Sackers

Quarterly briefing

March 2025

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

Q1
March 2025

On the front cover this quarter: Charlotte Bailey (senior associate), Tom Jackman (partner) and Bethan Rowlands (senior associate)

Abbreviations

AVC: Additional voluntary contribution

CDC: Collective DC

DB: Defined benefit

DC: Defined contribution

DPO: Deputy Pensions Ombudsman

DRCs: Deficit reduction contributions

DWP: Department for Work and Pensions

ESG: Environmental, social and corporate governance

FCA: Financial Conduct Authority

GMP: Guaranteed minimum pensions

HMRC: HM Revenue & Customs

HMT: HM Treasury

ICO: Information Commissioner's Office

IDRP: Internal dispute resolution procedure

IHT: Inheritance tax

ISP: Integrated service provider

LGPS: Local Government Pension Scheme

MaPS: Money and Pensions Service

PDP: Pensions Dashboards Programme

PPF: Pension Protection Fund

PSIG: Pension Scams Industry Group

SIPP: Self-invested personal pension

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
Virgin Media[1]	DWP's December 2024 update noted that it has been working with an industry working group regarding issues arising from the case, including whether to make regulations to validate any void amendments	Further update expected in early 2025
VFM[2]	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"
Pensions dashboards[3]	Statutory connection deadline is 31 October 2026	First connection date in DWP connection guidance is 30 April 2025 (see page 4)
CDC[4]	DWP consulting on expanding CDC regime to unconnected employers	Consultation closed in November 2024
IHT changes	HMRC consultation on proposals to bring most unused pension funds and death benefits within scope of IHT closed in January 2025	Consultation response and draft regulations expected later in 2025 Changes to take effect on and from 6 April 2027
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: Court of Appeal upholds High Court's Virgin Media decision on a failure to obtain a s37 confirmation (26 July 2024)
2 See our Alert: FCA consults on the new value for money framework (8 August 2024)
3 See our Alert: Pensions dashboards – DWP publishes connection guidance (26 March 2024)
4 See our Hot Topic: CDC schemes – the future of pensions? (November 2024)
5 See our Hot Topic: New reporting requirements (January 2022)

Dashboards are coming!

First "connect by" date is 30 April 2025

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 should be working with their administrators to ensure they are on track to meet the scheme's "connect by" date
- ✓ **Processing find requests** – Trustees will need to decide the data items that they are going to use for matching purposes
- ✓ **Responding to view requests** – Trustees will need to provide relevant information on receipt of a view request, including value data, ie a member's pension values.

Connecting to the dashboard ecosystem

The PDP has confirmed that it is on course for connection with the wider pensions industry in 2025, and that schemes need to keep going with their preparations. Volunteer participants (mainly ISPs) are starting to connect but they might not all have completed connection by April 2025. PDP has reassured schemes that regulators won't take action against an organisation unable to connect because they depend on a volunteer participant that has been unable to connect in time.

TPR has updated its dashboards guidance, to provide more help with connection, including more detail on the registration process, technical aspects of connection and connecting where a scheme has multiple sections (or separate AVC providers).

When will dashboards go live to the public?

The PDP has said that it "remains too early" to confirm when dashboards will become available to the public, but the DWP is expected to provide sufficient notice to allow the industry time to prepare.

No timing as to when dashboards will "go live"

The Government intends to prioritise the MoneyHelper dashboard, the non-commercial dashboard being developed by MaPS, before facilitating the connection of commercial ones. It is planning to involve pension providers and schemes in end-to-end testing of the MoneyHelper dashboard from spring 2025.

Trustee actions

Preparations should be well underway, particularly for schemes whose "connect by" date is looming. However, trustees should consider:

- liaising with their administrator to ensure everything is on track for connection (including any data improvement work)
- their data protection obligations (the ICO expects schemes to carry out a data protection impact assessment, and privacy notices and data protection policies will also need to be updated)
- checking whether any contractual terms need to be put in place or updated to reflect dashboard duties
- how their existing trustee protections apply to dashboards.

Mansion House 2024

The Chancellor, Rachel Reeves, delivered her first Mansion House speech in November 2024, setting out plans to create pension "megafunds" to "power growth in our economy".[6] Following the speech, the Government published an interim report on its pensions investment review. As part of the outcome of that review, two consultations were published:

Chancellor proposes pension "megafunds"

- **Pensions Investment Review: Unlocking the UK pensions market for growth** – proposing measures designed to accelerate and help enable scale and consolidation in the DC market
- **LGPS (England and Wales): Fit for the future** – containing a package of proposed reforms to the structure, investments and governance of the LGPS, intended to tackle "fragmentation and inefficiency".

Unlocking the UK pensions market for growth

Achieving scale in the DC market

The Government plans to "remove complexity and fragmentation" from the pensions market. It sought views on introducing minimum size requirements for default funds in multi-employer DC schemes which are used for automatic enrolment as well as limits on the number of such arrangements. The consultation also explored:

- whether the maximum number and size of default funds should be applied at arrangement or fund level
- whether schemes should be able to provide different pricing structures within the same default or between multiple defaults, and
- the correct minimum size of assets under management that should apply.

Since these measures are significant market changes which would require sufficient lead-in time, the requirements would not apply before 2030 at the earliest.

Bulk transfers without consent from contract-based schemes

Seeking to address the "significant barrier to consolidation" posed by the requirement for contract-based pension providers to get individual consents before transferring members to another arrangement, the consultation proposed measures to enable contractual overrides for contract-based schemes, subject to appropriate protections. Detailed rules on the use of transfers without consent will be developed by the FCA and will be subject to further consultation.

Costs vs value: The role of employers and advisers

Concern that focus is on cost not value

As the Government believes that the DC market is operating with an excessive focus on costs, coming at the expense of considering scheme quality, it also used the consultation to explore the role of employers and advisers and to seek further views on how to encourage these groups to shift their focus to value.

What happens next?

The consultations closed in January 2025. Many of the proposals would require primary legislation to implement, and a decision on whether to include these measures in the Pension Schemes Bill will be made in light of the consultation outcome.

A final report on phase one of the pensions review is due in the spring and it will further consider investment by pension funds in the UK. However, phase two of the review, which was expected to consider pension outcomes and retirement adequacy, has been put on hold.

6 See our Alert: Mansion House 2024: Government proposes pensions "megafunds" (18 November 2024)

DB funding – covenant guidance

New covenant guidance published

TPR published revised covenant guidance in December 2024, as the "last piece of the jigsaw" to help schemes carry out valuations under the new DB funding regime.[7] The guidance builds on the new DB funding code, which came into force in November 2024, setting out how TPR expects trustees to assess and monitor the employer covenant, covering the various components involved and including several worked examples.

Increased focus on proportionality

In line with the code, there is an increased focus on proportionality, with TPR expecting trustees to review whether their existing covenant analysis is focused in the right areas, especially if there has been "a significant change" in the scheme's funding position in recent years. Whilst TPR acknowledges that the guidance will simply "bake in best practice" for many schemes, it nonetheless expects all trustees to read applicable sections in full.

What is "employer covenant"? ?

Defined in pensions legislation for the first time, "employer covenant" takes account of the employer's financial ability to support the scheme having regard to its legal obligations.

Identifying employers

The guidance emphasises the importance of identifying the scheme's employer(s) and assessing the nature and extent of their legal obligations to the scheme, noting that this is "a complex process and may require legal advice". Where an employer's financial performance is "heavily dependent" on a third party, the wider group or a group obligation, this should be considered.

TPR provides helpful input on assessing "last man standing multi-employer schemes", formally segregated multi-employer schemes, and partial wind-up provisions for multi-employer schemes.

Key components of assessing covenant

Cash flow

An employer's "cash flow" is essentially what is left as "free cash" after taking account of reasonable operational and committed finance costs (eg utility costs, essential maintenance, and staff costs), but before DRCs to the scheme or other possible uses of that cash.

Focus on forward-looking forecast information for cash flow

The guidance sets out what trustees should consider when assessing the cash flow of employers (and non-employers) who have a legal obligation to financially support the scheme. When assessing cash flow, trustees should primarily focus on forward-looking forecast information, using historical information to help evaluate its accuracy and reliability.

Prospects

This section is designed to help trustees understand the "extent and duration of reliance" that can be placed on employers continuing to provide sufficient scheme support, and highlights the risks involved in that support deteriorating. Factors to consider when assessing prospects include market outlook, employer market position, diversity of employer operations, ESG risks, resilience and risk of insolvency.

Trustees should generally request the information needed from the employer's management, but may also have to consider supplementing this with information from other sources, such as market outlook reports and market data.

7 See our Alert: DB funding – TPR publishes covenant guidance (5 December 2024)

DB funding – covenant guidance cont.

Determining the reliability period and covenant longevity period
Under the code, trustees must consider the:

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 guidance includes detailed examples illustrating how the assessment of the reliability period and covenant longevity should be undertaken, emphasising the need for stress testing where "material risks" to the employer's prospects and covenant are identified.

Contingent assets
As a minimum, TPR expects trustees to:

Detail on how to value contingent assets

- reassess the value of contingent assets at each valuation, or more frequently if appropriate for the scheme's circumstances, and
- have in place processes to monitor any potential deteriorations in the asset value in the interim period.

The process for valuing contingent assets looks altogether more complex, granular and onerous than it is currently, so it will be interesting to see how covenant advisers approach this in practice.

Determining the covenant inputs required to assess supportable risk
The guidance details how to determine the appropriate covenant inputs needed to assess whether the level of risk being run in the scheme's funding and investment strategy is supportable by the covenant. It outlines how to calculate "maximum affordable contributions" and other considerations to be borne in mind, including look-through guarantees, payment of DRCs by an entity other than the employer, as well as the impact of an employer sponsoring more than one DB scheme.

How to calculate "maximum affordable contributions"

Monitoring covenant

TPR expects trustees to monitor the covenant throughout a scheme's lifetime. The frequency and depth of monitoring are likely to change over time, but trustees must be able to justify their approach and document decisions taken. As a minimum, a full review of the monitoring framework should be completed as part of the scheme valuation process.

Other developments

TPR has published the tests and conditions a scheme must satisfy to meet the fast track parameters. The fast track submission route is part of TPR's "twin-track approach" to assessing valuations under the new requirements. Trustees are urged to "think carefully" about whether fast track is right for their scheme, or whether a more prudent approach is appropriate, particularly where there is very limited employer covenant support.

A new digital service for submitting funding documents is due to launch in spring 2025. In the meantime, schemes have been advised to hold off submitting their statements of strategy until this service is up and running, with TPR providing comfort that it will not treat this as a breach of the funding requirements.

TPR update

Change in approach to regulation

TPR has announced some intended changes to its style of regulation in response to the Mansion House reforms (see page 5) and a "rapid acceleration" in the scale of workplace pension schemes. TPR's modelling suggests that, in 10 years, the master trust market will contain schemes of "systemically important size", with seven schemes each expected to have more than £50 billion assets under management.

TPR to develop a more "prudential" style of regulation

TPR intends to develop a more "prudential" style of regulation to address risks at both individual scheme level and those risks which impact the wider financial ecosystem. To do this, it will focus on scheme investments, data quality and trusteeship. A new "regulatory toolkit" will include:

- a new approach to master trust supervision with tiers of engagement depending on the risks schemes present
- investing in digital, data and technology
- growing a team of "innovation professionals" and putting in place a "pensions market innovation hub" to provide guidance to enable safe new product development.

Scheme returns

Changes made to the DB and hybrid scheme return for 2024-25 include:

Updates to DB and hybrid scheme return

- additional questions regarding the quality of data on scheme members
- requiring more recent information about scheme membership figures
- new questions about the performance of investment consultancy providers against objectives that have been set, and whether those objectives have been reviewed.

Scheme returns must be submitted by 31 March 2025.

Call to action on pension scams

TPR has issued a "fresh call" for the industry to take action to protect members against pension scams. It has also updated its pension scams leaflet, which trustees should send to members along with annual benefit statements and in response to transfer requests.

The industry is encouraged to report scams and suspicions of scams to Action Fraud.

Occupational DB and hybrid scheme landscape

Key findings from TPR's annual overview of the occupational DB and hybrid scheme landscape include:

- as with previous years, the DB and hybrid landscape continues to shrink at a yearly rate of 3% on average. The number of schemes has reduced from 7,300 in 2012 to 5,190 in 2024
- membership in private DB and hybrid schemes has fallen by 2% since 2023 to 9,424,000, with only 12% of memberships in open schemes
- the percentage of schemes in surplus on a technical provisions basis is 80% in 2024 compared to 77% in 2023.

In other news

New Pensions Minister

Torsten Bell, the MP for Swansea West, was appointed Parliamentary Secretary in HMT and Parliamentary Under Secretary of State in the DWP on 14 January 2025. He replaces Emma Reynolds, who is now the Economic Secretary to the Treasury.

Unlocking DB scheme surpluses

The Government has announced plans to lift restrictions on how well-funded, occupational DB schemes that are "performing well" will be able to invest their surplus funds. It explains that legislative changes could enable "all DB schemes to change their rules to permit surplus extraction where there is trustee-employer agreement". The intention is that trustees could strike a "deal" with employers to enable members to benefit as well.

Proposals for DB surplus expected in the spring

The Government intends to set out the details of the surplus policy in its response to the Options for Defined Benefit schemes consultation, which is expected in the spring.[8]

TPR has expressed its support for the proposals, with Nausicaa Delfas, TPR's Chief Executive, noting that whilst TPR's "first priority must be to ensure pension scheme members have the best chance of receiving their promised benefits", it supports efforts to help trustees and employers "consider how to safely release surplus if it can improve member benefits or unlock investment in the wider economy".

FCA's Advice Guidance Boundary Review

The FCA has recently finished consulting on its proposals for "targeted support" in pensions, as part of the wider Advice Guidance Boundary Review. Targeted support would be aimed at the gap between existing guidance-based services and more bespoke advice. It would allow firms to provide individuals with suggestions that have been developed for a group of consumers who share the same characteristics. It is aiming to consult on detailed requirements with draft rules and guidance in the first half of 2025.

In the meantime, a joint statement from the FCA, TPR and the ICO is intended to give trustees and pension providers some clarity on communications they can make to support members' decision-making, in line with data protection laws, the FCA's consumer duty and TPR's expectations. It clarifies that trustees and providers can provide "neutral, factual information" to members and sets out examples of communications that are unlikely to constitute prohibited direct marketing.

Through a separate discussion paper, the FCA is also seeking views on whether further changes might be needed to the regulatory framework to better support consumers, such as the use of digital tools, consolidation of pension pots and the rules around SIPPs. The FCA is asking for comments by 27 February 2025.

8 See our Consultation Response: Options for Defined Benefit schemes: consultation (18 April 2024)

In other news cont.

PPF levy

PPF levy estimate reduced to £45 million for 2025/26

The PPF levy estimate will be reduced to £45 million for 2025/26, a significant reduction on the £100 million estimate initially proposed and will be the lowest ever levy. The PPF estimates that 99.7% of levy payers should see a reduction in their levy next year.

Additionally, the final levy rules include a new provision that enables the PPF Board to calculate a zero levy if appropriate legislative changes that would give it greater flexibility in setting the levy are brought forward, and sufficiently progressed, over the course of 2025/26.

TPO developments

New DPO appointed

2024 was a busy year for TPO, with various developments, including:

- all complainants must now try to resolve their complaint through their scheme's IDRP before coming to TPO. Schemes should check their website and templates to make sure they are pointing members in the right direction at the right time, using wording in TPO's factsheet
- launching its expedited decision-making process, issuing expedited decisions and determinations on cases that have a clear outcome. These shorter-form determinations aren't generally published, but TPO has shared an example of a recent case to illustrate the process
- using its "lead case" approach "more than ever". When there is an industry-wide issue, or a scheme-specific issue affecting multiple members, TPO will select a representative "lead case" to accelerate. This allows TPO to set out its position "clearly and quickly" in a comprehensive determination, which in turn supports the timely resolution of other complaints.

Lastly, Camilla Barry has taken over from Anthony Arter as DPO. Her appointment runs for four years from 9 December 2024.

PSIG developments

Feedback from PSIG's recent consultation on its future showed that its Code of Good Practice is widely used and highly valued. The industry supports its "continued efforts and focus on scams" and is keen for PSIG to adopt a "more dynamic approach". Key suggestions for its future include more active lobbying of government and regulators, and the creation of a more interactive information hub. Additionally, many respondents expressed interest in more services, such as training, webinars and accreditation schemes.

PSIG plans to publish an updated version of its Code of Good Practice in 2025, and will continue to contribute to the Pension Scams Action Group and to offer its Pension Scams Industry Forum. It will come back to the industry with a proposal on the way forward in due course.

Pension fund clearing exemption

HMT has confirmed that the temporary exemption that pension funds currently have from the obligation to clear certain derivatives contracts will be maintained for the longer term. The exemption was made in recognition that clearing contracts through a central counterparty, which typically requires collateral to be provided in cash, could cause particular challenges for pension funds.

It intends to take forward legislation to ensure that the exemption does not expire on 18 June 2025 (as currently scheduled) and to remove any further time limit on the exemption. This policy will, however, be kept under review in coordination with the UK regulatory authorities.

Courts and TPO

Manolete Partners PLC v White (Court of Appeal)

In a recent case, the Court of Appeal considered the correct interpretation of section 91 of the Pensions Act 1995, which restricts the surrender, commutation and assignment of entitlements or future rights to a pension under an occupational pension scheme (subject to certain exceptions).[9]

After being found in breach of his fiduciary duties, Mr W was directed to pay Manolete around £1 million (the "Judgment Debt"). As the Judgment Debt was not paid, Manolete applied to the High Court for an order requiring Mr W to exercise his rights under his pension scheme and instruct payment of his pension to be made directly to Manolete. The High Court made an order requiring Mr W to draw down monies into an account in his own name, so that the pension pot could be used to satisfy the Judgment Debt ("the Order"). Mr W appealed to the Court of Appeal, contending that the Order was prohibited by section 91(2).

Creditor cannot require debtor to draw down pension

The Court of Appeal noted that section 91(2) prohibits the making of an order "the effect of which" would be that a member would be restrained from receiving their pension. In the judge's view, the reference to the member "receiving" their pension had to be to a member receiving the pension "*for their own benefit*". That would not be the case where the debt giving rise to a pension payment was attached or charged in favour of a judgment creditor, or where the effect of the order would be that, upon receipt, the member would be prohibited from using the pension monies except to pay a judgment debt.

It was clear that the Order (and alternative versions of it which had been put forward) would contravene section 91(2) as they would have operated to prevent Mr W receiving any of his pension monies. The Court of Appeal, therefore, allowed the appeal.

Mr N (CAS-71351-P8X2)

TPO has partially upheld a complaint relating to, among other things, the timing and communication of a trustee's GMP equalisation and rectification project.[10]

On the facts, TPO's view was that the scheme's equalisation project had not, at that point, been unreasonably delayed. However, as the trustee had agreed to keep Mr N updated on the progress of the GMP equalisation project but had failed to do so, TPO awarded Mr N £500 for distress and inconvenience.

This case highlights the importance of good communication, especially where trustees have committed to keeping a member updated on progress. It is reassuring to see TPO acknowledging that GMP equalisation and rectification projects are difficult and complicated and, therefore, take a reasonable period to implement.

Genwick Retirement Benefit Scheme & Uniway Systems Retirement Benefits Scheme (PO-16266)

In a recent determination, TPO directed a trustee director to personally pay over £9.7 million into the pension schemes in question. The DPO found that the schemes were established with the primary intention of channelling money into specific, predetermined investments. By facilitating this arrangement, the trustee company and its director had failed to invest the schemes' funds for a proper purpose, and the director was found to be a dishonest accessory to multiple breaches of trust.

The case reminds pension scheme members of the need to be cautious when transferring their pensions and to be aware of the risks of pension scams.

9 See our Case Summary: Manolete Partners PLC v White (Court of Appeal) – 15 November 2024 (2 December 2024)
10 See our Case Summary: Mr N (CAS-71351-P8X2) (20 January 2025)

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	08/05/2025	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.

A selection of short videos, webinars and podcasts on topical pensions-related issues and aspects of our firm is available on our website: www.sackers.com/knowledge/multimedia

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Recent publications

The Pensions litigation briefing – December 2024 reviews recent case law and examines the practical lessons for trustees and employers.

The Finance & investment briefing – March 2025 takes a look at current issues of interest to pension scheme investors.

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