

ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For July 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).

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.

Updated Code on combating pension scams **NEW**

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 tactics from scammers 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 member communication examples, checklists and case studies. [Read more](#)

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

GDPR and DPA now live **UPDATED**

The General Data Protection Regulation and the UK Data Protection Act (DPA) went ‘live’ on 25 May 2018. The final DPA includes an exemption allowing pension schemes to process special category data (e.g. information about health) where there is a lawful ground for processing and the processing is ‘necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with...social security’ (which includes invalidity, old-age and survivors’ benefits under occupational schemes). A policy document, which is kept up-to-date, must be in place to meet this exemption. It must explain the procedures and grounds for processing data and policies on data retention and erasure.

From a wider perspective, many schemes have worked to get key documents and processes in place by the 25 May deadline, leaving lower priority items for a future date. The Information Commissioner’s Office (ICO) expects that processes and key documents will be sustained, reviewed and updated over time. Now may be a good time to assess your progress and make a follow-up plan to deal with additional issues.

The ICO will be publishing further guidance (in addition to recent guidance on the ‘[legitimate interests](#)’ and [consent](#) grounds for processing). [Read more](#)

ACTION: Review your GDPR compliance actions: are there outstanding items that should now be addressed, implemented or documented?

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.



TPR and registrable information **NEW**

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 if 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.

TPR governance expectations

The Pensions Regulator (TPR) has published three further instalments of its '21st Century Trusteeship' campaign, looking at the [trustee skills and experience](#) necessary to run a scheme well, the [selection and monitoring of advisers and service providers](#), and [managing risk](#). The guidance on managing risk includes 'lack of planning for a cyber incident' among its case study examples.

TPR has also published guidance on building cyber resilience – the ability to assess and minimise the risk of a breach and to recover from a breach. This involves not only having controls, training and monitoring in place for the scheme but also ensuring that third party suppliers have sufficient controls in place. [Read more](#)

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

TPR's annual funding statement

TPR's 2018 funding statement focuses on fair treatment for pension schemes, expecting employer affordability to be considered in the context of covenant leakage (e.g. dividends). The statement also expresses caution about assuming increasing transfer activity in valuation processes. The statement is relevant for all DB schemes and sponsors, particularly where a valuation is in process or in view, or where funding and risk strategies are under review due to wider scheme changes. [Read more](#)

ACTION: Review the statement and ensure your valuation and funding strategies meet TPR's expectations.

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

Have your say

- The government is consulting on proposals to focus how trustees take environmental, social and governance issues into account in their investment decisions (deadline 16 July 2018). The proposals also include requirements for statements on stewardship, and on trustees' policy on taking members' views into account. The new measures are intended to apply from 1 October 2019. [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 the Pensions Regulator, including punitive powers, greater information-gathering powers and a strengthened clearance regime (deadline 21 August 2018). [Read more](#)

Watch this space

- The government's White Paper on DB pension 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 ban cold-calling and 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 allenovery.com/pensionsindispute for practical help with pensions problems, including our new 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