

ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For August 2018 meetings

Welcome to our monthly update on current legal issues for trustees of DB 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. For ease of reference DC issues are covered in our separate DC briefing (note: some issues are common to both briefings).

Updated Chair's statement guidance **NEW!**

The Pensions Regulator (TPR) has updated its guidance on the chair's statement to reflect the new disclosure requirements on costs and charges information which came into force on 6 April 2018 and apply to statements for the first scheme year ending on or after 6 April 2018. TPR has also increased its non-statutory expectations of the contents of the statement in several areas, including costs and charges, the monitoring and processing of core financial transactions and trustee knowledge and understanding. [Read more](#)

ACTION: Review the updated guidance when preparing the contents of the Chair's statement.

Updated Code on combating pension scams

The industry Code on combating pension scams has been updated. The Code sets out detailed checks to help trustees vet a proposed receiving scheme and is a voluntary standard of good practice.

The [updated Code](#) highlights new scamming tactics such as 'factory-gating' (approaching members outside their place of work); expands the list of checks to be made, for example identifying factors that could indicate a vulnerable member; and includes examples of member communications, checklists and case studies. [Read more](#)

ACTION: Review the updated Code and update your communications and procedures relating to transfers, as appropriate.

Date for your diary

Our next trustee training event will be held on the morning of Tuesday 6 November 2018.

Speak to your usual A&O contact if you have not received your invitation.

EMIR: pension scheme exemption **NEW!**

The European Securities and Markets Authority (ESMA) is proposing to extend the pension scheme exemption from central clearing requirements for over-the-counter derivative transactions. There will be a short timing gap between the expiry of the current exemption under the European Market Infrastructure Regulation (EMIR) and the date that the extension comes into force (under EMIR REFIT). The Financial Conduct Authority (FCA) has confirmed (further to a similar statement from ESMA) that, until further notice, it will not require pension schemes or their counterparties to clear derivatives subject to the exemption during the timing gap. [Read more](#)

ACTION: Keep an eye on further developments to the proposed extension of the pension scheme exemption from central clearing requirements for over-the-counter derivatives.

PASA checklist **NEW!**

The Pension Administration Standards Association (PASA) has published a checklist to help trustees, whose scheme administrator is not PASA accredited, evidence and action appropriate levels of governance over their scheme's administrator. [Read more](#)

ACTION: If the scheme's administrator is not PASA accredited, review the checklist against the scheme's practices to assess if there are any areas requiring attention.

TPR governance expectations

TPR's latest instalment in its '21st Century Trusteeship' campaign looks at 'managing risk'. The guidance on managing risk includes 'lack of planning for a cyber incident' among its case study examples. [Read more](#)

ACTION: Review the guidance and consider whether your scheme meets TPR's expectations.

TPR and registrable information

TPR recently fined a set of trustees for failing to update the register in relation to a trustee appointment. This was a breach of the requirement for trustees to notify TPR, as soon as reasonably practicable, about changes in 'registrable information'. This fine, the first of its kind, highlights TPR's stance where scheme information is not up-to-date on Exchange. [Read more](#)

ACTION: Review whether there are adequate procedures in place to alert you when a change requires notification to TPR.

Master trust regime: are you in scope?

A new authorisation and supervision regime for master trusts is due to come into effect on 1 October 2018. Any scheme that falls within the definition will be unable to operate from 2 April 2019 without authorisation.

Schemes that include non-connected participating employers (broadly, employers that are not part of the same group undertaking) may fall within scope of the master trust definition unless an exception applies – for example, where the participation is a transitional arrangement following a corporate transaction, or relates to a joint venture structure. Schemes where the only DC benefits provided are AVCs, pension credit rights or transfers-in are not affected. [Read more](#)

ACTION: If your scheme includes non-connected participating employers, check as soon as possible whether you fall within scope of the master trust regime; contact us urgently if so.

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

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

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

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

Have your say

- HM treasury has published a technical consultation seeking views on the draft regulations banning pensions cold-calling. The draft regulations adopt an 'opt-in model' for unsolicited direct marketing calls relating to pensions (deadline 17 August 2018). [Read more](#)
- The government has announced that, following the proposals in the White Paper on DB pensions reform, it is consulting on proposals to grant enhanced powers to TPR, including punitive powers, greater information-gathering powers and a strengthened clearance regime (deadline 21 August 2018). [Read more](#)
- The Competition and Markets Authority (CMA) has published its provisional decision report on its investigation of investment consultancy and fiduciary management services and proposed remedies. The CMA has asked for feedback on the proposed remedies, which include requiring trustees to tender for a fiduciary manager (if they haven't done so) and to regularly set and review strategic objectives with investment consultants (deadline 24 August 2018). [Read more](#)

Watch this space

- The government's White Paper on DB pensions reform proposes changes to trustee governance, new intervention and penalty powers for TPR 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. [Read more](#)
- Forthcoming standards for professional trustees could particularly affect trustees who fall within TPR's professional trustee description without being part of a wider organisation. [Read more](#)
- The government is proposing a number of changes to help combat pension scams, including [changes to statutory transfer rights](#). 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](#)

