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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.

Disclosure of trustee climate change considerations: an evolving area | Employment tribunal guidance on pension loss

Disclosure of trustee climate change considerations: an evolving area

With heightened interest in climate change issues, challenges have been made, both in the UK and abroad, by members seeking greater transparency about trustee investment decision-making. One such [complaint](#) has recently been rejected by the Deputy Pensions Ombudsman (DPO).

In that complaint, the member wrote to the scheme in 2016 to ask how it took into account the potential risks of climate change. He later met with the trustees and was provided with the actuarial valuation and statement of investment principles (SIP) and, later, a copy of the scheme's Responsible Ownership Policy. However, he was not provided with a copy of the investment strategy, risk management framework, employer covenant monitoring framework or internal management processes, on the basis that this information was confidential. He complained to the scheme and then to the Pensions Ombudsman, and was supported by ClientEarth in his complaint (press release available [here](#)). He complained that he had not been given enough information to be assured that the impact of climate change was being taken seriously, and he believed that the scheme was significantly at risk from climate change both in relation to its investments and from the business of the employer (Shell). The DPO concluded that the scheme had fully complied with its obligations under the disclosure regulations (and had gone further by arranging a face to face meeting to discuss climate change issues); there had been no breach of duty or maladministration.

The complaint predates the recent changes requiring trustees to update SIPs to include policies on taking financially material considerations (including climate change) into account in investment decisions and on stewardship. Trustees will be required to report on their actions via a publicly available 'implementation statement' – trustees should start planning for this now, and ensure that it is included in the scheme business plan. In addition, trustees will need to audit their arrangements with asset managers early next year in order to confirm whether any changes are needed to enable them to comply with additional SIP requirements from October 2020. You can read more about the new duties, and how these apply to DB and DC schemes, in our briefing '[ESG, stewardship and transparency in pension scheme investing](#)'.

The DPO's determination highlights that there are limits to the disclosure required, but trustees should note the expectations set out in TPR's [DC investment guidance](#) that the implementation report

should not be a 'tick box' report but should help ensure that 'action follows intent' so that members can be confident that their expectations are being met. The guidance suggests, for example, that trustees comment on the relevance of their investment beliefs to their policies on voting and engagement, the time and resource they dedicate to stewardship activities, and any actions taken with investor coalitions on climate change.

Industry guidance is also expected next year on climate risk based on recommendations from the Task Force on Climate-Related Financial Disclosures. This will cover areas including governance, risk management and disclosure and is expected to be included in TPR's revised governance code, due next year. This is a continually evolving area, and preparations for SIP changes and implementation statement content should be a trustee agenda item early in 2020.

Employment tribunal guidance on pension loss

The Employment Tribunal has [updated](#) its guidance on calculating pension loss; the last update was published in November ([WNTW](#), 18 November 2019). The guidance has been updated to take account of the different discount rate in Scotland.

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