



### The 'data ownership' dilemma

**D**ata has become part of our everyday life. From shopping to receiving your monthly wage, companies collect, hold, analyse and exchange data in various ways. Defined benefit (DB) pension schemes are no different. Trustees and their advisors need to understand and define their responsibilities with regards to data ownership, security, accuracy, the types of data being held and for what purpose the data is being used.

Pension scheme data is not the hot topic it once used to be. Certainly, when the Pensions Regulator issued its Record Keeping guidance in June 2010, most schemes would have conducted an exercise to measure the quality of their data and taken steps to improve data where appropriate. In today's post Brexit environment, de-risking and integrated risk management usually dominate the discussions at trustee meetings. However, trustees and their advisers should reconnect with their responsibilities under the Data Protection Act 1998 (DPA), their wider responsibilities to maintain good quality and accurate data and, in particular, administration contracts concerning data ownership and transfer.

### Controller vs processor

Under the requirements of the DPA, it is defined that the trustees are data controllers who are ultimately responsible for determining the purpose for which personal/sensitive pension scheme data is to be used. Administrators are data processors who handle pension scheme data on behalf of the trustees. There is a requirement to have a written contract between the controller and processor and this obligation is usually met as part of the administration contract signed when the administrator is appointed to provide services on behalf of the trustees.

Nevertheless, what happens when the trustees decide to transfer administration services to another provider? When and how will the data be transferred? Who retains overall responsibility for the data? Undoubtedly, you would expect any administration contract to clearly document the procedure in this situation. Trustees can reasonably expect that the transfer of data to the new administrator would be provided without incurring excessive charges. After all, the trustees are responsible for determining the use of the data and are ultimately responsible for the management of the scheme. The incumbent administrator has no need to

retain any data, including electronic data or hard copy member files, once the contract has been severed.

Increasingly though, certain administrators are asserting ownership of both member files and electronic data, either charging significant amounts for their release, or flat out refusing to transfer these vital scheme records to the new administrator.

### Scheme and member impact

Data can be held in a number of different forms from traditional paper based records and microfiche to electronic records. Although the aim may be to achieve a 'paperless office', paper based records still provide a wealth of information. If this information is not readily available or not transferred to the new provider, there is a risk of data and knowledge loss which could impact on the scheme's ultimate aim to pay out correct benefits to members. In the longer term, it could impact data cleansing projects such as Guaranteed Minimum Pension (GMP) reconciliations and buy-out. There are also similar risks associated with electronic data, for example what if the format becomes obsolete or is no longer accessible?

The DPA defines eight principles which trustees must adhere to. Principle 5 deals with retention of personal data, but the Act does not define the specific minimum or maximum periods for retaining personal data, just the need to review the length of time personal data is kept, consideration of the purposes that information is being held for, deleting information which is no longer needed for the required purpose and finally updating, archiving or securely deleting information that goes out of date. The Act also does not define other types of data, which is not personal (for example salary information to calculate benefits).

It is therefore essential that trustees negotiate a fair exit clause for the transition of pension scheme data as part of their administration contracts to ensure that the risk of data loss is mitigated. As part of this trustees should also consider the implementation of the General Data Protection Regulation (GDPR) in May 2018. ■



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