

# Trustee agenda update: current legal issues

For your December 2022 meetings

DC schemes

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. We also have a separate briefing that covers both DB and DC issues.

## Market volatility: TPR guidance

In light of recent market turbulence, and prior to the end of the Bank of England's gilt purchase scheme, the Pensions Regulator (TPR) issued a statement for trustees on managing investment and liquidity risk. The guidance is relevant to all schemes, not just those that have been directly impacted by liquidity issues, and includes a section specifically targeted at DC schemes. It sets out both short- and medium-term actions for trustees to consider, some of which are still relevant despite market turmoil having subsided ([read more](#)).

**ACTION:** Read the statement and consider which actions apply to your scheme.

## Dashboards developments **UPDATED**

There has been further progress on the path to the introduction of pensions dashboards. Regulations setting out the requirements for dashboards and schemes interacting with them, including the staging deadlines by which schemes must connect to the dashboards ecosystem, have been approved by Parliament ([read more](#)), following a response to the second consultation on those regulations ([read more](#)). The Pensions Dashboards Programme has produced an at-a-glance guide to the staging timetable ([read more](#)). In addition, sections of the Pension Schemes Act 2021 relating to dashboards have now been brought into force ([read more](#)); and the government has published guidance for

schemes considering applying for deferral of their connection deadline ([read more](#)).

**ACTION:** Ensure your scheme is taking steps to meet the requirements in the regulations.

## Illiquid investments and performance fees

After including the removal of certain performance-based fees from the DC charge cap in September's 'mini-budget' (one of the measures which has not since been reversed), the government has published draft regulations and guidance intended to broaden the investment opportunities of DC schemes. This came along with a response to part of the March 2022 consultation on facilitating investment in illiquid assets.

Key proposals include flexibility to exclude specified performance-based fees from the default fund charge cap, and requirements for relevant DC schemes to disclose and explain: (i) their policies on illiquid investments; and (ii) the proportions of default fund assets allocated to different asset classes at various specified member ages ([read more](#)).

**ACTION:** Keep a watching brief and consider the proposals as part of investment discussions.

## DC transfers guidance **NEW**

The Pensions Administration Standards Association (PASA) has published good practice guidance on DC transfer processes. While the guidance is voluntary, PASA anticipates that the Pensions Ombudsman will use it as a reference point when reviewing complaints. The guidance includes example member communications, checklists and a transfer template (**read more**).

**ACTION:** Check your processes against the guidance, to ensure best practice.

## Administrator exit terms

PASA has also published guidance on the provisions that schemes should have in place for the end of an administration contract, to ensure a smooth transfer to a new provider. It focuses on clarifying: the terms on exit, including service level agreements for provision of information and data and stated responsibilities; the scope of services covered; and fees, including any additional out-of-scope charges and the charge rates applied (**read more**).

**ACTION:** Check your administration agreement for adequate exit provisions, even if you are not expecting to transfer services imminently.

## Watch this space

- The government has consulted on changes to the notifiable events regime. There is currently no revised date for the delayed regulations (**read more**).
- TPR has consulted on its proposed single code of practice: **watch our webinar on the proposals** and **read TPR's interim response**. Publication of the revised version of the code is expected soon.
- A revised code on transfers, and other materials from the Pension Scams Industry Group, are also awaited.
- TPR will be launching a joint consultation with the Financial Conduct Authority (FCA) and DWP on a Value for Money Framework by the end of the year.
- The Chancellor announced in the Autumn Statement that the results of a review of the current timetable to increase the state pension age will be published in early 2023.

Need help with a pensions dispute? Visit [allenoverly.com/pensionsindispute](https://www.allenoverly.com/pensionsindispute).

Need help managing DB pension risk? Visit [allenoverly.com/pensionrisk](https://www.allenoverly.com/pensionrisk).

**Contact us** for more information or to be added to our mailing list.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales (SRA number 401323). The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. This document is for general information purposes only and is not intended to provide legal or other professional advice. | UKS1: 2010491873.2