

ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For September 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.

Updated Chair's statement guidance

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 areas including costs and charges, the 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 and 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.

PASA DC guidance **NEW!**

The Pension Administration Standards Association (PASA) has published DC-specific administration guidance covering areas such as data, decumulation, controls and processes. [Read more](#)

A separate PASA checklist provides guidance on governance of non-PASA-accredited administrators. [Read more](#)

ACTION: Review the guidance against the scheme's standards and practices.

Voluntary code on transfers

A new code of practice on transfers has been published by the Transfers and Re-registration Industry Group (TRIG), focusing on timelines and completion of transfers. The timing expectation for a standard transfer between occupational pension schemes involving cash assets is two weeks. The code is intended to reflect current good practice; adherence is voluntary but TRIG expects the Financial Conduct Authority and TPR to use it as a benchmark. [Read more](#)

ACTION: Review the code and test the scheme's and administrator's practices against it.

TPR governance expectations **UPDATED!**

TPR's latest instalments in its '21st Century Trusteeship' campaign look at managing conflicts of interest and ensuring effective board meetings and timely decision-making. [Read more](#)

TPR has also updated its DC guidance on communicating and reporting to reflect the new requirements on costs and charges that came into force on 6 April 2018. [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.



EMIR: pension scheme exemption

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 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.



Have your say

- 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. The consultation period on strengthening TPR's powers has now ended. [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](#) 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](#)



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.

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.