ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For February 2018 meetings

Welcome to our monthly update on current legal issues for trustees of DB and hybrid 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. We also have a separate DC-only briefing.

PPF levy 2018/19 UPDATED!

The PPF final Determination for the 2018/19 levy year has been published. Our briefing sets out the issues, action points and deadlines in three key areas: certifying contingent assets; certifying deficit reduction contributions; and insolvency risk scores. Read more

Updated standard form contingent asset agreements have also been published by the PPF. New contingent asset agreements entered into after 18 January 2018 must be on the new forms; existing contingent assets (and any executed before that date) can be submitted on the existing standard form for the 2018/19 levy, but those that involve a fixed cap may need to be re-executed on the new forms for 2019/20. Read more

ACTION: If you plan to certify deficit reduction contributions or a new or existing contingent asset for levy purposes, ensure that your timetable for Q1 2018 will enable you to meet the relevant deadlines.

Anti-money laundering duties

Trustees of occupational pension schemes have additional compliance duties under new money laundering regulations.

The most immediate duties relate to record-keeping and to provision of information when entering into a transaction/business relationship with parties (such as banks/some advisers) that are required to carry out money laundering checks. Some of the requirements may not be part of your normal scheme administration.

Schemes must also provide HMRC with trust information, normally by 31 January following a tax year in which specified tax charges have been triggered (first deadline: 31 January 2018 but HMRC will not impose penalties if schemes comply by 5 March 2018). Schemes must register with the Trusts Registration Service to provide this information. Read more

ACTION: Note the new duties and consider how to obtain missing data. Put in place an annual check to ascertain if a relevant tax charge has been triggered.

MiFID II actions

Revised rules for fund managers have introduced changes that may affect pension schemes. The PLSA has published a short action list for schemes to consider including, for example, the need to obtain a Legal Entity Identifier (if one is not already in place); and taking the opportunity to review investment management agreements. Read more

ACTION: Review the action list and address any items that apply to your scheme.

Scheme return – new requirements

The Pensions Regulator has published a checklist of information required to complete DB/hybrid scheme returns for 2017/18. New information disclosure is required, including the date on which the scheme last measured its common and scheme-specific data and what percentage of each data category is accurate and complete. The Regulator expects to engage with schemes which require improvement in their data standards and record-keeping. Read more

ACTION: Ensure that you have the new information requirements ready ahead of the scheme return deadline. Consider whether to update your data improvement plan.

TPR guidance on Chair's statement

The Pensions Regulator has published guidance clarifying its expectations as to the content of the DC Chair's statement, and highlighting where more detailed information about scheme processes and evaluation methods is expected. Read more

Our guide to preparing for the Chair's statement will help you identify the processes you need to have in place to meet the legal requirements of the statement.

ACTION: Review the guidance and assess whether your scheme's processes require updating to meet the Regulator's expectations for the Chair's statement.

Changes for 'safeguarded-flexible' benefits

New rules will apply from 6 April 2018, when members with 'safeguarded-flexible benefits' (such as benefits with a guaranteed annuity rate) seek to transfer, convert or access their benefits flexibly, and when those benefits are valued for the purposes of the independent advice requirement. Trustees will be required to provide a personalised risk warning highlighting the guarantee and its value. The government has published guidance explaining the information requirements, implementation processes and best practice. Read more

ACTION: If your scheme offers safeguarded-flexible benefits, liaise with administrators to ensure appropriate processes are in place for valuing benefits and providing risk warnings in line with the new rules and government guidance.

Update on VAT recovery

HMRC has updated its position on how VAT should be calculated for DB pension schemes, confirming that its 70/30 concessionary treatment, which allows scheme sponsors to reclaim 30% of VAT costs on combined supplies of administration and investment management services, will remain available. Read more

ACTION: Trustees/sponsors should consider whether current VAT recovery practices remain appropriate and whether additional items may be recoverable.

Watch this space

- Regulations to allow the bulk transfer of contracted-out rights without member consent to schemes that have never been contracted-out are expected to come into effect from 6 April. Read more
- The government is proposing changes to require schemes that provide DC benefits (not including the AVC element of DB schemes) to publish investment charges information annually and more detailed disclosure on costs and charges in the Chair's statement. The changes are expected to take effect from 6 April 2018. Read more
- The government intends to set out its proposals for DB pensions reform in a White Paper in spring 2018. Read more
- The government proposes changes to statutory transfer rights from late 2018, to help combat pension scams. Read more
- New standards for professional trustees could be introduced as soon as April. These could particularly affect trustees who fall within the Regulator's professional trustee description without being part of a wider professional trustee organisation. Read more

Need help with a pensions dispute? Visit allenovery.com/pensionsindispute for practical help with pensions problems, including our case tracker.

Need help managing DB pension risk? Visit allenovery.com/pensionrisk

Looking for resources on a range of DC-related issues? Visit allenovery.com/DCHQ

Contact us at pensions.team@allenovery.com for more information or to be added to our mailing list.