ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For April 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.

Disclosure of DC costs and charges NEW!

New regulations require DC schemes to publish additional costs and charges information in the Chair's statement (applicable to the Chair's statement for the first scheme year ending on or after 6 April 2018) in respect of each default arrangement and each alternative fund option available and in which member assets are invested. The information must include an illustration of the compounding effect of costs and charges on members' pension savings.

This same 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: Ensure that any processes required to enable this disclosure are put in place. Liaise with asset managers to gather cost information and update processes as required for future Chair's statements and publication.

Valuing benefits for the advice requirement

From 6 April 2018, changes apply to how benefits must be valued for the purposes of the independent advice requirement – this applies both to DB (safeguarded) benefits and to 'safeguarded-flexible benefits' (such as benefits with a guaranteed annuity rate). When assessing if members (who seek to transfer, convert or access their benefits flexibly) are required to take independent advice, these schemes must disregard any increase resulting from a 'higher than best estimate' calculation of the transfer value. This change flows out of new rules for valuing safeguarded-flexible benefits, but applies also to DB schemes generally. Read more

Trustees of schemes that offer safeguarded-flexible benefits will also be required to provide a warning highlighting the guarantee and its value. The government has published guidance on the new duties and best practice. Read more

ACTION: Liaise with your scheme's actuary and administrator to ensure appropriate processes are in place for valuing benefits for the advice requirement from 6 April 2018 and (where relevant) providing risk warnings.

Bulk transfers of contracted out rights without member consent NEW!

New regulations coming into force on 6 April 2018 will allow the bulk transfer of contracted out rights, without member consent, to schemes that have never been contracted out. The transfer must be on the basis that members' rights are not adversely affected and the same protections are provided by the new scheme. Read more

ACTION: If a bulk transfer of contracted out rights to a scheme that had never been contracted out was previously considered but unavailable, consider reassessing the position.

Bulk transfers of DC rights simplified NEW!

Another set of new regulations coming into force from 6 April 2018 simplifies bulk transfers of 'pure' DC rights (i.e. no guarantees or promises) without member consent. The requirement to obtain an actuarial certificate and other restrictions will be removed. Instead, the decision maker may need to consider the advice of an 'appropriate adviser' who is 'independent' from the proposed receiving scheme. If the default fund charge cap applies to members in the transferring scheme, the receiving scheme must continue to apply the charge cap in respect of those members. Statutory guidance is expected to be published this month. 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.

Watch this space

- The government's White Paper on DB pensions reform proposes to introduce 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. The intention is to phase in the proposed changes, beginning with those which do not require legislative change. Read more
- New standards for professional trustees are expected to be introduced this month. 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
- The government is proposing a number of changes to help combat pension scams, including changes to statutory transfer rights, banning cold-calling and requiring members to receive (or opt-out of receiving) guidance by a new body. Separately, TPAS has recently published a guide for members on how to spot and stop pension scams, which may be a useful resource for members. Read more

TPR governance expectations NEW!

The Regulator has published a statement setting out its expectation of how trustees should manage service providers, focusing on proper due diligence on appointment, on-going performance monitoring, retaining oversight and understanding of tasks delegated to providers and ensuring that a comprehensive business continuity plan is in place. Read more

The Regulator has also now published the fifth tranche of guidance as part of its '21st Century Trusteeship' campaign, which aims to improve governance standards. The latest instalment looks at the trustee skills and experience necessary to run a scheme well. Read more

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

Employer debt: multi-employer schemes NEW!

A new way of dealing with statutory employer debt in multi-employer DB schemes, a 'deferred debt arrangement' will allow employers in multi-employer schemes to defer the requirement to pay the statutory employer debt on ceasing to employ an active member, subject to trustee consent and meeting certain conditions. This arrangement is available to employers even if they have already used one of the other arrangements available for managing employer debt. 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.

Protected rights restrictions

When DC contracting-out ended in 2012, all statutory restrictions applying to accrued protected rights were removed. As this did not override scheme rules, trustees were given a statutory modification power, until 5 April 2018, to remove these restrictions by resolution. Schemes that have not yet completed this process (including DB schemes with a protected rights underpin) should consider urgently whether to do so before the deadline. Read more

ACTION: Check all affected schemes/legacy arrangements have removed protected rights restrictions by 5 April 2018.

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.