

ALLEN & OVERY

DC trustee agenda update: current legal issues

For October 2019 meetings

Welcome to our monthly update on current legal issues for trustees of DC 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.

Action required: fiduciary management, investment consultants

[New rules](#) requiring pension scheme trustees to run competitive tenders for fiduciary management (FM) services and to set strategic objectives for investment consultancy (IC) providers will come into force on 10 December 2019. The government has [published](#) draft regulations making similar (but not identical) changes that are expected to come into force in April 2020. The Pensions Regulator (TPR) has published draft guidance; this will be updated when the regulations are finalised.

If appropriate IC objectives are not already in place, trustees should plan to address this as soon as possible. Schemes with in-house providers may be covered by a carve-out in relation to IC services for the December deadline but are likely to be required to set objectives under the April 2020 regulations.

ACTION: Confirm whether appropriate objectives are in place for IC services and prioritise compliance as appropriate; take account of tendering requirements for FM services if relevant.

Reminder: changes to investment duties **UPDATED!**

Having updated statements of investment principles (SIPs) to meet new requirements by 1 October 2019, further new requirements are on the way for DC arrangements.

By 1 October 2020, trustees must report on implementation and also update the SIP to address further content requirements. Trustees should ensure that requirements to be met in 2020/2021 are included in the scheme business plan. [Read more](#)

ACTION: Check the requirements and prepare for compliance.

Chair's statement: what can go wrong **NEW!**

Many schemes providing DC benefits must prepare an annual governance statement known as the Chair's statement. TPR has imposed numerous fines on trustees for non-compliant statements.

Our [new publication](#) looks at some common issues when preparing the statement, as well as factors to consider if a penalty notice is received.

ACTION: Ensure that the draft statement receives a legal review before it is finalised.

GDPR: limitations on use of consent

Many trustees have already ceased to use consent as their basis for processing, but some schemes may have retained it for specific purposes. A recent [ruling](#) by the Greek Data Protection Authority makes clear that consent can only be used where no other basis is applicable; to rely on consent where processing is actually being conducted for reasons of legal obligation or legitimate interest is not valid and is likely to breach other data processing principles (such as fairness and transparency). The ruling is consistent with guidance from the UK Information Commissioner's Office.

ACTION: Review any GDPR wording relating to consent to ensure that the basis for processing is valid and correctly stated.

New DC investment guidance

TPR has published [updated DC investment guidance](#) – this is much more detailed than the previous version, and includes guidance on new transparency and disclosure requirements (see Reminder: changes to investment duties and [read more](#)).

ACTION: Review the updated guidance and discuss with advisers.



Transfers guidance

PASA has published [good practice guidance](#) on transfers, aiming to increase the speed of transfers, increase efficiency, and improve communications and transparency. The guidance focuses on DB transfers, but schemes are encouraged to apply the best practice principles more widely, including on DC-DC transfers.

ACTION: Review the transfer guidance and consider any changes to processes.

Watch this space

- Further details about the accreditation framework for **professional trustees** are expected. [Read more](#)
- The new [UK Stewardship Code](#) is now expected later this year (delayed from October).
- TPR is expected to consult on a new [regulatory strategy](#) and its [Codes of Practice](#) later this year.
- Proposed [changes](#) to **statutory transfer rights** remain on the agenda.
- Trustees should be aware of forthcoming [changes](#) affecting the **Financial Services Register**, and expected [guidance](#) requirements in relation to occupational schemes.

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