

Trustee agenda update: current legal issues

For your November 2022 meetings

DB and DC schemes

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.

Market volatility: TPR guidance **NEW**

In light of market turbulence, and prior to the end of the Bank of England's gilt purchase scheme on 14 October 2022, the Pensions Regulator (TPR) issued a statement for trustees on managing investment and liquidity risk. The guidance is relevant to all schemes, not just those that have been directly impacted by liquidity issues, and includes both short- and medium-term actions for trustees to consider (**read more**).

ACTION: Read the statement and consider which actions apply to your scheme.

DB funding regulations consultation **UPDATED**

Draft regulations have been published outlining what schemes will need to do to comply with the Pension Schemes Act 2021 requirement to have a funding and investment strategy (FIS) in place. The consultation on the regulations has now closed.

The FIS is intended to ensure that pensions can be provided over the long term. A key principle is that schemes should be in a state of low dependency on their sponsoring employer by the time they are significantly mature, and the regulations prescribe requirements related to meeting that goal. Schemes will need to set out the FIS in a written statement of strategy, along with other disclosures (**read more**).

Further detail (including what counts as 'significantly mature') will be set out in a revised DB funding Code of Practice – the Pensions Regulator (TPR) is due to consult on this later this year.

ACTION: Take the draft regulations into account when considering funding strategy.

DC: illiquid investments and performance fees **NEW**

After including the removal of certain performance-based fees from the DC charge cap in September's 'mini-budget' (one of the measures which has not since been reversed), the government has published draft regulations and guidance intended to broaden the investment opportunities of DC schemes. This came along with a response to part of the March 2022 consultation on facilitating investment in illiquid assets.

Key proposals include flexibility to exclude specified performance-based fees from the default fund charge cap, and requirements for relevant DC schemes to disclose and explain (i) their policies on illiquid investments and (ii) the proportions of default fund assets allocated to different asset classes at various specified member ages (**read more**).

ACTION: Keep a watching brief and consider the proposals as part of investment discussions.

Dashboards developments **UPDATED**

There has been further progress on the path to the introduction of pensions dashboards: regulations setting out the requirements for dashboards and schemes interacting with them have been laid before Parliament (**read more**), following a response to the second consultation on those regulations (**read more**); sections of the Pension Schemes Act 2021 relating to dashboards have now been brought into force (**read more**); and the government has published guidance for schemes considering applying for deferral of their connection deadline (**read more**).

ACTION: Ensure your scheme is taking steps to meet the requirements in the regulations.

Administrator exit terms

PASA has published guidance on the provisions that schemes should have in place for the end of an administration contract, to ensure a smooth transfer to a new provider. It focuses on clarifying: the terms on exit, including service level agreements for provision of information and data and stated responsibilities; the scope of services covered; and fees, including any additional out-of-scope charges and the charge rates applied (**read more**).

ACTION: Check your administration agreement for adequate exit provisions, even if you are not expecting to transfer services imminently.

Watch this space

- As noted above, TPR is expected to consult on a revised DB funding Code of Practice later this year.
- The government has consulted on changes to the notifiable events regime. There is currently no revised date for the delayed regulations (**read more**).
- TPR has consulted on its proposed single code of practice: **watch our webinar on the proposals** and **read TPR's interim response**. Publication of the revised version of the code is expected soon.
- A revised code on transfers, and other materials from the Pension Scams Industry Group, are also awaited.
- TPR will be launching a joint consultation with the Financial Conduct Authority (FCA) and DWP on a Value for Money Framework by the end of the year.

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