Sackers

Quarterly briefing

December 2024

Highlighting significant developments in pensions law, covering key areas such as pensions reform, regulatory developments, new legislation and cases

Q4
December 2024

On the front cover this quarter:
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Abbreviations

AVC: Additional voluntary contribution

CDC: Collective DC

DB: Defined benefit

DC: Defined contribution

DWP: Department for Work and Pensions

F&I Strategy: Funding and investment strategy

FCA: Financial Conduct Authority

HMRC: HM Revenue & Customs

IGC: Independent Governance Committee

IHT: Inheritance tax

IT: Information technology

LTA: Lifetime allowance

MaPS: Money and Pensions Service

NI: National insurance

PDP: Pensions Dashboards Programme

PPF: Pension Protection Fund

PSA21: Pension Schemes Act 2021

TPO: The Pensions Ombudsman

TPR: The Pensions Regulator

VFM: Value for money

In this issue

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Current legal agenda

Topic	Summary	Timing
DB scheme funding[1]	New funding regime applies to valuations with effective dates on or after 22 September 2024	DB funding code expected to come into force in November 2024 (see pages 6 & 7)
Removing the LTA[2]	LTA removed from 6 April 2024. Amending regulations will have retrospective effect from 6 April 2024	Amending regulations expected to come into force 18 November 2024 (see page 11)
VFM[3]	FCA consultation on rules for VFM framework for contract-based schemes closed in October 2024 Similar requirements for trust-based schemes to be included in the new Pension Schemes Bill	FCA plans to publish a final policy statement, rules and guidance "in due course" (see page 5)
Pensions dashboards[4]	Statutory connection deadline is 31 October 2026	First connection date in DWP connection guidance is 30 April 2025 (see page 8)
CDC	DWP consulting on expanding CDC regime to unconnected employers	Consultation closes on 19 November 2024 (see page 10)
Pensions transfers	Possible regulations to change the incentives and overseas investment flags following the DWP's review of the transfer conditions	Unknown
Notifiable events[5]	Consultation on changes to the regime back in 2021. Response to consultation and final regulations are outstanding	Unknown

1 See our Alert: New DB funding code laid in Parliament (29 July 2024) and our Alert: DWP publishes revised DB funding regulations (30 January 2024)

2 See our Alert: LTA-Day – new regulations arrive to fix issues in tax legislation (18 October 2024) and our Alert: LTA-Day – it's the final countdown (23 March 2024)

3 See our Alert: FCA consults on the new value for money framework (8 August 2024)

4 See our Alert: Pensions dashboards – DWP publishes connection guidance (26 March 2024)

5 See our Hot Topic: New reporting requirements (January 2022)

Autumn Budget 2024

The Chancellor, Rachel Reeves, delivered the Government's Autumn Budget at the end of October. Rumours of subjecting employer pension contributions to NI proved unfounded, with pension changes focusing on the IHT treatment of "unused" pension pots. Minor changes are also being made to the tax regime for overseas pension schemes.

IHT on pension death benefits

Most pension death benefits in scope of IHT from April 2027

Alongside other changes to IHT, and an extension of the freeze in the IHT tax-free allowance of £325,000 to 2030, the Government intends to bring most unused pension funds and death benefits into scope of IHT from April 2027. This seeks to ensure that tax reliefs on pensions are being used for their intended purpose, ie to encourage saving for retirement and later life, by removing the opportunity for individuals to use pensions for IHT planning.

The changes are also intended to address a "distortion" in tax treatment between discretionary and non-discretionary death benefits. Discretionary death benefits paid from a registered pension scheme do not currently attract IHT, but non-discretionary death benefits, where the scheme member can choose the recipient, are already treated as part of the member's estate for IHT purposes. The majority of registered pension schemes currently provide discretionary death benefits.

Scope of the changes

Under the proposals, most authorised death benefit payments, except a dependant's scheme pension and a charity lump sum death benefit, would be brought within the value of a person's estate for IHT purposes. As things stand, this means that both DB lump sum death benefits and DC benefits paid as income to a dependant would be in scope of the proposals.

The technical consultation published alongside the Budget states that "life policy products purchased with pension funds or alongside them as part of a pension package offered by an employer are not in scope of the changes". But it is unclear precisely what this captures, and whether insured death in service benefits are, for example, carved out. In addition, it is uncertain how payments from unregistered life assurance schemes might be affected.

Scheme administrators to calculate and pay IHT

Scheme administrators would pay the IHT due

In a significant change to the current position, pension scheme administrators would report and pay the IHT due on pension elements of a scheme member's estate. To enable this to happen, schemes would need to exchange certain information with the member's legal personal representatives. HMRC will also provide a new online calculator to help establish whether the estate is subject to IHT (or not).

Income tax

While pension funds will be required to pay IHT directly to prevent an additional income tax liability becoming due on the funds used to pay IHT, there is no plan to change the income tax treatment of death benefits. This means that a death benefit could be subject to both IHT and income tax at the recipient's marginal rate.

What next?

The technical consultation seeks views on the processes to report and pay any IHT due to HMRC, including ensuring relevant information is exchanged between HMRC, pensions schemes, legal personal representatives and beneficiaries, and closes on 22 January 2025. The Government intends to carry out a further technical consultation on draft legislation in 2025.

Value for money

Proposed new framework

Similar VFM requirements are expected for trust-based schemes

The FCA has recently consulted on detailed rules and guidance for a new market-wide VFM framework for DC schemes. It sets out the proposed rules that will apply to default arrangements of FCA-regulated workplace DC schemes, but the metrics and concepts are intended to be suitable for application across the whole DC pensions space, ie including occupational pension schemes.

The proposed measures aim to:

- ✓ reduce the number of savers with workplace personal pensions that are delivering poor value
- ✓ drive better VFM across the workplace DC market through greater scrutiny and competition on long-term value rather than predominantly cost.

Once implemented, all schemes in scope will be required to report on wider value metrics and to use this data to assess the value of their offering against real market comparators.

What is being proposed?

In-scope schemes to disclose against certain metrics

Schemes will have to measure and disclose investment performance, costs and service quality against metrics which the FCA believes will allow VFM to be assessed effectively. This, in turn, will enable those overseeing an arrangement (ie IGCs or trustees) to assess performance against other arrangements on a "consistent and objective" basis.

Schemes will be required to publicly disclose the outcome of their VFM assessments, using a "RAG" ratings system, which could mean that arrangements not offering VFM would need to submit an action plan and close to new business until they have improved.

Where improvement is not possible, the FCA expects the firm to consider consolidating or exiting the market. Changes to legislation may be needed to permit bulk transfers without member consent in that situation.

RAG ratings

RED	"cannot or will not be improved within a reasonable period of time"
AMBER	"can be improved within a reasonable period of time such that it offers VFM"
GREEN	VFM

When will this come into force?

The consultation closed in October and the FCA plans to publish a final policy statement, rules and guidance "in due course", with similar requirements for trust-based schemes to be included in the new Pension Schemes Bill, which we expect in 2025.

DB funding

The PSA21 set out the framework for a new requirement for DB schemes to have an F&I Strategy, with regulations finalised earlier this year detailing the matters trustees must take into account, and the principles they must follow, in determining or revising their F&I Strategy.

The new funding requirements apply to actuarial valuations with an effective date **on or after 22 September 2024**.

TPR has confirmed that schemes in scope of these requirements should refer to the new DB funding code, which sets out its guidance and expectations on how to comply with the new regime. The code is expected to formally come into force in late November.

New regime – quick recap

F&I Strategy

Employers need to agree the F&I Strategy

An F&I Strategy is essentially a journey plan for how a scheme is going to achieve a state of "low dependency" on their sponsoring employer by the time the scheme is "significantly mature". Trustees will need to obtain the employer's agreement to the F&I Strategy, as well as consulting with them on certain issues.

Statement of strategy

Trustees will have to prepare a written statement of strategy, which will set out the F&I Strategy and certain "supplementary matters", including the trustees' assessment of the F&I Strategy, key implementation risks and mitigations, and information relating to investment, funding and covenant. The statement must be submitted to TPR "as soon as reasonably practicable" after the F&I Strategy has been prepared or revised. TPR expects this would normally be within 10 working days.

Template statements are available

Template statements, reflecting the different information that will be required depending on a DB scheme's circumstances, have been published by TPR.

Fast track and bespoke

TPR is introducing a twin-track approach. If a valuation submission meets a series of fast track parameters, TPR is unlikely to scrutinise it further and is less likely to engage with trustees. In contrast, under the bespoke approach, trustees will have the flexibility to select scheme-specific funding solutions, so long as the funding approach and actuarial valuation meet legislative requirements and follow the principles of the DB funding code.

Assessing the employer covenant

Although covenant monitoring is already a key part of funding discussions, the new regime now requires trustees to carry out a covenant assessment. The new code sets out more detail, including that trustees must consider:

- **reliability period** – the period over which trustees have reasonable certainty about the employer's available cash flow to fund the scheme (generally three to six years for "most" employers)
- **covenant longevity** – how long trustees can be reasonably certain that the employer will be able to continue to support the scheme.

The code explains how to assess these periods, as well as covering the rest of the covenant assessment in some depth. Further detail will be set out in TPR's updated covenant guidance, which it aims to publish in the coming months, after engaging "extensively" with the pensions industry.

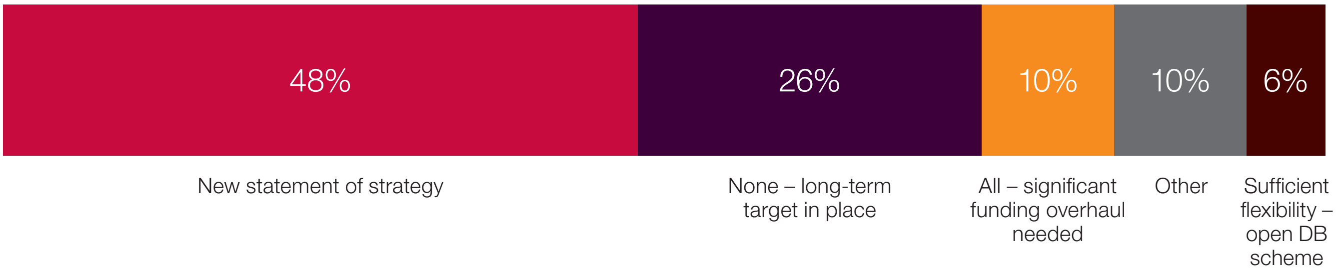
DB funding cont.

Sacker's DB funding survey

As part of a recent webinar, we asked attendees to answer a couple of questions on the new DB funding regime:

Question 1:

What particular aspect of the new funding regime are you most concerned about?

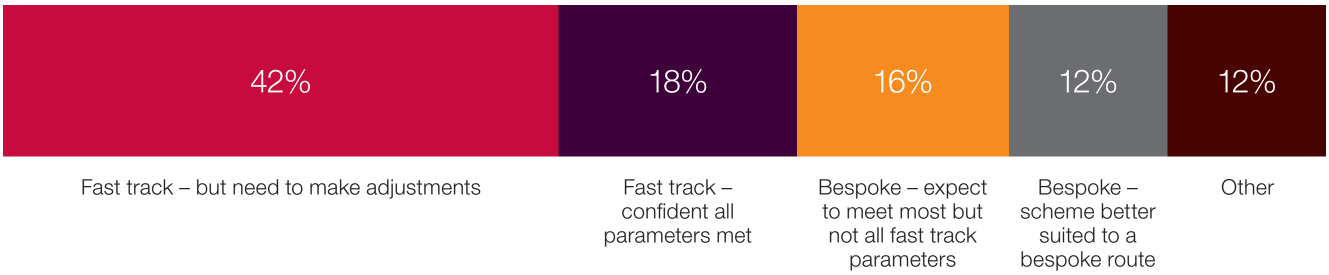


Comment

We had an interesting range of responses to our first question but it's clear that the main concern is the statement of strategy. This isn't a big surprise, as the concept of having a long-term funding target has been embedded by TPR in its annual funding statements over recent years (and many schemes had set long-term targets anyway). In contrast, the statement is a new document that will require a significant amount of granular information to be provided in a prescribed format.

Question 2:

Which funding track are you envisaging your scheme following?



Comment

The responses received differ from TPR's estimates as at March 2023, ie that 62% of schemes already meet all of the fast track parameters, and a further 19% could change their funding approach at no extra cost and meet all the parameters. Given that we generally advise some of the larger schemes with more complex benefit structures and funding arrangements, it is perhaps unsurprising that our figures for schemes which are fast track ready are lower. The "other" option covered respondents who weren't yet sure what they were going to do, or those that were responsible for multiple schemes. Overall, these responses are consistent with TPR's expectations as to how many schemes might end up using the fast track route.

What next?

TPR plans to launch a new digital service for schemes to submit their statement of strategies in spring 2025. Schemes have been told not to submit their statements until this service is enabled.

Pensions dashboards

First "connect by" date is 30 April 2025

Following a "reset" of the pensions dashboards programme back in 2023, there is now a statutory connection deadline of 31 October 2026 for all in-scope schemes. However, schemes are expected to connect in line with the DWP's connection guidance, which sets out a staged timetable to connect to the dashboards ecosystem, starting from 30 April 2025 for the largest schemes.

Reminder of the key trustee dashboard duties

- ✓ **Connecting to the dashboard ecosystem** – trustees need to liaise with their administrator to understand how they are going to connect.
- ✓ **Processing find requests** – trustees need to decide the data items that they are going to use for matching purposes.
- ✓ **Responding to view requests** – trustees will need to provide the relevant information on receipt of a view request, including value data, ie a member's pension values. The value data that needs to be provided will depend on the member's status and the benefit type.

Compliance and enforcement

TPR has published its final dashboards compliance and enforcement policy, setting out how it expects trustees to comply with their dashboards duties and the enforcement action TPR can take in the event of breaches. TPR's primary focus will be on schemes not connecting by the statutory connection deadline, and trustees not being able to demonstrate they have had regard to the DWP's connection guidance.

Trustees should keep clear audit trails

TPR expects schemes to keep clear audit trails of the steps taken to comply with their duties, including monitoring progress and success, keeping a record of compliance and keeping a record of actions taken to resolve any issues, such as communications with third parties. Trustees are also expected to keep records of their matching policy and the steps taken to improve their data.

Missing your "connect by" date?

Inform PDP and TPR if "connect by" date may be missed

Although the deadline for deferring the statutory deadline of 31 October 2026 has passed, the DWP acknowledges that changing administrator can be a significant process and that it may be "excessively burdensome" to connect by a scheme's "connect by" date. If trustees do not believe it is possible to connect by that date, they should review the DWP's deferred connection guidance, which sets out information that they may wish to consider, and communicate their plans with the PDP and TPR "at the earliest opportunity".

Trustee actions

Duties and decisions

- Understand your trustee duties.
- Work with your administrators and AVC providers to understand what their offering is, what flexibility is available, what decisions you have to make and understand the associated risks.

Data

- Audit your scheme data and put in place a plan to improve and/or digitise data, if needed.
- Carry out a Data Protection Impact Assessment to help identify and minimise the data protection risks of the connection process.
- Understand the dataflows and the cyber footprint involved in connecting to the ecosystem.

Governance

- Establish proper oversight of the dashboards workstream – even though the day-to-day work will generally fall to administrators, trustees are ultimately responsible for dashboard compliance.
- Use a decisions log to ensure key decisions are recorded.

Cyber risk in the spotlight

General Code sets out expectations on cyber risk

The General Code sets out TPR's expectations for trustees in respect of cyber risk. A scheme's cyber controls should cover people, processes and technology and be proportionate to your cyber risk. Larger schemes, and those more exposed to cyber risk, will need more robust controls.

What is cyber risk?

Cyber risk can be broadly defined as the risk of loss, disruption, or damage to a scheme, or its members associated with using IT. Risks can arise not only from the technology itself but also from the people using it and the processes supporting it. It includes risks to information (data security) as well as assets, and both internal risks (for example, from staff) and external risks (such as hacking).

What do trustees need to do?

Use TPR's cyber security guidance

TPR's cyber security guidance, which was updated at the end of 2023, expects trustees to:

- understand the scheme's cyber risk – receive training, know your scheme's "cyber footprint" (the digital presence of all parties involved in your scheme) and check your data map (which service providers hold what scheme data and how the data flows between parties) to identify and address any points of vulnerability
- ensure that the scheme administrator (and others handling scheme data) have appropriate controls in place
- manage incidents that arise – have an incident response plan in place and understand how and when core services will be back online following an incident.

Top tips for managing cyber risks

1. **Don't forget human error**. Cyber policies generally address the risks of external attacks like hacking and phishing. However, incidents stemming from human error can be just as catastrophic, so cyber controls shouldn't cover just the risk of outside threats.
2. **Data theft isn't the only risk**. Recent cyber incidents have shone a light on the risks of data theft. But service disruption, for example to payments of pensions or investment of contributions, is just as important to schemes. Continuity plans should be in place and rehearsed to manage the impact of cyber outages, even when there is full confidence in the scheme's providers.
3. **IT systems changes are a risk area to be managed**. One of the new modules in the General Code addresses IT system maintenance. TPR expects trustees to ask providers to confirm that written policies are in place for maintaining, upgrading and replacing systems – which should cover, for example, the transition of a database to the cloud.
4. **Don't lose focus on how providers interact**. Whilst technological solutions often work well in isolation, new risks emerge when providers begin to interact and systems or data are shared. Trustees' cyber due diligence should focus on the join-up between providers, as well as what happens within each of their providers' systems.
5. **Check contracts now, to manage risk allocation later**. TPR expects suitable provisions on cyber to be included in contracts with providers. Whilst we may think "this could never happen here", schemes will benefit from understanding – and where relevant, strengthening – providers' cyber obligations in advance of any incident.

In other news

TPR new digital, data and technology strategy

TPR has published its data, digital and technology strategy setting out a new regulatory approach. As part of the strategy, TPR will:

- explore where it can join up with other agencies to which schemes currently provide information, to reduce unnecessary burden on schemes by "capturing data once and reusing it"
- in the next 12 months, introduce its first scheme-facing digital service for DB schemes, "Submit a Scheme Valuation". This is intended to enable TPR to identify and tackle certain scheme risks more effectively
- enhance its data and technology capabilities so that scheme, saver and market data can be collected at high volumes and more frequently.

TPR intends to set up an industry working group to agree further detail.

TPO decision-making process

TPO is rolling out a new expedited decision-making process. This involves an initial decision by a caseworker being issued to all parties, with an option to appeal to the Ombudsman for a determination. TPO has published a factsheet summarising the process and the various options available to the parties. TPO hopes that this process could reduce waiting times by as much as 18 months.

The process is being applied initially to cases that TPO has assessed as having a "clear outcome", such as complaints about an incorrect benefit statement where "it is clear no loss was caused by the error", and all the information needed to make a decision is supplied in the application.

PPF levy

PPF levy likely to remain unchanged

The PPF has consulted on its draft 2025/26 levy rules, with the final rules expected in December. The PPF's proposed levy estimate is £100m, which is the same as in 2024/25. Minor changes proposed to the levy methodology are intended to ensure that the risk-based levy continues to be paid by a broad range of levy payers, and that it continues to be distributed in a way that reflects risk, as far as possible.

The PPF will continue to engage with the Government on legislative changes which would enable the levy to be reduced further, including to zero, given the PPF's strong financial position.

CDC consultation

The DWP is currently consulting on draft regulations to enable unconnected multi-employer "whole life" CDC schemes, including master trusts.

The consultation closes on 19 November 2024, with the DWP planning to lay the regulations in 2025 and, subject to parliamentary approval, bring that legislation and an updated TPR code into force "as soon as practicable after that". Unconnected multi-employer CDC schemes would then be able to apply to TPR for authorisation to operate.

Separately, the DWP is continuing to explore what would be needed to provide trust-based decumulation-only CDC options.

LTA removal

Following HMRC's informal consultation over the summer, two sets of regulations have been published, which are intended to fix certain issues in the pensions tax legislation dealing with the LTA's removal from 6 April 2024. Both sets of regulations are drafted to come into force on 18 November 2024, but with retrospective effect from 6 April 2024.[6]

Virgin Media – section 37 confirmations

In the summer, the Court of Appeal upheld the High Court's decision on the correct interpretation of historic legislation governing the amendment of schemes that were contracted-out on a DB basis on or after 6 April 1997.[7]

By way of recap, the Court of Appeal confirmed that a written actuarial confirmation (a "section 37 confirmation") was required where an alteration to a scheme's rules affected pension benefits attributable to past or future service benefits related to certain contracted-out rights. Without such a confirmation, an amendment would be void.

What does this mean for schemes that used to be contracted-out?

- Our view is that this decision doesn't expose pension schemes to any new risks. Whether a section 37 confirmation was given is part of the wider question of whether all the necessary formalities (eg execution requirements, section 67 certificate) were satisfied when a scheme amendment was made.
- Whether trustees should take steps to investigate will depend, we think, on their scheme's specific circumstances. This is something which trustees should discuss with their advisers.
- The legislation did not require a section 37 confirmation to be given in any particular form, so it could have been wrapped up as part of written advice. As such, a deed making specific reference to a section 37 confirmation (or not) will not necessarily be conclusive either way.
- Given the potential for historical scheme amendments to be rendered void due to a lack of evidence of a section 37 confirmation, it is possible the DWP might exercise its power to make regulations to validate such changes. There is an industry working group liaising with the DWP on this issue.

Pension Wise

MaPS has recently launched "Pension Wise Digital" to expand the existing Pension Wise service, which offers free impartial guidance to anyone aged 50 or over with a DC pot. This new service can be accessed online at any time of day and will provide the equivalent guidance of a telephone or face-to-face appointment. MaPS will continue to offer telephone and face-to-face appointments.

6 See our Alert: LTA-Day – new regulations arrive to fix issues in tax legislation (18 October 2024)
7 See our Alert: Court of Appeal upholds High Court's Virgin Media decision on failure to obtain a s37 confirmation (26 July 2024)

Sackers

Upcoming webinars and seminars

We offer an extensive programme of client workshops and seminars. In addition to the quarterly legal updates, our seminars, which are led by our experts, offer clients the opportunity to ask questions and to share experiences on topics.

Quarterly Legal Update	14/11/2024	Online webinar This session will provide an essential overview of significant developments affecting occupational pension provision in the UK for employers and trustees.

If you would like to attend any of our events, please contact our marketing team at marketing@sackers.com.

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Recent publications

The DC briefing – October 2024 highlights topical news on DC pensions from a legal viewpoint.

The Finance & investment briefing – December 2024 takes a look at current issues of interest to pension scheme investors.

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