

Trustee agenda update: current legal issues

For December 2020 meetings

DB and DC schemes

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.

Covid-19 **UPDATED**

As the economic impact of the Covid-19 pandemic unfolds, trustees should continue to monitor developments and take appropriate action.

- Ongoing monitoring of the employer covenant, scheme funding and investments remains important (in the light of both the pandemic and the end of the Brexit transition period). The Pensions Regulator (**TPR**) has recently published **guidance** for trustees on sponsor distress; it expects trustees to act quickly if they spot warning signs.
- TPR updated its **guidance** on self-select funds that were suspended (or 'gated') – if funds were gated, take legal advice on next steps.
- Trustees should be aware of the risk of transfer scams. TPR has launched a **new campaign**, Trustee toolkit module and scams pledge.
- The easement on reporting late payment of contributions will be **phased out**.
- With a number of employers planning redundancy or pay reduction exercises, we have published several **blog posts** to help trustees and employers avoid potential pensions pitfalls.

ACTION: Review the new sponsor distress guidance and consider further/refresher advice or training. Liaise with the scheme sponsor on any plans for pay/workforce reduction.

GMP equalisation **UPDATED**

In the latest decision in the *Lloyds* litigation (on transfers-out), the judge has ruled that the trustees should consider what action to take to rectify past underpaid transfers. You can read more about the implications of the decision in **our briefing**.

ACTION: Continue to progress equalisation projects; seek legal advice as appropriate, including on the latest judgment.

Reminder: January reporting deadline **UPDATED**

Many schemes are subject to rules on setting strategic objectives for investment consultancy providers and tendering for fiduciary management services. Trustees of relevant schemes must submit an **annual compliance statement**, and signed certificate, by 7 January 2021. The government plans to replace the current regime, but this will not be in place before the reporting deadline.

ACTION: Ensure the statement and certificate are submitted before the deadline.

New superfunds guidance

TPR has published **guidance** for trustees and employers considering a transfer to a DB superfund.

ACTION: Review the guidance and seek advice if considering a transfer to a superfund.

Pension Schemes Bill/TCFD reporting **UPDATED**

The **Pension Schemes Bill** includes new regulation-making powers for governance and risk management arrangements relating to climate risks and opportunities. The government has **consulted** on proposed requirements, including reporting in line with the recommendations of the Task Force on Climate-related Financial Disclosures.

The Bill also includes proposed changes to TPR's powers and sanctions and to the DB funding regime; new duties affecting trustees, and changes to transfer rights. It is currently at the final Parliamentary stage before Royal Assent.

ACTION: Maintain a watching brief.

Fraud risk: signed online documents

There have been **recent reports** of attempted fraud using signatures in online pension scheme documents.

ACTION: Review online documents and consider redacting signatures or substituting a typed name. Seek advice as appropriate.

Changes to investment duties

Trustees are now required to produce an **implementation statement** as part of their annual report, setting out how they have complied with specified matters set out in their statement of investment principles; and to publish the implementation statement.

ACTION: Prepare an implementation statement; ensure it is published in line with requirements.

Watch this space

- We are expecting TPR to consult on the draft new **DB funding Code** and on changes to its **Codes of Practice**. It also plans to **update TKU materials**.
- The government has **consulted** on changes to DC governance and reporting requirements.
- The government is **planning** to introduce new advice and guidance requirements for members.
- The government is expected to **consult** on mandatory requirements for annual benefit statements for DC auto-enrolment vehicles. It also plans a further consultation on mandating the timing for sending annual written pension benefit statements (a 'statement season').
- Further guidance on data protection is expected in light of the *Schrems II* decision and the end of the Brexit transition period (latest statement on *Schrems II* **here**; Brexit guidance **here**).
- A new industry **code of practice** for transfers, including target timescales, is expected shortly.

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Need help managing DB pension risk? Visit [allenoverly.com/pensionrisk](https://www.allenoverly.com/pensionrisk).

Looking for resources on a range of DC-related issues? Visit [allenoverly.com/DCHQ](https://www.allenoverly.com/DCHQ).

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