

ALLEN & OVERY

DC trustee agenda update: current legal issues

For November 2019 meetings

Welcome to our monthly update on current legal issues for trustees of DC 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.

Urgent: investment objectives, FM

[New rules](#) requiring pension scheme trustees to run competitive tenders for fiduciary management (FM) services and to set strategic objectives for investment consultancy (IC) providers will come into force on 10 December 2019. The government has [published](#) draft regulations making similar (but not identical) changes that are expected to come into force in April 2020. The Pensions Regulator (TPR) has published draft guidance; this will be updated when the regulations are finalised.

If appropriate IC objectives are not already in place, affected trustees must address this as soon as possible. Schemes with in-house providers may be covered by a carve-out in relation to IC services for the December deadline but are likely to be required to set objectives under the April 2020 regulations.

ACTION: Ensure compliance with deadline for IC objectives (if applicable); take note of tendering requirements for FM services if relevant.

2020 changes to investment duties UPDATED!

New [requirements](#) will apply to statements of investment principles (SIPs) in 2020, when trustees must report on implementation and update the SIP with further content. Trustees should ensure that upcoming requirements are included in the scheme's business plan.

ACTION: Review information required (for example, on arrangements with asset managers) and prepare for compliance.

Pension Schemes Bill NEW!

The new [Pension Schemes Bill](#) includes proposed changes to TPR's powers, new duties that will affect trustees, and changes to statutory transfer rights.

ACTION: Maintain a watching brief on the progress of the Bill.

Chair's statement: what can go wrong

Many schemes providing DC benefits must prepare an annual governance statement known as the Chair's statement. TPR has imposed numerous fines on trustees for non-compliant statements.

Our [publication](#) looks at some common issues when preparing the statement, as well as factors to consider if a penalty notice is received.

ACTION: Ensure that the draft statement receives a legal review before it is finalised.

TPR record-keeping guidance NEW!

TPR has [updated](#) its guidance for trustees on record-keeping. TPR has also [contacted](#) a number of schemes about record-keeping standards. These actions reflect previous announcements by TPR that record-keeping would be one of its regulatory priorities.

ACTION: Review the updated guidance, check compliance. Discuss with advisers as appropriate.

GDPR: limitations on use of consent

Many trustees have already ceased to use consent as their basis for processing, but some schemes may have retained it for specific purposes. A recent [ruling](#) by the Greek Data Protection Authority makes clear that consent can only be used where no other basis is applicable; to rely on consent where processing is actually being conducted for reasons of legal obligation or legitimate interest is not valid and is likely to breach other data processing principles (such as fairness and transparency). The ruling is consistent with guidance from the UK Information Commissioner's Office.

ACTION: Review any GDPR wording relating to consent to ensure that the basis for processing is valid and correctly stated.



Date for your diary

Our next Pensions Academy will be held on the morning of 25 February 2020. It will provide an update on issues for pension schemes. Invitations will be sent in due course, but please save the date.



Watch this space

- Further details about the accreditation framework for **professional trustees** are expected. [Read more](#)
- The new [UK Stewardship Code](#) is now expected later this year (delayed from October).
- TPR is expected to consult on a new [regulatory strategy](#) and its [Codes of Practice](#) later this year.
- TPR has recently [consulted](#) on the **future of trusteeship**, and **DC consolidation**.
- Trustees should be aware of forthcoming [changes](#) affecting the **Financial Services Register**, and expected [guidance](#) requirements in relation to occupational schemes.

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