

Pensions communications: a journey from disclosure to engagement

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It was not long ago that pensions communications was, largely, treated as a straightforward box ticking disclosure exercise.

There was a list of things that trustees were required by law to tell beneficiaries at certain points in time. Schemes generally said exactly what they had to say, no more and no less, often using the same words (i.e. simply mirroring the, not particularly easy to follow, legislation) and sending it out in the same way (i.e. by post/in hard copy).

In 2022, the world of pensions communications looks very different.

Many trustee boards now have specialist communication consultants on board and invest increasing amounts of time and energy on member communication. Trustees are no longer just asking themselves “Do we have to say this?” but are thinking about how they communicate with members in a completely different way.



Why have things changed?

As members carry significantly more of the risk with Defined Contribution (DC) benefits, DC members should play a far more active role throughout their scheme membership than Defined Benefits (DB) members do. Tax simplification also brought a greater need for member engagement so individuals could manage the new annual and lifetime allowances in a way which reflected their personal tax position. Pensions freedom and choice then came, significantly expanding the range of retirement options, meaning schemes needed to start providing more information to help members make the right decision for them. The growing threat of pension scams also brought new risks that members need to be warned about so they can protect themselves.

In short, communication has become so important that the pensions industry can simply no longer afford not to do it better.

Thankfully, technology now offers new opportunities for enhanced communication options. We also have a much better general appreciation of the level of pensions literacy in the UK and more of an awareness that people want and need to receive and process information differently.

What do trustees have to say?

Unfortunately for trustees, there is no one document that sets out all of a trustee's disclosure obligations.

The basic foundations of a trustee's statutory disclosure obligations are the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (the "Disclosure Regulations"). However, on top of this foundation is laid a significant number of other communications and disclosure obligations which are dotted around in numerous other sets of regulations.

Information which has to be automatically provided

There is a wide range of information which a trustee must automatically make available to members and beneficiaries at certain points in time.

	Automatic enrolment and re-enrolment	Pension savings statements	Pension sharing on divorce	
Leaver statements	Early leaver options	DC Annual benefit statements	Summary Funding Statements	
	DC Chairs statements	Transfer rights and information	Death benefit information	
Wake up packs	Signposting guidance	Options in relation to flexible benefits	Statements on first flexibly accessing benefits	
	Lifestyling	DB to DC transfers	Privacy information	
Late payment of contributions	Return of surplus	Implementation statement	Stronger nudge	
Disclosure Regulations – Basic Scheme Information				

Information which must be provided to members

Information which needs to be provided on request



There is also information which a trustee must be ready to provide on request.

Providing information electronically

The Disclosure Regulations explicitly allow schemes to provide certain information and/or documents by email or by making it/them available on a website. However, there is a process which trustees need to follow before they can start using these options. They also need to maintain a postal alternative for members who choose to opt out of electronic communication and must be careful to comply with their duties under the Equality Act 2010.

Members rights in relation to personal data

As pension schemes will hold lots of personal data, they will also have certain disclosure obligations under data protection law. When collecting personal data, trustees need to provide members with “privacy information” including details of what information is being collected, how it will be used, who it will be shared with and how long it will be kept. Members also have a right to access and receive a copy of their personal data. This is commonly referred to as making a “data subject access request” or “DSAR”. If a trustee receives a DSAR, it will need to ensure that the required information is provided within the relevant timeframe.

The new requirement for simplified annual benefit statements – a tide turning moment?

In 2019, as an extension of its automatic enrolment strategy, the government started consulting on how annual benefit statements could be made simpler, shorter and more consistent to make it easier for individuals to understand them and engage with their pension savings.

New regulations came into force from October 2022, requiring schemes which are used for automatic enrolment and provide DC only benefits to issue simpler statements which must not exceed one double-sided sheet of A4 paper when printed. Trustees of relevant schemes are also required to have regard to statutory guidance in relation to how the statements are structured and how the required information is presented.

Government commentary suggests that this is just the start of statutory requirements governing how information is communicated as well as just setting out what needs to be said and that trustees should see this as the direction of travel for the future.

Do we have any duties beyond the statutory requirements?

It is widely accepted that a trustee's disclosure obligations do not simply end once the statutory requirements have been met. However, the lines of what trustees do and don't have to provide beyond the statutory requirements are far less clear cut.

The basic law around the general duty to inform members about their pension rights stems back to *Scally v Southern Health & Social Services Board* [1991] IRLR 522. Although this case was about an employer's implied duty (as part of the employment relationship) to inform employees, it is generally considered to also set the standard for trustees. This is that trustees should "take reasonable steps" to inform individuals about their rights.

Subsequent cases have confirmed this duty can generally be interpreted fairly narrowly. Provided the information is made available to beneficiaries in a reasonable manner, trustees do not need to go to lengths to draw attention to it. Nor do they need to point out to members what is the most financially advantageous option for them personally.

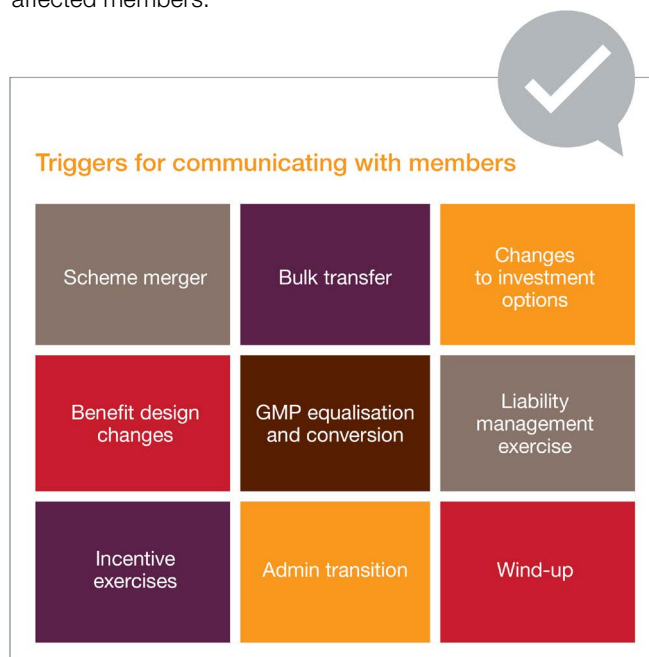
The question of what else members can ask for, and in particular to what extent trustees may be required to disclose other trust documents, meeting minutes, copies of advice and or to give reasons for decisions is outside the scope of this article (indeed, it is more than worthy of a separate piece all of its own). However, trustees should not simply assume that, just because a member has asked for something, they are necessarily entitled to see it simply by virtue of being a member.

Communicating in relation to changes

From time to time there may be changes impacting the scheme which trigger a need to communicate with members.

Exactly what trustees are required to communicate and how will depend on the specific circumstances and what, if any, action they need members to take. There may also be regulatory or other industry guidance which they need to consider when planning their change communications.

Certain scheme changes will also trigger an obligation on the employer to formally consult with affected members.



Are there more disclosure requirements coming down the track?

Almost inevitably, yes. Perhaps the most obvious example comes in the form of the introduction of dashboards. The whole point of dashboards is to give individuals easy access to pensions information to encourage them to engage with and monitor their pension savings. In broad terms, when schemes receive a “view request” through a dashboard, they will need to be ready to provide:

- administrative data – information about the scheme, administrator and relevant employment
- signpost data – a link to a website where the individual can find information about member-borne costs and charges, the scheme’s statement of investment principles and implementation statement
- value data – accrued and projected pension values. The value data that needs to be provided will depend on the member’s status and the benefit type.

What are the potential consequences of a communication “fail”?

The Pensions Regulator could impose a fine (Up to £5,000 for an individual trustee and up to £50,000 for a corporate trustee) on a trustee who fails to comply with a requirement under the Disclosure Regulations “without reasonable excuse”.

Some of the other statutory disclosure requirements come with similar consequences and there are various potential fines and claims for compensation in relation to breaches of data protection law.

However, there are other consequences which might arise either as a result of poor communication or of a failure to communicate.



Giving information but not advice

When providing information to members, trustees need to be extremely careful not to give advice.

Not only would doing so likely breach their fiduciary obligations but, generally, financial advisers need to be appropriately authorised and regulated by the Financial Conduct Authority (FCA).

In March 2021, the Pensions Regulator and the FCA issued a joint “Guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation” to help trustees and employers know what they should, and should not, say so that they can “help” without risking getting themselves into trouble. Key points trustees should remember to help them stay the right side of the line include:



Protecting the trustees – advice, health warnings, caveats and disclaimers

When preparing scheme communications, trustees should think about how they can ensure they have met their legal obligations and mitigate the potential wider risks highlighted above.

One of the key steps they can take is to get proper advice on their communications strategy and content. In many cases this will include legal advice.

They are also likely to need to include carefully worded, and positioned, health warnings, caveats and disclaimers to help protect themselves and minimise the risk of member claims. For example, noting that:

- benefits will ultimately be determined in accordance with the scheme's trust deed and rules
- communications reflect current statutory requirements and tax rules (which could change)
- members should consider seeking financial advice before making decisions about their pensions savings.

What should trustees be doing?

As well as meeting their legal obligations, trustees should also have an eye on the Pensions Regulator's expectations and what constitutes best, or at least good, industry practice.

It is in this space that we have already seen a noticeable shift of focus towards the quality as well as the content of pensions communications. It is no longer just about what trustees say but also when, and how, they say it.

The new Single Code is expected to set out the Regulator's latest thinking as to what trustees "should" be doing when it comes to communication. The draft code indicates that trustees should:

- ensure communications are accurate, clear concise, relevant and in plain English
- regularly review communications taking account of member feedback
- consider technology options and different forms of communication when designing their communications
- where relevant, regularly inform members about the impact of the level of contributions they pay
- provide "any additional information or explanation that members may need to help them make informed decisions about their benefits".

This is clearly raising the expectations placed on trustee boards as to the way they communicate and encourages them to think more about their membership's preferences and needs rather than simply coming at scheme communications from a basic compliance perspective.

Good communication as part of providing value for members

DC schemes are required to undertake a value for members assessment at least annually and report on their fundings in their Chair's statement. As part of their assessment, trustees are expected to look at the communications issued by the scheme as these form part of the scheme services members pay for. DC trustees in particular should therefore be looking closely at the frequency and quality of their member communications and how they compare to what members might get elsewhere.

Communicating in a time of crisis or uncertainty

Both Covid 19 and the most recent market turbulence have highlighted that there may be times where, although there is no specific disclosure requirement triggered, trustees might feel that they really should communicate with their members because of the risks which might arise if they don't. For example, to help manage members' expectations, reassure them about how the scheme is responding to the crisis, and/or help them make informed decisions about their benefits. However, this is likely to be an area where trustees will need to take advice to ensure that they strike the right balance and don't inadvertently raise expectations or take on additional responsibility.

What else might trustees want to do?

There is a wealth of evidence that clear and regular communications lead to a better informed and engaged membership which in turn results in better member outcomes and fewer complaints. Employers may also be keen to introduce additional features so employees can better plan for retirement and fully appreciate the benefit they are getting.

Although the bar for both the statutory requirements and the Regulator's expectations is rising there is definitely still a huge range of "nice to have" communication options which trustees could consider providing on top.



However, trustees clearly need to balance the potential benefits of enhancing their communication offering against the potential cost and risks of doing so. Just because they could potentially do more doesn't necessarily mean they should. Is there actually a member demand for more enhanced communication?

Knowledge is power, but there are also limits to how much pensions information members can, and want to, take on. Schemes need to be mindful to avoid information overload, otherwise they may find that despite their best efforts, their members simply switch off and disengage.

The journey continues

Clearly the pensions landscape, available technologies and member needs and expectations will continue to evolve and pension schemes will, at least to some degree, need to keep updating the way they communicate.

Where there is a particular policy incentive, as we have seen with the stronger nudge and dashboards, disclosure requirements are likely to lead the way. However, when it comes to other improvements in communication, the law is perhaps more likely to follow on the coat tails of industry best practice, as has been the case with the simpler annual benefit statements. As such, trustees should keep a close eye both on their legal disclosure obligations but also on what other schemes are doing.

