

# ALLEN & OVERY

## Joint DB and DC trustee agenda update: current legal issues

### For June 2018 meetings

Welcome to our monthly update on current legal issues for trustees of DB 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. For ease of reference DC issues are covered in our separate DC briefing (note: some issues are common to both briefings).

#### Master trust regime: are you in scope? **NEW**

A new authorisation and supervision regime for master trusts is due to come into effect on 1 October 2018. Any scheme that falls within the definition will be unable to operate from 2 April 2019 without authorisation.

Schemes that include non-connected participating employers (broadly, employers that are not part of the same group undertaking) may fall within scope of the master trust definition unless an exception applies – for example, where the participation is a transitional arrangement following a corporate transaction, or relates to a joint venture structure. Schemes where the only DC benefits provided are AVCs, pension credit rights or transfers-in, are not affected. [Read more](#)

**ACTION:** If your scheme includes non-connected participating employers, check as soon as possible whether you fall within scope of the master trust regime; contact us urgently if so.

#### GDPR now live **UPDATED**

The General Data Protection Regulation is now 'live'; further UK data protection legislation is still going through Parliament and some documents/processes may need to be reviewed once its final provisions are known.

The Information Commissioner's Office has recently published detailed guidance on the '[legitimate interests](#)' and [consent](#) grounds for processing and will publish further guidance once the UK data protection legislation is final.

Many schemes have worked to get key documents and processes in place by the 25 May deadline, leaving lower priority items for a future date. Now may be a good time to assess your progress and make a follow-up plan to deal with additional issues. [Read more](#)

**ACTION:** Review your GDPR compliance actions: are there outstanding items that should now be addressed, implemented or documented?

#### Bulk transfers of DC rights simplified **UPDATED**

New regulations simplify bulk transfers of 'pure' DC rights (i.e. no guarantees or promises) without member consent. Certain restrictions have been removed, such as the requirement to obtain an actuarial certificate. Instead, the decision maker may need to consider the advice of an 'appropriate adviser' who is 'independent' from the receiving scheme.

[Statutory guidance](#) has now been published, highlighting issues to consider when making the decision to transfer, including how to choose an appropriate adviser, and good practice in relation to the transfer agreement. It also includes a short section on fund mapping and the circumstances in which charge cap protection will apply to members' transferred benefits in the receiving scheme. [Read more](#)

**ACTION:** If a bulk transfer of 'pure' DC rights was previously considered but was not viable at the time, consider reassessing the position.

#### TPR governance expectations **UPDATED**

The Pensions Regulator (TPR) has published three further instalments of its '21st Century Trusteeship' campaign, looking at the [trustee skills and experience](#) necessary to run a scheme well; the [selection and monitoring of advisers and service providers](#), and [managing risk](#). The guidance on managing risk includes 'lack of planning for a cyber incident' among its case study examples.

TPR has also published guidance on building cyber resilience – the ability to assess and minimise the risk of a breach and to recover from a breach. This involves not only having controls, training and monitoring in place for the scheme but also ensuring that third party suppliers have sufficient controls in place. [Read more](#)

**ACTION:** Review the guidance and consider whether your scheme meets the Regulator's expectations in these areas.

### TPR's annual funding statement

TPR's 2018 funding statement focuses on fair treatment for pension schemes, expecting employer affordability to be considered in the context of covenant leakage (e.g. dividends). The statement also expresses caution about assuming increasing transfer activity in valuation processes. The statement is relevant for all DB schemes and sponsors, particularly where a valuation is in process or in view, or where funding and risk strategies are under review due to wider scheme changes. [Read more](#)

**ACTION:** Review the statement and ensure your valuation and funding strategies meet TPR's expectations.

### Disclosure of DC costs and charges

New regulations require DC schemes to publish additional costs and charges information, starting with the Chair's statement for the first scheme year ending on or after 6 April 2018. The information relates to each default arrangement and each alternative fund option separately. It must include an illustration of the compounding effect of costs and charges on members' savings. This information must also be published on the internet and members who receive an annual benefit statement must be given the web address. [Read more](#)

**ACTION:** Liaise with asset managers to gather cost information; update processes as required for future Chair's statements and for publication.

### Bulk transfers of contracted-out rights

Contracted-out rights may be transferred in bulk and without member consent to schemes that have never been contracted-out, under new regulations. The transfer cannot adversely affect members' rights and the new scheme must provide the same protections. [Read more](#)

**ACTION:** If such a transfer was previously considered but unavailable, review the position.

Need help with a pensions dispute? Visit [allenovery.com/pensionsindispute](http://allenovery.com/pensionsindispute) for practical help with pensions problems, saving you time and money.

Need help managing DB pension risk? Visit [allenovery.com/pensionrisk](http://allenovery.com/pensionrisk)

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

Contact us at [pensions.team@allenovery.com](mailto:pensions.team@allenovery.com) for more information or to be added to our mailing list.

### Employer debt: multi-employer schemes

A new way of dealing with statutory employer debt in multi-employer DB schemes allows employers to defer the requirement to pay the debt on ceasing to employ an active member, subject to trustee consent and meeting certain conditions. [Read more](#)

**ACTION:** Employers considering how to deal with their employer debt obligations may wish to review whether this new arrangement is a helpful option.

### Watch this space

- The government's White Paper on DB pensions reform proposes changes to trustee governance, new intervention and penalty powers for the Regulator and a new duty for companies to make a statement, before a sale or takeover of a DB scheme employer, that any detrimental impact to the scheme has been considered and mitigated. [Read more](#)
- Forthcoming standards for professional trustees could particularly affect trustees who fall within the Regulator's professional trustee description without being part of a wider organisation. [Read more](#)
- The government is proposing a number of changes to help combat pension scams, including [changes to statutory transfer rights](#). Provisions to ban cold-calling and to require members to receive (or opt-out of receiving) guidance in relation to a transfer or flexible access request are included in the Financial Guidance and Claims Act. [Read more](#)

### Date for your diary

Our next trustee training event will be held on the morning of Tuesday 6 November 2018 – please save the date; further details to follow.

