Sackers

DC briefing

March 2022

Highlighting the latest developments in DC for trustees, employers and providers

Introduction

The days are finally getting longer again, which is fortunate for DC schemes as they need all the time they can get to ready themselves for a deluge of changes. In this issue, we set out your agenda for the coming months and spotlight two of the key developments; pensions dashboards and the stronger nudge to guidance. Although both of these have been on the cards for a while, it's now time to get to grips with the detail.

DC trustees should consider how to incorporate the upcoming changes into their business plan for 2022/23 and whether they have sufficient resource to deal with the accompanying workload. As ever, we are here to help and support you throughout this process.

DC agenda

Topic	Summary	Timing
Ban on flat fees for small DC default pots	Final regulations published	In force 6 April 2022
Stronger nudge	Response to consultation and final regulations published (see page 3)	In force 1 June 2022
CDC	Response to consultation and final regulations published	In force 1 August 2022
TPR's single code	Revised code due in spring 2022	Due into force summer 2022
Simpler annual statements	Response, regulations and guidance issued	In force 1 October 2022
Climate change governance and reporting requirements	Schemes with £1bn or more in relevant assets in scope	From 1 October 2022
Pensions dashboards	Consultation and draft regulations published (see page 2)	Final regulations due later in 2022, with delivery set for 2023

Pensions dashboards

The DWP's consultation on pensions dashboards sought views on a range of policy areas relating to their creation.

What are they?

Pensions dashboards will be online platforms for individuals to access information about their pensions in one place. The aim of the dashboards is to bring together all of an individual's pension entitlements (including the State pension), and to display accrued and (in some cases) projected values.

On one side of the dashboards infrastructure, pension schemes will need to "plug in" their databases. On the other, MaPS and FCA-authorised providers will offer apps and websites to allow the public to connect, find and ultimately view their pension data.

Timing

This is a huge operation that will be phased in over a period of time. The DWP is proposing the following staged approach:

April 2023 – September 2024	Schemes with 1000 or more active and/or deferred members will need to connect their data to the dashboards. Master trusts, personal and stakeholder schemes are expected to be among the first to connect, followed by DC schemes used for automatic enrolment.
October 2024 – October 2025	Schemes with 100 to 999 active and/or deferred members will then need to connect.

Small and micro schemes are not specifically covered by the draft regulations, but the DWP expects to stage these schemes from 2026.

Action points

Governance	Connection to the dashboards will involve a significant amount of preparatory and ongoing work, with very tight timescales. Input will be required from both a scheme's administrator and its trustees. Trustees should ensure that an appropriate governance structure is in place to oversee the preparatory and ongoing work. Talk to your administrator/provider to understand what their plans are and how this could impact your scheme.
Scheme data	A scheme's member data will need to be sufficiently accurate and accessible to allow matching of find data to take place, and to provide value data. Consider when you last undertook a data cleansing exercise and what steps are needed to improve your most recent data score.
Pre-connection work	Schemes will need to ensure that their administration systems meet the necessary requirements to "plug in" to the dashboards. Software upgrades and/or third party assistance may be necessary. For in-house administrators this could involve discussions with the sponsoring employer around prioritising technology support. It will also be necessary for schemes to review their data protection compliance framework and ensure it is up to date.
Post-connection compliance	Once the dashboards are available, member engagement may increase. Trustees should ensure they will have sufficient administrative resource to handle increased calls and member enquiries, and consider the impact on service level agreements and administration fees. Trustees will also be subject to ongoing compliance and reporting requirements which will need to be resourced appropriately.

For further details of the dashboards proposals, please see our Alert. If you would like to discuss any of the above, please speak to your usual Sackers contact.

Delivering the Stronger Nudge to guidance

Although the ink is barely dry on recent changes to transfer processes, to implement the stronger nudge requirements trustees and administrators will have to look again at these, as well as their retirement processes, before 1 June 2022.

The timing of the changes aligns with similar changes being introduced by the FCA in respect of contract-based schemes. TPR's guidance is intended to provide a helpful steer on how to apply the new requirements in practice.

Requirements

Trustees or managers of occupational pension schemes will be required to deliver the Stronger Nudge in relation to applications (and communications in relation to applications) made on or after 1 June 2022 to transfer or start receiving "flexible benefits". These include not only DC scheme benefits, but also DC AVCs held within a DB scheme.

It is helpful that TPR's guidance explains that the new requirements "do not apply to applications already being processed before 1 June 2022". However, as the requirements also apply to communications in relation to applications, it may not be easy to spot when the nudge is triggered for any applications that are already in train at that point.

Although there are some legal exceptions to this requirement, the need to apply consistent administration practices and seek cost efficiencies could lead some schemes to apply the requirements to every application regardless.

There are several steps to providing the Stronger Nudge. In summary, trustees and managers will have to:

- ✓ refer the applicant to appropriate pensions guidance ("Guidance") and explain its nature and purpose
- ✓ facilitate a Guidance appointment (currently, with Pension Wise), including offering to book the appointment and, where that offer is accepted, taking reasonable steps to do so
- ✓ explain that an application cannot proceed unless the applicant has received the Guidance and notified the trustees or managers of its receipt, or opted out of doing so
- ✓ explain that an applicant can only opt out of receiving the Guidance by giving the trustees or managers an opt-out notification. Subject to certain exceptions, for example transfer applications, this notification must be in "a communication made solely for the purpose of opting out". This could consist of a further phone call, an online opt-out form through a member portal, or an email or separate form provided with an application.

TPR considers it "good practice" to offer to book a Pension Wise appointment as early as possible in the process, and suggests that trustees consider encouraging members to take some time to fully consider their decision before confirming that they wish to opt-out.

Unless the applicant confirms that they have received the Guidance, or they have provided the opt-out notification, the trustees or managers must repeat certain parts of the Stronger Nudge in subsequent interactions in relation to the same application.

Exceptions

The Stronger Nudge will not be required in relation to a transfer if:

- ✗ the applicant is under the age of 50
- ✗ receiving flexible benefits is not the purpose, or one of the purposes, of the application (eg it is a transfer for the purpose of consolidating benefits)
- ✗ the trustees or managers have received verbal or written confirmation that the applicant has opted out of, or received, the Guidance following a referral by the trustees or managers of a different scheme, or
- ✗ the applicant is transferring rights to flexible benefits into a relevant pension scheme which, broadly speaking, is regulated by the FCA.

There is not long to go before the new requirements come into force, so trustees and managers should seek input from advisers as soon as possible. Please speak to your usual Sackers contact for further information and advice on how to comply.

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Contact

Sackers is the leading specialist law firm for pension scheme trustees, employers and providers. Over 60 lawyers focus on pensions and retirement savings, including our DC experts who provide practical and specialist help on all aspects of DC arrangements. For more information on any of the articles in this briefing, please get in touch with Helen Ball, Claire van Rees or your usual Sackers contact.

Helen Ball
Partner and head of DC
D +44 20 7615 9509
E helen.ball@sackers.com

Claire van Rees
Partner
D +44 20 7615 9573
E claire.vanrees@sackers.com

Emily Forrest
Partner
D +44 20 7615 9565
E emily.forrest@sackers.com

Olly Topping
Associate Director
D +44 20 7615 9037
E oliver.topping@sackers.com

Upcoming events

We offer an extensive programme of workshops, seminars and trustee training. If you would like to attend any of our events, please contact events@sackers.com or visit www.sackers.com/events.

Quarterly legal update	05/05/2022	Breakfast seminar (9:00am-10.30am) Available online as a webinar at 12:30pm The latest legal and regulatory developments in the pensions world.
Pensions for new trustees	19/05/2022	All day workshop (9:00am-3.30pm) Aimed at new trustees or those wanting a refresher on DB, DC and hybrid schemes, this session will look at key legal issues for trustees.

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Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 20 7329 6699
E enquiries@sackers.com
www.sackers.com