

# ALLEN & OVERY

## Joint DB and DC trustee agenda update: current legal issues

### For January 2018 meetings

Welcome to our monthly update on current legal issues for trustees of DB and hybrid pension schemes, designed to help you stay up-to-date with key developments between trustee meetings, and to support the legal update item on your next trustee agenda. We also have a separate DC-only briefing.

#### TPR guidance on Chair's statement

The Pensions Regulator has published guidance clarifying its expectations as to the content of the DC Chair's statement, and highlighting where more detailed information about scheme processes and evaluation methods is expected. [Read more](#)

Our [guide to preparing for the Chair's statement](#) will help you identify the processes you need to have in place to meet the legal requirements of the statement.

**ACTION:** Review the guidance and assess whether your scheme's processes require updating to meet the Regulator's expectations for the Chair's statement.

#### Update on VAT recovery **UPDATED!**

HMRC has updated its position on how VAT should be calculated for DB pension schemes, confirming that its 70/30 concessionary treatment, which allows scheme sponsors to reclaim 30% of VAT costs on combined supplies of administration and investment management services, will remain available. [Read more](#)

**ACTION:** Trustees/sponsors should consider whether current VAT recovery practices remain appropriate and whether additional items may be recoverable.

#### Scheme return – new requirements

The Pensions Regulator has published a [checklist](#) of information required to complete DB/hybrid scheme returns for 2017/18. New information disclosure is required, including the date on which the scheme last measured its common and scheme-specific data and what percentage of each data category is accurate and complete. The Regulator expects to engage with schemes which require improvement in their data standards and record keeping. [Read more](#)

**ACTION:** Ensure that you have the new information requirements ready ahead of the scheme return deadline. Consider whether to update your data improvement plan for 2018.

#### MiFID II actions **NEW!**

Revised rules for fund managers effective from 3 January 2018 introduce changes that may affect pension schemes. The PLSA has published a short action list for schemes to consider including, for example, the need to obtain a Legal Entity Identifier (if one is not already in place); and taking the opportunity to review investment management agreements. [Read more](#)

**ACTION:** Review the action list and plan to address any items that apply to your scheme.

#### PPF levy 2018/19

The PPF final Determination for the 2018/19 levy year will include changes to some aspects of the levy process. In particular, changes are proposed to the standard form contingent asset agreements that are acceptable for levy purposes, and to the reporting requirements supporting certification of Type A guarantees. [Read more](#)

New contingent asset agreements entered into after publication of the revised versions will be required to use the new forms; existing contingent assets (and any executed before the new versions are published) can be submitted for the 2018/19 levy, but new forms are likely to be required for 2019/20. [Read more](#)

**ACTION:** If you plan to certify a new or existing contingent asset for levy purposes, ensure that your timetable for Q1 2018 will enable you to meet relevant deadlines.

#### TPR sets out governance expectations

The Pensions Regulator has published three tranches of its new '21st Century Trusteeship' guidance, which aims to improve governance standards. These tranches explore 'good governance', 'clear rules and responsibilities' and 'clear purpose and strategy'. The guidance includes links to other material, including a newly published guide to data improvement plans, an example of committee terms of reference, a sample business plan and a sample annual planner. [Read more](#)

**ACTION:** Review the guidance and consider whether scheme practices should be updated.

## Transaction cost disclosure

From 3 January 2018, the FCA's Handbook rules will require asset managers, where requested by schemes, to provide certain information about transaction costs. This will help trustees meet their obligations to review and consider the value for money of transaction costs and administration charges. [Read more](#)

The government is also consulting on plans to require schemes that provide DC benefits (not including the AVC element of DB schemes) to publish details of investment charges annually; and provide more detailed disclosure on costs and charges in the Chair's statement. The changes are proposed to take effect from 6 April 2018 (and in relation to the Chair's statement, for the first scheme year ending on or after 6 April 2018). [Read more](#)

**ACTION:** Liaise with asset managers to gather cost information in Q1 2018 and in good time ahead of the publication of the Chair's statement.

## Changes for 'safeguarded-flexible' benefits

New rules will apply from 6 April 2018, when members with 'safeguarded-flexible benefits' (such as benefits with a guaranteed annuity rate) seek to transfer, convert or access their benefits flexibly, and when those benefits are valued for the purposes of the independent advice requirement. Trustees will be required to provide a personalised risk warning highlighting the guarantee and its value. The government has published [guidance](#) explaining the information requirements, implementation processes and best practice. [Read more](#)

**ACTION:** If your scheme offers safeguarded-flexible benefits, liaise with administrators to ensure appropriate processes are in place for valuing benefits and providing risk warnings in line with the new rules and government guidance.

## Anti-money laundering duties **UPDATED!**

Trustees of occupational pension schemes have additional compliance duties under new money laundering regulations from 26 June 2017.

The most immediate duties relate to record-keeping and to provision of information when entering into a transaction/business relationship with parties (such as banks/some advisers) that are required to carry out money laundering checks. Some of the requirements may not be part of your normal scheme administration.

Schemes must also provide HMRC with trust information, normally by 31 January following a tax year in which specified tax charges have been triggered (first deadline: 31 January 2018 but HMRC will not impose penalties if schemes comply by 5 March 2018). Schemes must register with the Trusts Registration Service to provide this information. [Read more](#)

**ACTION:** Note the new duties and consider how to obtain missing data. Put in place an annual check ahead of the reporting deadline to ascertain if a relevant tax charge has been triggered.

## Watch this space

- The government intends to set out its proposals for DB pensions reform in a White Paper in early 2018. [Read more](#)
- The government proposes changes to statutory transfer rights from late 2018, to help combat pension scams. [Read more](#)
- New standards for professional trustees are under consultation and could be introduced as soon as next April. These could particularly affect trustees who fall within the Regulator's professional trustee description without being part of a wider professional trustee organisation. [Read more](#)

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Need help managing DB pension risk? Visit [allenoverly.com/pensionrisk](http://allenoverly.com/pensionrisk)

Looking for resources on a range of DC-related issues? Visit [allenoverly.com/DCHQ](http://allenoverly.com/DCHQ)

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