

Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

New consultations: fiduciary management, investment consultants | TPR: latest DC governance statistics | Latest HMRC newsletters | Transfers: FCA consults on contingent charging ban

New consultations: fiduciary management, investment consultants

The government is [consulting](#) on new rules for trustees to run competitive tenders for fiduciary management services and to set objectives for investment consultants; alongside this, the Pensions Regulator (TPR) is [consulting](#) on related guidance for trustees.

In June, the Competition and Markets Authority (CMA) published new rules (see [WNTW](#), 17 June 2019), requiring trustees to run competitive tender processes for fiduciary management services and to set strategic objectives for investment consultancy services. These apply from 10 December 2019. The government committed to integrating those rules into pensions legislation, and is now consulting on regulations that are expected to come into effect on 6 April 2020. As the government's proposals are not identical to the CMA rules, there may be a mismatch between the two regimes.

Government consultation

The key proposed obligations are:

- A duty for trustees to set objectives for investment consultancy providers, to annually review a provider's performance against the objectives, and to review the objectives at least every three years (or after a significant change in investment policy).
- A duty for trustees to carry out qualifying tenders for fiduciary management services, based on a threshold of 20% or more of scheme assets (excluding buy-in policies). The government is also proposing to allow a grace period until June 2021 where, as at 6 April 2020, 20% or more of the relevant assets of the scheme are subject to fiduciary management from an existing provider.

Under the proposed framework, trustees would be required to report on compliance using the scheme return. The draft regulations contain some changes to the rules from CMA's version – the consultation explains that some of these changes are to simplify the drafting of the rules, but others represent a policy difference. For example, the carve-outs from the obligations are not identical for schemes with in-house providers – the government suggests that even if these schemes should not have to run a tender process for fiduciary management services, it is reasonable to set objectives for

an in-house investment consultant and to monitor performance against those objectives. A narrower carve-out is provided, which will apply where the provider is a subsidiary of the trustee.

The consultation closes on 2 September 2019. As the regulations will differ in some respects from the CMA rules which are being introduced earlier, trustees will need to carefully assess their obligations once the regulations are finalised. We will report further on this in due course.

The consultation also notes that changes to the Regulated Activities Order are expected to bring investment consultancy services within the regulatory perimeter of the Financial Conduct Authority – the consultation on this is expected later this year. The FCA will also update its handbook with relevant changes by April 2020.

TPR draft guidance

Alongside these proposed changes, TPR is consulting on supporting guides for trustees, which cover legal requirements and/or key principles and good practice:

- a guide to [tendering for fiduciary management services](#);
- a guide to [tendering for investment consultancy services](#);
- a guide to [setting objectives for providers of investment consultancy services](#); and
- a guide to [choosing an investment governance model](#).

The good practice guidance goes further in some respects than the regulations – for example, the guide to setting objectives lists a range of different investment consultancy services, only some of which fall within the legal definition of investment consultancy services within the new regulations and therefore trigger the requirement to set strategic objectives. However, as a matter of good governance TPR encourages trustees to consider setting objectives for any additional services they receive, and monitoring performance accordingly. The guides include case studies on tender processes and objective-setting.

The draft guidance is based on the CMA rules; TPR intends to update the guidance when the government's draft regulations are finalised. The consultation closes on 11 September 2019.

TPR: latest DC governance statistics

TPR's latest [survey](#) of DC schemes indicates that the number of members in a scheme meeting all Key Governance Requirements (KGRs) has increased significantly (to 71% from 54% the previous year) – press release available [here](#). The KGRs relate to trustee knowledge and understanding, value for members, processing of core scheme financial transactions, and having a suitable default strategy, plus an additional independence KGR for master trusts. 21% of large schemes met all the KGRs; however, only 16% of schemes, and only 47% of large schemes, met the value for members requirement. Once again, governance standards were much poorer in small and micro DC schemes – TPR is currently consulting on improving governance and encouraging small DC schemes to consolidate (see [WNTW](#), 8 July 2019).

14% of schemes reported some form of cyber-attack or breach in the previous 12 months – this was most commonly reported by master trusts (potentially due to better recording procedures). Approximately a third of those reporting an attack or breach reported a negative impact. 96% of large and medium schemes had more than half of nine specific controls in place, and over 87% of large schemes include cyber risk on their risk register.

Approximately 42% of large schemes had considered climate change in their investment strategies. This proportion will increase as schemes prepare to comply with new requirements from October 2019 (to read more, see our briefing '[Updating your SIP: new content requirements and disclosure deadlines for pension schemes](#)').

Latest HMRC newsletters

HMRC's latest Pension Schemes Newsletter ([no. 112](#)) contains information for scheme administrators on issuing annual allowance pension saving statements to members, and a request to remind members who have exceeded the annual allowance to make a declaration on their Self Assessment tax return, whether or not they are using the 'scheme pays' facility.

HMRC's latest Countdown bulletin ([no. 47](#)) includes information for administrators dealing with reconciliation processes after the end of DB contracting-out. The latest edition provides key information on the Scheme Financial Reconciliation billing and refund exercises.

Transfers: FCA consults on contingent charging ban

The Financial Conduct Authority (FCA) is [consulting](#) on banning contingent charging for DB pension transfers and conversion, except in limited circumstances (such as serious ill-health or financial hardship, to mitigate the effects on individuals who cannot afford advice). The ban will also apply where an employer is paying for pension transfer or conversion advice for members, and there will be detailed rules on transfer fees to prevent firms from 'gaming' the ban.

The consultation also covers issues including introducing 'abridged advice' (as a cheaper alternative to full advice, to filter out persons for whom transfer/conversion is unlikely to be suitable), addressing conflicts of interest in charging models, increasing disclosure of charges to consumers, and introducing additional CPD requirements for advisers.

The FCA acknowledges that its proposals may result in fewer individuals being able to access advice, at least in the short term, as some advisers exit the market and charging structures change. It suggests that abridged advice and the ability to allow consumers to pay in instalments may mitigate this effect. The consultation closes on 30 October 2019.

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