

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 TPR consultation on trusteeship and governance | Pensions Minister statement on survivor benefits | Climate-related disclosures: green finance strategy | Latest HMRC newsletter | ICO publishes new guidance on use of cookies | ScamSmart campaign re-launched | PPF publishes new restructuring guidance | New report: social impact investing | New gender equality roadmap

New TPR consultation on trusteeship and governance

The Pensions Regulator (TPR) has launched a [consultation](#) on the 'Future of trusteeship and governance' – the underlying theme is TPR's concern about members of poorly-run schemes, and how this can be addressed by raising standards of governance and encouraging underperforming schemes to wind-up. A [press release](#) and [blog post](#) are also available.

The consultation covers three main areas: trustee knowledge and understanding (TKU) and skills, including learning and development; scheme governance structures for effective decision-making; and consolidation of DC schemes. The consultation closes on 24 September 2019. TPR plans to hold various stakeholder events before then – further details will be available on TPR's website.

We will be preparing a response to the consultation and will be in touch to find out your views on the key issues relevant to your scheme.

TKU and skills

TPR will review its existing TKU materials to ensure that it is easier for trustees to translate these into good governance. In addition, trustees will increasingly be expected to demonstrate how they meet TKU requirements. The consultation asks for feedback on two aspects of trustee knowledge and skills:

TKU standards: TPR is considering moving to competency-based standards (using the expectations in the 21st century trusteeship campaign as a starting point). It has asked whether there should be a legal requirement to demonstrate a minimum level of TKU (eg via a qualification) as well as a legal requirement for a minimum time spent on ongoing learning. TPR is also considering if there should be higher expectations of TKU for professional trustees.

TPR's role in communicating with and educating trustees: TPR has questioned the effectiveness of its existing educational materials (such as the Trustee toolkit) in improving governance standards, particularly for trustees of smaller schemes. It is therefore planning a new communication approach for these trustees, and plans to communicate more clearly with advisers and service providers so that they can support trustees to improve governance.

Scheme governance structures – board diversity, mandatory professional trustees and sole trustees

TPR is seeking to improve diversity on trustee boards. It has asked for feedback on whether there should be a new requirement for schemes to report to TPR on the steps that they are taking to ensure diversity – TPR does not currently support the use of board quotas.

TPR considers that schemes would benefit from appointing an accredited professional trustee – to read more about the proposed accreditation framework, see [WNTW](#), 4 March 2019. It is therefore seeking input on whether there should be a legal requirement to appoint a professional trustee.

Finally, TPR has expressed concerns about some schemes operating with a sole trustee – a single person carrying out the trustee role (including a sole trustee director for a corporate trustee). TPR has asked for input on this scenario, including on management of conflicts, governance standards and the role of professional trustee firms. It has also asked for general feedback on the pros and cons of different corporate trustee models.

Consolidation of DC schemes

This part of the consultation concentrates on how TPR can support DC schemes to consolidate (as a means of ‘closing the quality gap’), and in particular on winding-up issues. The consultation focuses on DC consolidation in light of the government’s work on an authorisation and supervision regime for DB superfunds (for more information see ‘[DB superfunds: a new option for legacy pension liabilities?](#)’).

Future initiatives

Over the next couple of years TPR will be running various initiatives to drive up specific governance and administration standards on areas including investment governance, record-keeping, prompt and accurate financial transactions, TKU and costs and charges.

Pensions Minister statement on survivor benefits

The Pensions Minister has made a [statement](#) on survivor benefits following the *Walker v Innospec* decision by the Supreme Court in 2017. The court ruled that legislation allowing a surviving civil partner’s pension rights to be restricted to the member’s pension earned from 5 December 2005 was unlawful and should be disapplied (see ‘[Supreme Court widens rights for same-sex couples](#)’).

The statement confirms that the government will follow the judgment for public sector schemes and remove the 5 December 2005 limitation in the legislation. It also includes a brief response to the review of survivor benefits generally in occupational pension schemes which was published in 2014 (see [WNTW](#), 30 June 2014). It confirms that, apart from changes due to the Supreme Court judgment, the government will not make any further retrospective changes to legislation to equalise survivor benefits.

Trustees should take legal advice on their scheme rules on civil partnership and same-sex marriage survivor benefits if they have not already done so.

Climate-related disclosures: green finance strategy

The government has published a [green finance strategy](#) setting out steps the government is taking to transition to a green financial system and address financial risks associated with climate change.

The government expects that by 2022 all listed companies and large asset owners will make disclosure in line with the recommendations of the Financial Stability Board’s [Taskforce on Climate-related Financial Disclosures](#) (TCFD). It has established a taskforce with regulators to explore the

most effective approach to disclosure, including whether to introduce mandatory reporting. An industry working group established by the government and TPR is producing guidance for pension schemes on TCFD. TPR plans to consult on the guidance in late 2019 with a view to implementing it via its forthcoming governance code (to read more about the code, see [WNTW](#), 29 October 2018).

A number of regulators, including TPR, have also published a [joint statement](#) on climate change to coincide with the publication of the government's strategy. TPR views climate change as a 'core financial risk' which is relevant to standards of governance and risk management by schemes. The Pensions Minister has also recently given a speech '[Investing in action to combat climate change](#)'.

Separately, the European Union is close to finalising a new [regulation on disclosures relating to sustainable investments and sustainability risks](#) (which would apply to pension schemes). The extent to which this will be relevant will depend on the circumstances of the UK's withdrawal from the EU.

Latest HMRC newsletter

HMRC's latest [Countdown bulletin](#) (no. 46) includes information for administrators dealing with reconciliation processes after the end of DB contracting-out. As previously reported, HMRC will be re-running a number of automated exercises – the bulletin reminds administrators about engaging with HMRC in relation to Scheme Financial Reconciliation (the deadline for this is 19 July 2019). The bulletin also contains information on the process for Scheme Financial Allocations, and advice where there are problems accessing the Shared Workspace service.

ICO publishes new guidance on use of cookies

The Information Commissioner's Office (ICO) has published new [guidance](#) on the use of cookies and similar technologies together with a 'myth-busting' [blog post](#) on cookies. The guidance sets out in detail the ICO's expectations for the use of cookies – this includes providing information to users and ensuring that consent requirements are met – as well as guidance on whether an exemption applies. You can read more about the ICO's guidance in this [blog post](#) on Allen & Overy's Digital Hub.

ScamSmart campaign re-launched

The ScamSmart pension scams advertising campaign is being [re-run](#) over the summer. Both TPR and the Financial Conduct Authority have published updated text on pension scams that can be used by trustees (TPR [here](#); FCA [here](#)).

PPF publishes new restructuring guidance

The Pension Protection Fund (PPF) has published new [guidance](#) on restructuring proposals involving a new or successor scheme – this is where members are offered an opportunity to transfer to a scheme with a less generous future benefit structure or to stay in the original scheme which will undergo a PPF assessment. The PPF has emphasised that these restructurings are very rare, and that it consults with TPR on all cases.

The guidance is intended to be read with the PPF's general guidance on employer restructurings (see [WNTW](#), 14 January 2019). It contains brief guidance on costs, mitigation, transfer terms, allocation of assets, benefit design and employer support for the successor scheme. A press release is available [here](#).

TPR plans to release restructuring materials for trustees in September (see [WNTW](#), 7 May 2019).

New report: social impact investing

In 2016, the government created an advisory group on growing a culture of social impact investment and savings in the UK – a [report](#) has now been published on the implementation of the recommendations made by the group. It supports encouraging pension schemes to invest for social impact, and comments on areas where it considers further work is required. This includes: further guidance and education on impact investment for trustees; trustee consideration of how impact investment sits in their investment approach and relates to environmental, social and governance (ESG) factors; involving impact investment and ESG experts in core investment decisions; and incorporating impact investment choices into DC schemes. The taskforce also believes that employers should align chosen pension product providers with corporate social responsibility policies, and encourage employee engagement on their pension preferences.

TPR's investment guidance for both DB and DC schemes was revised last year to include content on impact investment (see [WNTW](#), 5 November 2018). The latest version of the DC investment guidance (released at the end of June 2019) states that trustees need to formally consider the suitability of impact investing very carefully and take advice. Where trustees have good reason to think that scheme members share their view and there is no risk of significant financial detriment to the scheme, trustees can actively take account of impact considerations. For more information on the new DC investment guidance, see [WNTW](#), 1 July 2019. An updated version of the DB investment guidance is expected to be released shortly.

New gender equality roadmap

The government has published a [gender equality roadmap](#) (and associated documents) setting out the government's plan to address gender-based inequalities. This includes: addressing factors which lead to a gap in private pensions savings between men and women; highlighting pension sharing in the online divorce process; working with the industry, TPR and the Money and Pensions Service on improving communications; and monitoring the impact of recent pensions reform on women.

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