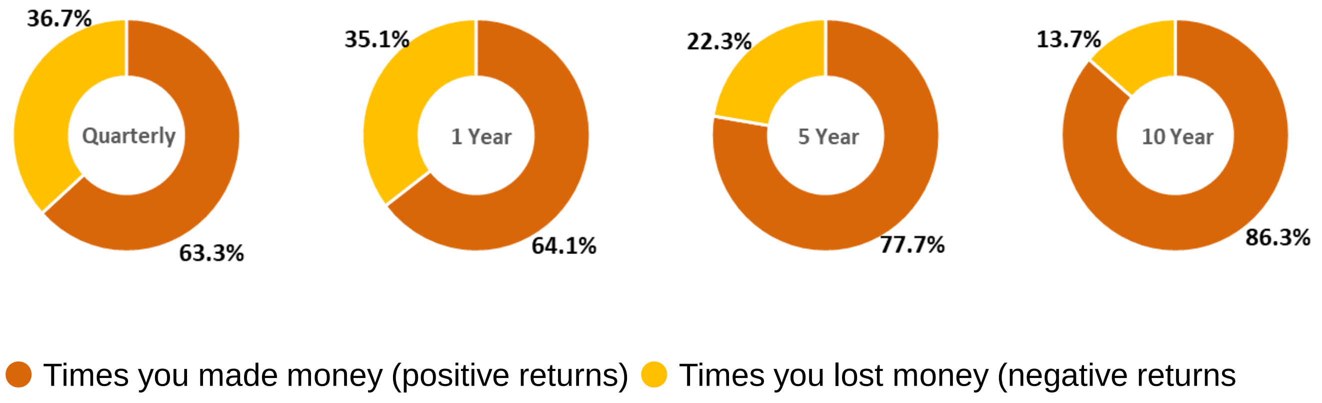
1-year returns of stocks (1928-2018)



Staying invested for the long-term

The stock market can be volatile in the short term. It can decline substantially even in a single day, creating fear amongst investors. But if you stay calm, you'll find that the likelihood of a positive return grows higher the longer you stay invested.

The longer you stay invested, the greater your likelihood of positive returns
Rolling returns of stocks (1928-2018)



INVESTMENT DB/DC

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European Union (Supplementary Pension Rights) Regulations 2019

Mobile Workers Directive

European Union (Supplementary Pension Rights) Regulations 2019

The EU (Supplementary Pension Rights) Regulations 2019 (the "**Regulations**"**)** make a number of changes to the Pensions Act 1990 (the "**Act**") and have introduced the concept of an "*outgoing worker*" into Irish pensions law for the first time.

The purpose of the Regulations is to give further effect to Directive 2014/50, known as the Portability Directive (the "**Directive**"), which aims to enhance worker mobility between Member States by creating minimum pension rights for mobile workers across the block.

These rights and protections are:

- a right to a refund of pension contributions where service in relevant employment terminates and the Outgoing Worker is not entitled to a preserved benefit under a scheme;

- a prohibition on trustees of a scheme making a transfer payment in respect of an Outgoing Worker who is entitled to a preserved benefit under a scheme without having first obtained the written consent of the Outgoing Worker to the transfer payment;

and

- a right of an Outgoing Worker to join a scheme which applies to their employment (if any) within a period of no longer than 12 months after commencing employment.

The Directive defined the principle of *outgoing worker* as an active scheme member whose current employment relationship terminates for reasons other than becoming eligible for a supplementary pension, and who moves between EU Member States for the purposes of further employment.

It becomes apparent from a review of this definition that every active member of a pension scheme could, at some point in time, be categorised as an outgoing worker and so become entitled to those pension rights that were transposed into Irish law by the Regulations on 13 September 2019.

The Regulations indicate that employees can be either *inbound outgoing workers* or *outbound outgoing workers*, depending on whether a worker is joining or leaving service in Ireland or another Member State.

Outbound outgoing workers:

The Regulations amend the Act with the addition of a number of new sections. A new section 32A states that where an *outgoing worker* has had their relevant employment terminated, and at the time of termination they are not entitled to receive a preserved benefit under the relevant pension scheme, this worker shall be entitled to a refund of the contributions paid by them or on their behalf to the scheme.

What schemes do the Regulations apply to?

S32A applies to both defined benefit (DB) and defined contribution (DC) schemes. The section provides that where the relevant scheme is a DB scheme, the outgoing worker shall receive a refund of all contributions paid by or on behalf of the outgoing worker.

For DC schemes it provides that

(A) The *outgoing worker* shall receive the sum of the contributions paid by, on behalf of or in respect of the outgoing worker whether the Contributions were paid by the employer or the outgoing worker or both, *or*

(B) The *outgoing worker* shall be paid the value of the investments arising from the contributions paid by or on behalf or in respect of the *outgoing worker* whether the contributions were paid by that outgoing worker or the employer, or by both of them.

S32A also confirms that where the rules of the scheme provide for a refund to the *outgoing worker* that is greater than the amounts provided for under s32A, then nothing in that section shall prevent this greater amount being paid to the *outgoing worker*.

Equal treatment

It also appears that an active member who leaves service for employment in another Member State is to be treated differently than an active member that leaves service for further employment elsewhere.

The relationship between S32A and S70 of the Act is potentially an issue here that requires resolution.

S70 of the Act deals with equality of pension treatment and requires employers to comply with the principle of equal treatment.

The Regulations permit only those that can be categorised as *outbound outgoing workers* to take a full refund of benefits.

Workers that move from Ireland to a non-Member State for further employment do not have the same entitlement.

Tax treatment of refunds of employer contributions

S32A has also raised tax concerns as tax legislation only makes provision for the repayment of employee contributions and does not deal with the repayment of employer contributions.

This is a matter for the Revenue, though it has yet to issue guidance on this aspect of the Regulations.

Inbound outgoing workers:

Section 39A has also been inserted to the Act by the Regulations and applies to those employees that have joined service and moved from employment in another Member State. This section provides that the waiting period for admission to membership of a scheme for *outgoing workers* shall be no greater than:

- 12 months from the date of commencement of service in the relevant employment of that person, *or*

- In the case of a person whose service commenced before 13 September 2019, that person shall be admitted to the scheme 12 months from the date on which their service commenced, *and*

- Where more than 12 months has elapsed from the day on which service commenced and the relevant scheme has a waiting period of more than 12 months, then they are to be admitted on 13 September 2019.

Inbound outgoing workers:

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- 12 months from the date of commencement of service in the relevant employment of that person, *or*

- In the case of a person whose service commenced before 13 September 2019, that person shall be admitted to the scheme 12 months from the date on which their service commenced, *and*

- Where more than 12 months has elapsed from the day on which service commenced and the relevant scheme has a waiting period of more than 12 months, then they are to be admitted on 13 September 2019.

Leaving Service – Trustee obligations

For active members that leave service, the Pensions Authority has simply recommended that trustees make enquiries of the member to see if they can be categorised as an *outbound outgoing worker*.

Where the member leaving service answers yes, the Pensions Authority suggests that evidence be sought by way of a letter from their new employer in the destination Member State which confirms the new employment.

This may be difficult to achieve as an active member may leave service without any plans for immediate further employment.

It means that continuing efforts will need to be made at contacting the departing member long after they have left service.

GDPR

There are also potential General Data Protection Regulation (**GDPR**) concerns here.

To remain in touch with a member that has left service will require the retention of their personal data such as their address, phone number and email address.

It is important to note that GDPR defines "processing" in a very wide manner and it include activities such as collecting or receiving data, sharing data with third parties, storing or archiving data, inputting data onto IT systems or deleting data.

Even the mere *retention* of personal data in manual or electronic files may amount to processing.

New Member joining the Scheme

Where new employees are commencing employment, the Pensions Authority has recommended that the following questions be asked:

(A) Whether their most recent employment, prior to commencing employment in Ireland, was as an employee in another Member State as an active member of a supplementary pension arrangement;

(B) If the new employee answer question (A) affirmatively then the employer should request:

i) a copy of the leaving service statement from their previous supplementary pension scheme and/or a letter from their former employer or the scheme administrator confirming their employment as an employee in another EU member state as an active member of a supplementary pension scheme

ii) if there was any period between cessation of that employment in another EU member state and commencement of new employment, evidence that the new employee was not in employment during that period e.g. receipt of social welfare benefit.

Clarifications and advice

The operation of the Supplementary Pension Rights will need further clarification by the Pensions Authority as it is not absolutely clear how in practical terms the Regulations are to be operated -

Regulation 5 amends the Pensions Act by inserting section 35(1A).

This new provision states that the trustees of a scheme may carry out a transfer payment from the scheme by making one or more payments where an outgoing worker has provided the necessary consent in writing for the trustees to do so.

There is some confusion in the industry about this provision, particularly around the requirement to obtain the written consent of the outgoing worker.

European Union (Supplementary Pension Rights) Regulations 2019 Mobile Workers Directive

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Pension Governance

A summary of recent case law

Association of Pension Trustees Ireland Limited v Minister for Employment Affairs and Social Protection

The Association of Pension Trustees of Ireland (“**APTI**”) made an application to the High Court, filed in March of 2019, which sought various reliefs against the Minister concerning the transposition of the IORP II Directive (“**IORP II**”) into Irish law.

Amongst the numerous reliefs requested, it sought a declaration from the High Court that the application of various discretionary provisions of IORP II to single member pension schemes would be unreasonable, disproportionate and an irrational exercise of the Minister’s discretion.

APTI's members are concerned about Article 19 of IORP II and the impact it will have on single member pension schemes and their providers. Article 19 states that scheme assets must be predominantly invested in regulated markets and it restricts the extent to which schemes can invest in property and borrow. It will also oblige scheme trustees to consider environmental, social and governance factors when making investment decisions.

Substantial proceedings commenced on 15 October 2019, however on the following day counsel for APTI requested an adjournment to allow the Minister time to consider the matter.

The order of 16 October 2019 also removed the stay on the transposing regulations that had been in place since 25 March 2019.

It was thought that the Minister would utilise the time provided by the adjournment to consider whether the transposing IORP II regulations would apply to single member pension schemes or retain the existing exemption which applies to that scheme type in Ireland. However, given the COVID-19 pandemic and the fact that we are still without a government, it may be some time before we see transposing regulations.

It is expected that APTI will seek to recommence proceedings if the proposed transposing regulations do not include an exemption for single member pension schemes. Mr Justice Simons has confirmed that he will continue to hear the matter if and when it recommences.

If the Minister chooses to discontinue the exemption for single member pension schemes there is the possibility that the application for judicial review by APTI will fail. If that occurs, trustees of single member pension schemes will need to review their investment, compliance and scheme administration procedures.

PSV v Bauer (Decision of the Court of Justice of the European Union)

On 19 December, the CJEU delivered a judgment on the minimum protection entitlements for pension benefits in *PSV v Bauer*. The case was a referral from the German Federal Labour Court.

Mr Bauer retired in 2000 and his former employer granted him various old-age pension benefits including a pension paid by PKDW, an occupational pension institution.

In 2003, PKDW experienced financial difficulties and were authorised by a national authority to reduce the pension payable to Mr. Bauer.

Mr. Bauer’s former employer was obliged to offset the shortfall in the level of pension payable but in 2012 it entered insolvency PSV (German insolvency insurance institution) assumed payment of the monthly pension supplement but refused to take over his former employer’s obligation to pay the offset amount.

This was contested by Mr. Bauer and the matter was referred to the CJEU – two main referral queries:

- Did Article 8 of the Insolvency Directive apply to the offset

- If it did, in what circumstances would a loss of pension benefits be regarded as “manifestly disproportionate” obliging a MS to ensure a minimum level of protection against such losses

The CJEU reaffirmed that Member States are not required to guarantee employees’ pension benefits in full on their employer’s insolvency.

It reiterated that Article 8 of the Insolvency Directive requires a Member State to ensure that an employee receives at least <u>half</u> of the accrued pension rights to which they were entitled, *unless* any reduction in their benefits may be regarded as *manifestly disproportionate*.

Any reduction which “seriously compromises” a former employee’s ability to meet his or her needs must be regarded as manifestly disproportionate.

It went on to say that this would be the case if a former employee would have to <u>live at or below the at risk of poverty threshold</u> (determined by Eurostat for each Member State).

In Ireland, the at risk of poverty threshold for an Irish adult is just under €15,000, according to Eurostat.

The Pensions Act 1990 only covers benefits of up to €12,000 (section 48A). Is there a potential risk for the State here?

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