

ALLEN & OVERY

DC trustee agenda update: current legal issues

For September 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.

Action required: fiduciary management, investment consultants **UPDATED!**

[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. TPR has published draft guidance on setting objectives and running tender processes; this will be updated when the regulations are finalised.

If appropriate IC objectives are not already in place, trustees should plan to address this as soon as possible to ensure the deadline is met. Schemes with in-house providers may be covered by a carve-out in relation to IC services for the 10 December deadline, but are expected to be required to set objectives under the April 2020 regulations. [Read more](#)

ACTION: Confirm whether appropriate objectives are in place for IC services and prioritise compliance as appropriate; take account of tendering requirements for FM services if relevant.

Further changes to investment duties

Statements of investment principles (SIPs) must be updated to meet new requirements from 1 October 2019. Relevant DC schemes must publish the SIP online by 1 October 2019.

Additional information relating to arrangements with asset managers must be provided from 1 October 2020 (SIP content requirements) and 1 October 2021 (disclosure via the implementation statement).

[Read more](#)

ACTION: Check the requirements and ensure compliance by the deadline.

GDPR: limitations on use of consent **NEW!**

A recent [ruling](#) by the Greek Data Protection Authority has underlined the limitations of using consent as a basis for data processing under the GDPR.

Many trustees have already ceased to use consent as their basis for processing, but some schemes may have retained it for specific purposes. The ruling 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.

New DC investment guidance

The Pensions Regulator (TPR) has published [updated DC investment guidance](#) – this is much more detailed than the previous version, and includes guidance on forthcoming changes to investment duties (see above).

ACTION: Review the updated guidance and discuss with advisers.

Have your say

TPR is [consulting](#) on the 'Future of trusteeship and governance' – central issues include improving consistency of trustee knowledge and understanding, raising standards of governance and encouraging underperforming schemes to wind up. The consultation closes on 24 September 2019.





Transfers and pension scams

PASA has published [good practice guidance](#) on transfers, aiming to increase the speed of transfers, increase efficiency, and improve communications and transparency. The guidance focuses on DB transfers, but schemes are encouraged to apply the best practice principles more widely, including on DC-DC transfers.

An [updated version](#) of the Code of Good Practice on Combating Pension Scams has been published.

ACTION: Review the updated Scams Code and transfer guidance and consider any changes to processes.

Watch this space

- Further details about the accreditation framework for professional trustees are expected. [Read more](#)
- A new UK Stewardship Code is [expected](#) in October.
- TPR is expected to consult on a [new regulatory strategy](#) and its [Codes of Practice](#) later this year.
- Proposed [changes](#) to **statutory transfer rights** remain on the agenda.
- 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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