

ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For December 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.

Schemes must equalise GMPs **NEW!**

In a landmark ruling, the High Court decided that pension schemes must equalise for the effects of unequal guaranteed minimum pensions: [Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc and others](#). The court ruled that if multiple methods produce equality of benefits, the method which results in 'minimum interference' with the rights of any party should be chosen. In this case the sponsor was entitled to insist on the cheapest method. [Read more](#)

ACTION: In the short-term, consider your member communication strategy and how to deal with transfers and benefit payments. Review scheme data and design a process for corrections.

Updated DC communications guide **NEW!**

TPR's updated DC guide to communicating and reporting supports the use of the 'Simpler Annual Benefit Statement' template (see below) and includes links to useful resources such as the new pension scams leaflet and the quick guide to the Chair's statement. [Read more](#)

ACTION: Review the guide to ensure that your communication and reporting meet best practice standards (e.g. the latest pension scams leaflet).

Simpler annual statement template **UPDATED!**

The Pensions Minister has launched a simpler annual statement template (and a technical guide) intended to provide all relevant information to members in a plain English, two-page, two-minute read format.

The European Insurance and Occupational Pensions Authority has also [published a report](#) containing guidance on the design and presentation of benefit statements, communications of projections and disclosure of costs. [Read more](#)

ACTION: Review these best practice resources when updating your DC benefit statement.

Action on PPF contingent assets

Schemes with Type A or B contingent assets with a fixed cap must update these to the new Pension Protection Fund (PPF) standard forms in order for them to be recognised for the purposes of the PPF levy in 2019/20. [Read more](#)

ACTION: Contact your usual Allen & Overy adviser as soon as possible if affected.

Changes to the scheme SIP

New regulations will make changes to investment duties and disclosure obligations in the statement of investment principles (SIP).

From 1 October 2019, the SIP for DB and DC schemes with more than 100 members must state how 'financially material considerations' (including environmental, social and governance considerations) are taken into account over the time period needed for funding future benefits; the extent (if at all) to which members' views are taken into account in the selection, retention and realisation of investments; and the policy on stewardship of investments (e.g. voting rights).

From 1 October 2020, schemes offering money purchase benefits (other than AVCs) with more than 100 members must produce an implementation statement detailing how items in the SIP have been actioned. This and the SIP must be published as set out in the regulations.

The government has also updated its statutory guidance on the reporting of costs, charges and other information relevant to DC schemes. [Read more](#)

ACTION: Consider the changes required and the actions necessary to implement them by the 1 October 2019 and 1 October 2020 deadlines.

TPO, TPAS and signposting

The government and the Pensions Regulator (TPR) have told schemes they may update ‘signposting’ to the services of the Pensions Ombudsman (TPO) and the Pensions Advisory Service to reflect current arrangements, despite a delay in amending legislation to provide for this.

Schemes may also use TPO’s new Early Resolution Service (ERS) without completing a scheme’s internal dispute resolution process if the parties are happy to do so. [Read more](#)

ACTION: Consider the scheme’s approach to the ERS and updating signposting in communications.

Ombudsman’s guidance on compensation for non-financial injustice

Updated TPO guidance on compensation for non-financial injustice caused by maladministration splits awards into five bands ranging from nil in trivial cases to GBP2000 (or more in exceptional cases). [Read more](#)

ACTION: Review the guidance and use as a reference for compensation in appropriate cases.

GMP reconciliation: PASA guidance

The Pensions Administration Standards Association has issued more guidance on GMP reconciliation, looking at options and solutions for schemes reaching the end of their reconciliation exercise with ‘stalemate’ issues that cannot be resolved with HMRC. [Read more](#)

ACTION: If relevant to your scheme, review the guidance to help close off outstanding queries.

Updated Chair’s statement quick guide

TPR has updated its quick guide to the Chair’s statement for DC schemes. There is a new section on common mistakes relating to costs and charges and value for members. [Read more](#)

ACTION: Review the updated guide when preparing the contents of the Chair’s statement.

Updated investment guidance **NEW!**

TPR’s updated investment guidance for DB and DC schemes addresses social impact investment and patient capital. TPR expects trustees selecting investments for social impact to have good reason to think that members share their view and ensure there is no risk of significant financial detriment to the scheme. TPR expects patient capital to represent a small proportion of overall asset allocation and for appropriate due diligence to be completed before investing. [Read more](#)

ACTION: Review the guidance to assess whether your investment strategy or due diligence procedures require updating.

Watch this space

- TPR has announced that the largest workplace schemes will receive **one-to-one supervision**; all schemes can expect more intervention. [Read more](#)
- The government does not support an automatic bar on companies paying **dividends** where their pension schemes are in significant deficit, but is considering other changes to the dividend payment framework (more details expected shortly). [Read more](#)
- The government’s response to a [consultation](#) on **strengthening TPR’s powers** is awaited. The consultation followed a [White Paper](#) on DB pensions reform proposing changes to TPR’s powers and trustee governance, and a new duty for companies to make a statement, before a sale or takeover of a DB scheme employer, that any detrimental impact to the scheme has been considered and mitigated.
- The government is proposing a number of changes to help **combat pension scams**, including [changes to statutory transfer rights](#) and [banning pensions cold calling](#). Provisions to require members to receive (or opt out of receiving) guidance in relation to a transfer or flexible access request are included in the Financial Guidance and Claims Act. [Read more](#)

Need help with a pensions dispute? Visit allenoverly.com/pensionsindispute for practical help with pensions problems, including our case tracker.

Need help managing DB pension risk? Visit allenoverly.com/pensionrisk.

Looking for resources on a range of DC-related issues? Visit allenoverly.com/DCHQ.

Contact us at pensions.team@allenoverly.com for more information or to be added to our mailing list.