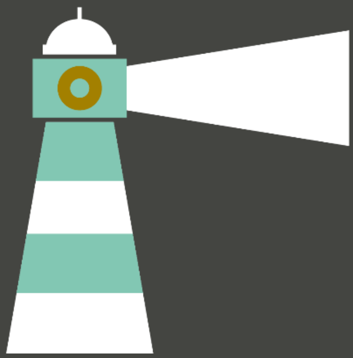
BRIEFING

TRAVERS SMITH

What's Happening in Pensions

Issue 108 – April 2024



[Travers Smith Pensions Sector Group]

In this issue:

TPR General Code of Practice: The Pensions Regulator's general code of practice came into force on 28 March 2024. It replaces ten of the Regulator's 16 codes of practice. The principal new content relates to the requirements for schemes to have an effective system of governance and (for schemes with 100 members or more) to conduct an own risk assessment.

DB funding and investment: The new scheme funding and investment legislation has come into force and applies to DB scheme valuations with an effective date on or after 22 September 2024. The finalised regulations include details of the new requirements for schemes to have an agreed funding and investment strategy and to report on it in a statement of strategy. The Pensions Regulator has not yet published its code of practice or expected guidance but is consulting on the content of the statement of strategy.

Pensions dashboards: The Government has published guidance including a staged timetable for pension schemes and providers to connect to the pensions dashboards ecosystem. It also covers what the Government considers is meant by the requirement in legislation to "have regard to" the guidance. Separate guidance "Annualised accrued value calculations for Pensions Dashboards" has also been published, to help trustees to calculate an annualised rate of income for an individual's accrued DC pot value.

Lifetime allowance abolition: Regulations have amended the legislation that abolished the lifetime allowance and introduced the lump sum allowance and lump sum and death benefit allowance, with the aim of addressing identified errors and oversights in the legislation. Further regulations are awaited. HMRC has continued to publish guidance in newsletters on issues with the legislation and answers to FAQs, and has updated the Pensions Tax Manual.

Tax on surplus refunds: A statutory instrument has reduced the rate of the authorised surplus payments charge, applicable to payments of surplus to an employer, from 35% to 25%, with effect from 6 April 2024.

TCFD reporting: The Pensions Regulator has published its second annual review of pension schemes' climate-related disclosures. The aim is to help raise standards across the industry, including by showing what 'good' looks like.

TPR VFM enforcement: The Pensions Regulator has launched an exercise to ensure compliance by DC schemes that have less than £100 million in assets with the more detailed "value for members" assessment requirements that apply to them.

Select committee report on DB pensions: Parliament's Work and Pensions Committee has published a report on its wide-ranging inquiry into DB pension schemes, including a number of recommendations for the Government and the Pensions Regulator.

LDI – Bank of England and TPR: The Pensions Regulator has published a letter to the Governor of the Bank of England setting out the Regulator's progress and actions in relation to liability driven investment and financial stability.

Carer's leave: Under new regulations, employees are able to take up to one week of unpaid leave per year to provide or arrange care for a dependant with long-term care needs. The effect on pension contributions and accrual is the same as for unpaid parental leave.

TPR D&I survey: The Pensions Regulator has published a report on its first trustee diversity and inclusion survey.

PENSIONS RADAR: You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes. A new issue will be published later this month.

SUSTAINABILITY MATERIALS: Our Sustainable finance and Investment Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors.

TPR GENERAL CODE OF PRACTICE

A Government Order brought the Pensions Regulator's General Code of Practice into force on 28 March 2024, which was a day later than originally planned. The General Code replaces ten of the Regulator's 16 codes of practice. Those ten codes were revoked from 28 March 2024.

The principal new content relates to the requirements for schemes to have an effective system of governance and (for schemes with 100 members or more) to conduct an own risk assessment.

The promised web-based version is available on the Pensions Regulator's website. This also includes content from codes of practice that were excluded from the General Code consolidation exercise. The Regulator's online guidance is undergoing revision in various areas.

See our initial briefing for general information and our ongoing series of detailed briefings about the different aspects of the Code.

DB FUNDING AND INVESTMENT

Funding and investment regulations

The Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2024 came into force on 6 April 2024 (but see below) alongside the relevant provisions of the Pension Schemes Act 2021 (which are section 123 and Schedule 10). They set out the new principles that will govern how DB schemes will have to be funded, alongside an integrated investment strategy, based on a long-term objective for providing benefits (for example buy-out, consolidation or run-off). They include details of the new requirements for schemes to have an agreed funding and investment strategy and to report on it in a statement of strategy.

The new legislation applies in respect of valuations with an effective date on or after 22 September 2024. There is a 15 month deadline (i.e. the same as for producing the valuation) for producing the funding and investment strategy and the statement of strategy. All actuarial valuation reports will have to be sent to the Pensions Regulator, not only (as at present) where the scheme is in deficit.

The accompanying Pensions Regulator code of practice has not yet been published, so we do not yet have all the detail we need.

See our February 2024 briefing for more detail of the new regime.

Statement of strategy and other TPR materials

The Pensions Regulator has consulted on its proposed approach to the statement of strategy, including the form and content of the document and the type and extent of information that will need to be submitted.

The Regulator proposes a standardised template format, partly narrative and partly figures-based, which under the legislation schemes would be required to use. There would be four versions, with schemes choosing the relevant version depending upon whether the scheme has reached 'significant maturity' and whether it is using the 'fast-track' or 'bespoke' approach (of which final details are awaited).

Less information on some aspects will be expected from smaller schemes. For some actuarial information, this concession will apply to schemes with fewer than 100 members. For some investment information, it will apply to schemes with PPF basis liabilities of less than £30 million.

A draft example statement is included, for a larger scheme that has not reached significant maturity and is using the bespoke route (i.e. the version requiring the most information to be included). The Regulator has also published an example of a trustee assessment of maximum affordable contributions and a spreadsheet reference list for the data and information that will need to be gathered.

After the Regulator has published its funding code of practice, there will be further engagement with industry and then guidance published alongside the final templates. We also await the Regulator's new covenant guidance.

PENSIONS DASHBOARDS

Connection staging timetable

The Government has published guidance including a staged timetable for pension schemes and providers to connect to the pensions dashboards ecosystem and be in a position to process 'find' and 'view' requests. It also covers what the Government considers is meant by the requirement in legislation to "have regard to" the guidance.

The guidance retains the original plan for staged dates, by which schemes are expected to connect, ahead of the ultimate legal deadline of 31 October 2026. Dates are determined based on scheme type and number of relevant members (i.e. active members, deferred members and pension credit members) and are set out in section 3 of the guidance. The number of relevant members is measured as at the scheme year end date that falls between 1 April 2023 and 31 March 2024.

Some key dates are as follows:

- The earliest date is 30 April 2025, which is for DC master trust schemes with 20,000 or more relevant members and FCA-regulated operators of a personal pension scheme with 5,000 or more relevant members.
- The earliest date for other DC schemes is 31 May 2025, which is for DC schemes used for automatic enrolment with 5,000 or more relevant members and other DC schemes with 20,000 or more members.
- The earliest date for schemes without DC benefits is also 31 May 2025, which is for such schemes with 20,000 or more members (but not public service or parliamentary schemes).
- The earliest date for hybrid schemes is also 31 May 2025, for such schemes with 20,000 or more members.
- The single date for collective DC schemes is 30 September 2025.
- The single date for public service pension schemes and parliamentary pension schemes is 31 October 2025.
- The latest date is 30 September 2026, which is for any schemes with between 100 and 124 relevant members. (Schemes with fewer than 100 members are not required to connect but may do so voluntarily.)

Applications to defer the connection deadline are only required where the deferral is to a date after the legal deadline, 31 October 2026, and can only be made in very limited circumstances, involving a change of administrator or contractual retendering requirement (see WHiP Issue 104). Schemes that will miss their guidance connection date are encouraged to engage with the Pensions Dashboards Programme and the Pensions Regulator.

The guidance is clear that it is not mandatory but the Government encourages schemes and providers to follow it "unless there are exceptional circumstances which prevent them from doing so". The obligation in the legislation is to "have regard to" the guidance. The guidance says: "This means that trustees or managers and pension scheme providers must take the guidance into account when preparing to connect to the pensions dashboards ecosystem."

It goes on to say:

> *"It is a legal requirement for trustees or managers and pension scheme providers to have regard to this guidance as part of meeting their obligations and not doing so would be a breach of this requirement. As such, trustees or managers and pension scheme providers must consider it when making decisions or taking actions in relation to preparing to connect to dashboards.*
>
> *Trustees or managers and pension scheme providers will need to be able to demonstrate, upon request, how they have had regard to this guidance. This means, but is not limited to:*
>
> - *Not making final decisions about connecting before engaging with this guidance.*
> - *Being able to demonstrate that adequate governance and processes for making such decisions are in place. The reasoning for decisions should be clearly considered and documented, as well as how relevant risks are identified, evaluated, and managed.*

- *Making sure that access is available to all relevant information before making decisions and acting upon them. Keep clear and accurate audit trails to demonstrate the decisions made, the reasons for them and the actions taken.*

If trustees or managers and pension scheme providers are unable to demonstrate how they have had regard to the guidance, this may result in enforcement action by the relevant regulator."

The Pensions Regulator has updated its "Pensions dashboards: initial guidance" to reflect the staging timetable.

PDP blog post and FAQs

A Pensions Dashboards Programme (PDP) blog post highlights the above guidance and mentions that "20-plus" volunteer participants will be connecting to the pensions dashboards ecosystem from August 2024.

The PDP also stresses the importance of schemes connecting by their guidance date, in order to manage the volume and flow of connections in a stable manner. It adds that this will also support more extensive user testing and make it possible to launch the service to the public as soon as possible.

The PDP has also published a web page "Recent questions on dashboards". It answers the following questions:

- What is the timeframe for returning value data triggered by a successful find request?
- Can trustees assume that user consent is present via the consent and authorisation service?
- Who is responsible for making additional voluntary contributions (AVCs) data available to members on dashboards?

DC annual rate calculation guidance

New Government guidance "Annualised accrued value calculations for Pensions Dashboards" has been published. This is to help trustees and managers to calculate an annualised rate of income for an individual's accrued DC pot value.

LIFETIME ALLOWANCE ABOLITION

Amending regulations

The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024 came into force on 6 April 2024. They amend the primary and secondary legislation that abolished the lifetime allowance and introduced the lump sum allowance and lump sum and death benefit allowance, with the aim of addressing identified errors and oversights in the legislation. These issues were generally described in recent HMRC newsletters (see WHiP Issue 107).

A key provision adds to the statutory override in paragraph 132 of Schedule 9 to the Finance Act 2024. This override applies where a scheme rule imposes a limit on the amount of a benefit by reference to the member's lifetime allowance, the standard lifetime allowance or the lifetime allowance charge. The effect of the override is that any such scheme rules continue to have effect as if the abolition had not occurred. This, and the existing override ensuring that references to a lifetime allowance excess lump sum are now read as references to a pension commencement excess lump sum, apply until 5 April 2029. By then, schemes should have made appropriate rule amendments (though we note that this will not always be possible – this is being raised with HMRC).

Further correcting regulations are expected and will have retrospective effect. They are expected to relate primarily to issues with protections and overseas transfers. These issues are noted in the most recent HMRC newsletter (see below).

HMRC guidance

The publication of HMRC newsletters on matters concerning the abolition of the lifetime allowance continues unabated.

HMRC's Pension Schemes Newsletter 157 (published 28 March 2024) includes, among other things, answers to 39 new FAQs.

Pension Schemes Newsletter 158 (published 4 April 2024) includes information on matters to be covered in the forthcoming correcting regulations (see above).

The original version of Newsletter 158 told schemes that they should advise members and others not to take certain steps until the forthcoming legislation is in place and that doing certain things in accordance with the legislation as it currently stands will be a breach of the law when the retrospective legislation takes effect. This includes:

- The need to include any PCLS or (tax-free element of an) UFPLS paid after age 75 in a transitional tax-free amount certificate (which will retrospectively be a requirement from 6 April 2024 under the forthcoming regulations).
- The need to provide a receiving scheme with information about funds crystallised before 6 April 2024 when making a transfer (which will retrospectively be a requirement from 6 April 2024 under the forthcoming regulations).
- Advising members with enhanced protection not to transfer until the regulations are in place, because they would lose the protection.
- Advising members with enhanced protection or primary protection that their PCLS is limited to £375,000 (the lump sum allowance) and they will lose their protection unless they delay payment of the PCLS until after the regulations are in place.

The newsletter was later amended, without announcement, to remove the unsatisfactory expectation that schemes should advise members. The amended version includes the same content but seeks to guide members, rather than trustees, on what they should consider doing pending the making of the new regulations.

HMRC has updated pages of the Pensions Tax Manual to reflect the lifetime allowance abolition changes. A consolidated list of FAQs is to be published later this month.

TAX ON SURPLUS REFUNDS

The Authorised Surplus Payments Charge (Variation of Rate) Order 2024 reduces the authorised surplus payments charge rate in section 207(4) of the Finance Act 2004 from 35% to 25%, with effect from 6 April 2024. This follows an announcement in the 2023 Autumn Statement and precedes proposed other measures to ease access to surplus and thereby encourage schemes to be run on and invest in return-seeking assets, rather than de-risk (see WHiP Issue 106).

TCFD REPORTING

The Pensions Regulator has published its second annual review of pension schemes' climate-related disclosures. It covers 30 schemes' reports for scheme years ending between 1 October 2022 and 30 September 2023, which is about 10% of the total number of reports for that period.

The aim is to help raise standards across the industry, including by showing what 'good' looks like. The Regulator found many examples of good strategic decision-making and that more than 60% of the reports had some form of net zero goal with a target date of 2050 or earlier. (There is no requirement to do this.)

The Regulator notes that the time and resources devoted to monitoring and managing climate change risk should be proportionate to the materiality of the risk and that there will be more materiality for DC and open or immature DB schemes than for DB schemes where the assets are closely matched to liabilities or that are very well funded.

The Regulator makes the following suggestions:

- Putting information about the scheme near the beginning of the report helps to put the rest of the report in context.
- When referring to specific investment mandates, it is helpful to explain their size in relation to the total scheme assets, so that readers can understand materiality.
- Use of generic wording gives less confidence than including specifics about policies in place, steps taken to manage risks and information received from advisers.
- Trustees can reuse text from the previous year but should add a summary of developments and activities during the reporting year.
- Reports varied in length, up to 94 pages, with an average of 38 pages. Shorter reports tended to be better.
- A plain English summary allows the rest of the report to be more aimed at more informed readers.
- An action plan should be included where trustees have identified that additional work is needed. This should then be monitored and reported on in the next report.

The report also notes specific examples of good practice and suggestions for improvements in the specific areas of governance, strategy, scenario analysis, risk management, metrics and targets.

TPR VFM ENFORCEMENT

The Pensions Regulator has launched an exercise to ensure compliance by DC schemes that have less than £100 million in assets with the more detailed "value for members" assessment requirements that have applied to them since 1 October 2021 (see WHiP Issue 92).

These requirements are broadly designed to prompt the smallest schemes to consider whether consolidation into a larger scheme would improve value for members. The Regulator reports that an initial pilot exercise has included 16% of schemes from the pilot reporting that they have opted to wind up, having concluded that they do not offer good value.

The Regulator will now be scrutinising information from DC scheme returns and issuing fines where appropriate. It says that a corporate trustee has already been fined £12,500 for a breach of this requirement.

SELECT COMMITTEE REPORT ON DB PENSIONS

Parliament's Work and Pensions Committee has published a report and separate summary on its wide-ranging inquiry into DB pension schemes, including a number of recommendations for the Government and the Pensions Regulator. The Government has two months to respond.

Recommendations of interest include the following:

- **DB funding:** The Government should set out how it plans to promote retirement income adequacy in the future and the role it sees DB schemes playing in this. It is essential that the Pensions Regulator works with open schemes to ensure that outstanding concerns are addressed before its funding code of practice is finalised. The Committee criticises the Government for expecting Parliament to approve funding legislation in the absence of all the material details (i.e. with so much left to a future Pensions Regulator code of practice).
- **Surplus:** In developing proposals to allow easier access to surplus, the Government should assess the regulatory and governance framework that would be needed to ensure that member benefits are safe and take steps to mitigate the risks. The Government and the Regulator should explore ways to ensure that members' reasonable expectations for benefit enhancement are met, particularly where there has been a history of discretionary increases. On that topic, the Regulator should undertake research to understand the extent to which living standards have been eroded by a lack of pension increases.
- **Governance:** The Government and the Pensions Regulator should invest in driving high standards of governance across pension schemes. The Government should: make accreditation mandatory for professional trustees; explore ways to ensure that lay trustees have the time and resources to become accredited; and set out plans for ensuring that every trustee board has at least one accredited member. Given the potential for conflicts of interest where there is a sole trustee appointed by the employer, the Government should introduce measures to improve the accountability of sole trustees and to enable scheme members to be involved in their appointment. The forthcoming trustee register should be used to record trustees' completion of the Trustee Toolkit programme.
- **PPF funding:** The Government should legislate to give the PPF more flexibility to reduce its levy to zero and be able to increase it later. It should also legislate to improve PPF compensation levels, with the indexation of pre-1997 benefits a priority. The same should be done, at taxpayer expense, for Financial Assistance Scheme compensation.
- **TPR objectives:** Not least because of the PPF's very healthy funding position, the Pensions Regulator's statutory objective to protect the PPF should be replaced with an objective to protect future, as well as past, service benefits.

LDI – BANK OF ENGLAND AND TPR

The Pensions Regulator has published a letter sent in January 2024 to the Governor of the Bank of England setting out the Regulator's progress and actions in relation to liability driven investment (LDI) and financial stability.

In March 2023, the Bank of England's Financial Policy Committee (FPC) made recommendations with the aim of improving the resilience of pension schemes to market shocks such as the autumn 2022 gilts market turmoil. The Pensions Regulator's letter included the following points of interest:

- The Regulator has published guidance on leveraged LDI including expected resilience measures (see WHiP Issue 102). Pension schemes are now more resilient to shocks.

- The Regulator has built dashboards to monitor pooled and segregated LDI mandates. These are designed to identify funds and bespoke mandates at greatest risk of requiring a capital call over the next month under market stress conditions.
- The scheme return now collects leverage and liquidity data (see WHiP Issue 107). The Regulator is also surveying the main investment consultants and a significant proportion of schemes in Q1 and Q2 2024 respectively to check that governance and operational procedures are being implemented in line with the guidance.
- Over the last year, the Regulator has doubled its number of investment consultants and bolstered this with the recruitment of a senior economist.
- Areas of collaboration with the Bank of England are noted.

This was followed by a report on the subject by the FPC.

CARER'S LEAVE

The Carer's Leave Regulations 2024 come into force on 6 April 2024. Employees are able to take up to one week of unpaid leave per year to provide or arrange care for a dependant with long-term care needs. The effect on pension contributions and accrual is the same as for unpaid parental leave.

Some details are as follows:

- the right will apply from "day one" of employment and there will be no service requirement;
- the right will apply to employees who have a dependant with long-term care needs (e.g. an elderly or disabled relative);
- employees will be able to take half-days or full days, either consecutively or in separate chunks, up to a total of one week in any rolling twelve-month period;
- employees will be required to give notice in writing to take carer's leave which is at least twice the length of the leave requested, subject to a minimum of three days' notice;
- employers cannot refuse a request but can postpone a request by up to a month if it would cause undue disruption to the business;
- employers cannot ask for evidence of the dependant's care needs;
- employees are protected from detriment or dismissal for taking or seeking to take carer's leave.

See our Employment team's briefing for more detail.

Regulation 9 says that an employee who takes carer's leave is entitled to the benefit of all the terms and conditions of employment which would have applied if the employee had not been absent but not including terms and conditions about remuneration, which means only sums payable by way of wages or salary.

Regulation 10 describes the right to return to work, including with pension and other rights as they would have been if the employee had not been absent and no less favourable terms and conditions.

TPR D&I SURVEY

Results of the Pensions Regulator's first trustee diversity and inclusion survey have been published.

The Regulator says that this confirms that pension trustees are less diverse than the overall population. It intends to use it as a baseline to measure future progress.

It added:

> *"The results highlighted industry recognition of the importance of inclusive and diverse boards with 78% saying they felt a diverse trustee board was important. There was also broad consensus that diverse and inclusive pension boards are important for good decision-making (84%), good governance (83%) and good member outcomes (85%).*

While the survey highlights the lack of trustee diversity in terms of protected or visible characteristics such as ethnicity, most trustee boards were seen as diverse in terms of skills (82%), life experience (74%), professional background (73%), cognitive diversity (73%) and education (61%)."

Although the majority of trustees recognise the importance of greater board inclusivity and diversity, fewer than half of schemes have taken action to improve.

Travers Smith's award-winning Pensions Sector Group seamlessly encompasses all the technical legal specialisms our pensions clients need. Our experienced and talented multi-specialist teams are at the forefront of pensions so we can help you to predict and plan for the future. For more information about our services please visit our website or speak to your usual Travers Smith contact.

You can also follow us on LinkedIn

FOR FURTHER INFORMATION, PLEASE CONTACT

Susie Daykin
Partner, Head of Pensions
susie.daykin@traverssmith.com
+44 (0)20 7295 3247

Daniel Gerring
Partner
daniel.gerring@traverssmith.com
+44 (0)20 7295 3341

Niamh Hamlyn
Partner
niamh.hamlyn@traverssmith.com
+44 (0)20 7295 3287

David James
Partner
david.james@traverssmith.com
+44 (0)20 7295 3087

Andy Lewis
Partner
andrew.lewis@traverssmith.com
+44 (0)20 7295 3444

Dan Naylor
Partner
dan.naylor@traverssmith.com
+44 (0)20 7295 3454

Nick White
Knowledge Counsel
nick.white@traverssmith.com
+44 (0)20 7295 3472

10 Snow Hill | London EC1A 2AL | T: +44 (0)20 7295 3000 | F: +44 (0)20 7295 3500 | www.traverssmith.com