

## Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Updated Code on Combating Pension Scams | New SIP requirements from 1 October 2020 | CMA publishes rules on investment consultants, fiduciary management | TPR contacts schemes about default arrangements

### Updated Code on Combating Pension Scams

The Pension Scams Industry Group (PSIG) has published an [updated version](#) of the Code of Good Practice on Combating Pension Scams. The updates reflect developments since the previous version was published in June 2018, including the introduction of the cold calling ban and recent Pensions Ombudsman (TPO) determinations, as well as changes to scam practices and an increase in contact from claims management firms.

The new Code continues to support the use of a direct fact-finding call from the trustee/administrator to the member early in the process. It also includes new guidance on making reports to Action Fraud, two new case studies on 'international SIPP' transfer requests, and tweaks to the due diligence practices, including:

- Further guidance on actions and risks where an overseas adviser is involved.
- New initial due diligence questions: has there been a high volume of transfers from a single DB scheme over a short period of time; and is the customer transferring out of a new DC arrangement soon after transferring from a DB scheme?
- A suggestion that trustees may need legal advice as to the level of detail they provide about reasons for refusing a transfer request, in order to avoid helping scammers to improve their techniques, while still giving members appropriate information.

It is important for trustees and administrators to be aware of the updated Code – member complaints about transfers have been judged by normal market practice at the time of transfer (examples of recent TPO determinations can be found [here](#) and [here](#)). PSIG has also [announced](#) that it is working on the 'safe sharing' of practitioner intelligence to increase protection for members and schemes.

### New SIP requirements from 1 October 2020

We reported last week on new regulations extending content and publication requirements for Statements of Investment Principles (see [WNTW](#), 10 June 2019). The Pensions Regulator (TPR) has published a short [statement](#) on the new requirements, outlining the key deadlines. For more

information see our new guide [‘Updating your SIP: new content requirements and disclosure deadlines for pension schemes’](#).

## CMA publishes rules on investment consultants, fiduciary management

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The Competition and Markets Authority (CMA) has published an [order](#) implementing remedies in connection with its investigation into investment consultants and fiduciary management. The order includes obligations on pension scheme trustees to run competitive tenders for fiduciary management (FM) services and to set strategic objectives for investment consultancy (IC) providers, as well as requirements for providers in relation to marketing material, fee disclosure and performance reporting. The key obligations for trustees are set out below – these provisions come into force on 10 December 2019; trustees should take steps to ensure that they will be compliant.

- Broadly, trustees may not enter into an FM agreement without carrying out a competitive tender, where the agreement (or this agreement aggregated with other FM agreements) would cover 20% or more of scheme assets. Trustees must provide written confirmation to successful providers.
- Where existing arrangements in excess of the 20% threshold have been entered into without a competitive tender, trustees must not continue to obtain FM services from the relevant provider(s) after a specified date, unless a competitive tender has been carried out – the date depends on the arrangements with the provider, but trustees will have at least a two-year period (until 10 June 2021) to complete the tender.
- The [Explanatory Note](#) states that when assessing whether the 20% threshold is met, trustees should take into account only those assets which are capable of being allocated to an FM provider, and should not take into account asset-backed contributions and buy-in policies.
- Trustees must not enter into a contract with an IC provider for IC services (or continue to obtain these services) unless they have set strategic objectives for the provider. The Explanatory Note sets out expectations that the objectives will be closely linked to the scheme’s investment objectives in most cases and should include a clear definition of the expected outcome and the timescale for delivery; the objectives will be reviewed at least every three years or after a significant change to the scheme’s investment strategy; and trustees will ask providers to report periodically on their performance in meeting the objectives.
- Trustees must submit an annual ‘compliance statement’ (and signed certificate) to the CMA.

A number of changes have been made to the consultation version, including:

- a broader carve-out for schemes with ‘in-house’ providers – trustees in this position will need to take advice on whether they fall within the redrafted exclusion; and
- clarification that trustees are under a duty to report ‘any failure on their own part to comply’, but are not subject to a ‘whistleblowing duty’ to report compliance failures by providers.

TPR will consult on related guidance for trustees shortly. The order contains ‘sunset’ provisions setting out when the order will cease to apply – one of these is where equivalent obligations have been brought into force as part of TPR’s regulatory regime. The government has previously stated that it intends to make relevant changes to pensions legislation.

# TPR contacts schemes about default arrangements

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TPR has [launched](#) a pilot programme asking trustees to confirm that they have reviewed their default arrangements – this applies to a ‘relevant scheme’ (that is, a DC or hybrid scheme but not an AVC-only scheme). TPR says it has already contacted hundreds of trustees about this, and is ‘walking trustees through compliance’.

The default strategy and the performance of the default arrangement must be reviewed every three years, or when there is a significant change in a scheme’s investment policy or membership profile. As part of the review, trustees are expected to review the extent to which the investment performance is consistent with the aims and objectives for the default arrangement.

TPR is also expected to issue updated investment guidance for DC schemes very shortly.

## Contact information

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