Sackers

Quarterly briefing

June 2023

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

Q2

June 2023

On the front cover this quarter: James Bingham (partner) and Hannah Savill (senior associate)

Abbreviations

AA: Annual allowance

AE: Automatic enrolment

CDC: Collective DC

DB: Defined benefit

DC: Defined contribution

DWP: Department for Work and Pensions

EDI: Equality, diversity and inclusion

ESG: Environmental, social and corporate governance

FCA: Financial Conduct Authority

HMRC: HM Revenue & Customs

ICO: Information Commissioner's Office

LTA: Lifetime allowance

PASA: Pensions Administration Standards Association

PCLS: Pension commencement lump sum

PDP: Pensions Dashboards Programme

PSIG: Pension Scams Industry Group

SIP: Statement of investment principles

TCFD: Taskforce on Climate-related Financial Disclosures

TPR: The Pensions Regulator

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Current legal agenda

Topic	Summary	Timing
Single / General code[1]	Draft code consulted on in 2021	Revised code expected before 30 June 2023
Pensions dashboards	DWP postponed the connection deadlines in March 2023 as part of a "reset" and "review" Regulations came into force 12 December 2022	DWP to provide an update before the summer (see page 7)
DB scheme funding[2]	TPR's consultation on draft code closed in March 2023 DWP consultation on draft regulations on new funding and investment strategy closed in October 2022	New regime now expected to come into force in April 2024 (see page 8)
CDC[3]	Legislation for single or connected employer schemes came into force 1 August 2022 DWP consultation on unconnected multi-employer schemes and decumulation only schemes ended March 2023	Timings unknown
Notifiable events[4]	Consultation on changes to the regime back in 2021. Response to consultation and final regulations are outstanding	Timings unknown

1 See our Alert: TPR issues consultation on draft single code of practice (18 March 2021)
2 See our Alert: DWP consults on DB funding and investment strategy (27 July 2022), our consultation response (17 October 2022), our Alert: TPR consults on its new funding code (19 December 2022) and our consultation response (23 March 2023)
3 See our Alert: The DC deluge (31 January 2023)
4 See our Hot Topic: New reporting requirements (January 2022)

Spring Budget – pensions tax changes

Changes to AA and LTA announced

Rumours of changes to pensions tax were rife in the run-up to this year's Spring Budget, and many were on the money. Aiming to help ensure that "high skilled individuals such as NHS clinicians are not disincentivised from remaining in the workforce", the Chancellor of the Exchequer announced increases to the AA, the tapered AA and the money purchase AA, as well as the abolition of the LTA.[5]

The Finance (No.2) Bill will implement certain measures announced at the Spring Budget. Although the Bill is not yet in force, it will have retrospective effect, as is common for Finance Bills, and seems to be progressing steadily through Parliament.

At a glance

With effect from 6 April 2023 the Bill will:

- ✓ increase the standard, money purchase and tapered AAs
- ✓ remove the LTA charge
- ✓ generally freeze the maximum possible PCLS at £268,275 (being 25% of the 2022/23 LTA)
- ✓ grandfather existing rights to higher PCLSs for those with certain tax protections.

The LTA will then be removed altogether from 6 April 2024.

Annual allowance

The AA limits the total tax-relieved pension savings an individual can make each tax year across all registered pension schemes.

Standard AA increases to £60,000

The Bill includes measures which, with effect from 6 April 2023, will:

- increase the standard AA from £40,000 to £60,000
- increase the money purchase AA (which applies to any subsequent DC savings by individuals who flexibly access their DC benefits) from £4,000 back up to its previous level of £10,000
- increase the minimum tapered AA from £4,000 to £10,000, and the threshold at which the taper starts to apply from £240,000 to £260,000. The taper will continue to work by reducing the AA by £1 for every £2 of income over the taper threshold. This means that the minimum £10,000 taper will apply to individuals whose income is £360,000 or more.

Lifetime allowance

The LTA limits the total amount of tax-relieved pension savings that an individual can build up over their lifetime across all their registered pension schemes without incurring an additional tax charge.

LTA charge removed from April 2023

With effect from 6 April 2023, the Bill will:

- remove the LTA charge
- ensure that certain lump sums which can be subject to an LTA charge of 55% (ie serious ill-health lump sums, LTA excess lump sums, DB lump sum death benefits and uncrystallised funds lump sum death benefits) will be taxed at the recipient's marginal rate.

With effect from 6 April 2024, the plan is to abolish the LTA altogether. Presumably to allow ample time to work through the substantial changes which will be required to pensions tax legislation, this will be the subject of a future Finance Bill.

5 See our Alert: Finance (No.2) Bill (23 March 2023)

Spring Budget – pensions tax changes cont.

LTA protections

When the current pensions tax regime came into force on 6 April 2006 (A-Day), measures were introduced for those whose benefits were already near or exceeded the then LTA. Since A-Day, the LTA has been reduced several times and, each time, additional protections have been put in place.

Maximum tax-free cash frozen at £268,275 unless a protection applies

In the Budget, the Chancellor announced that, for those without specific protections, the maximum overall PCLS an individual can take will be £268,275 (25% of the 2022/23 LTA) and "will be frozen thereafter".

With effect from 6 April 2023, the Bill will ensure that members with protected lump sums, eg valid enhanced or fixed protection, will retain their entitlement to a higher PCLS.

Helpfully, HMRC has confirmed that members who hold a valid enhanced or fixed protection will be able to accrue new pension benefits, join new arrangements or transfer their benefits from 6 April 2023 without losing this protection. To benefit from this, the relevant application must have been made before 15 March 2023 (the date of the Spring Budget).

Timings

As mentioned, the Bill is making its way through the Parliamentary process and is expected to receive Royal Assent before the summer recess.

Removal of LTA from 6 April 2024

Potential uncertainty over removal of LTA altogether

The removal of the LTA altogether from April 2024 will be the subject of future legislation. However, a change in the governing political party could potentially bring with it further pensions tax changes, as the Labour party has already indicated that it will reverse the position if it regains power. Instead, it would make specific provision for senior NHS clinicians, one of the main drivers behind the Spring Budget proposals. If this were to occur, it is currently unclear what, if any, measures would be put in place to protect the benefits of those who took advantage of the removal of the LTA in the interim.

Trustee actions

- If they haven't already done so, trustees should consider issuing a communication to members, both to explain the proposals and to flag that the final legislation is not yet in force.
- We recommend advising individuals to take independent financial advice before taking any action based on the proposed changes, particularly as a change in the governing political party could affect the proposed removal of the LTA.
- As the LTA framework will remain in place until 6 April 2024, HMRC has confirmed that trustees and administrators will need to continue to operate LTA checks when paying benefits (for example, assessing whether an individual has available LTA) and to issue benefit crystallisation event statements.

Spotlight on equality, diversity and inclusion

TPR has published new EDI guidance

TPR has published EDI guidance for governing bodies (including trustees and scheme managers) and employers. It believes that improving EDI in governing bodies will lead to wider discussion, encouraging new thinking and approaches, more effective decision-making and improved member communications.

What is EDI?

"**Equality**" is about ensuring that every individual has an equal opportunity to make the most of their lives and talents. Certain characteristics, such as race and sex, are protected against discrimination in the Equality Act 2010.

"**Diversity**" is about embracing individual differences and is a broader definition than the protected characteristics in the Equality Act. TPR considers diversity to include additional characteristics such as socio-economic, educational history and accents.

"**Inclusion**" means the effective involvement of all individuals. In an inclusive environment, diverse characteristics are harnessed in a way which is mutually beneficial to individuals and organisations, enabling the best decisions to be made.

What does the guidance say?

The guidance is an indicator of what TPR considers to be "best practice" for schemes. However, TPR recognises that there is not a one-size-fits-all approach to EDI and each scheme will have different challenges to consider.

The guidance includes:

Role of chair is key in promoting EDI

- "pointers for chairs", who TPR sees as playing a key role in making boards more diverse and inclusive
- recommendations for trustee boards on how to "get started" with EDI (see box below)
- advice for employers on EDI-related considerations when appointing a chair or professional trustees.

Key actions for trustee boards to consider

- ✓ **Seek training on EDI** – TPR suggests trustees are provided with training on EDI to understand the role it plays in board effectiveness
- ✓ **Set EDI objectives** – TPR recommends trustee boards agree scheme-specific EDI objectives at the start of each scheme year
- ✓ **Develop an EDI policy** – setting out an agreed definition of EDI, the EDI aims of the board and an EDI training plan. The guidance notes that some schemes may wish to start by putting in place EDI principles first, before developing these into a policy
- ✓ **Review and enhance board diversity** – starting with an assessment of the board's diversity, experiences, expertise and skills. TPR recommends engaging with the employer on the appointment process for employer-nominated trustees. Trustees should also review aspects of the member-nominated trustees recruitment and appointment process in an EDI context, for example considering fixed terms, an election or selection process and the communication materials, among others
- ✓ **Review communications** – TPR has also updated its guidance on communicating and reporting for DC schemes to include a section on inclusive communications. The guidance highlights the use of accurate pronouns, checking for unconscious bias, avoiding stereotypes and avoiding words with negative connotations.

Pensions dashboards

Delays to connection timetable

A ministerial statement was published in March 2023 explaining that more time is needed to deliver the "complex technical solution" which will enable pension providers and schemes to connect to the dashboard architecture.

Schemes' dashboard connection dates postponed

Schemes' connection deadlines will be postponed but it is not yet clear what the revised timings will be. The DWP intends to legislate "at the earliest opportunity" to amend timings, and Laura Trott, the Pensions Minister, is expected to provide a further update before Parliament's summer recess in July.

Trustee actions

- The DWP, TPR and PDP have all made clear that they expect schemes to continue preparing for dashboards.
- In particular, trustees should work with their administrators to assess the quality and accuracy of the scheme data, putting in place a plan to improve data if needed.

TPR has updated its dashboards guidance and its checklist to help schemes with their preparations.

New dashboards legislation

The Pensions Dashboards (Prohibition of Indemnification) Act 2023 has received Royal Assent. The Act is intended to prohibit trustees and managers from being reimbursed out of scheme assets in respect of penalties imposed under pensions dashboards regulations, in line with the position for other areas of pensions legislation. It is not yet clear when the key parts of the Act will be brought into force.

PASA dashboards guidance

PASA has published two new pieces of pensions dashboards guidance:

More guidance to help trustees prepare

- the "What to say to savers" guidance is intended to help administrators and pension providers respond to increasing numbers of enquiries from members about dashboards by providing suggested responses to common questions, and
- an addendum to PASA's August 2022 data matching guidance contains additional help on matching without a national insurance number, and responding to possible matches where the matching criteria are only partially met.

Further guidance from PASA on value data is expected later this year.

PDP publishes "myth busting" videos

The PDP published a series of videos addressing possible misconceptions about pensions dashboards. The videos explain that:

- more than one dashboard will be available
- dashboards will be free to use, and
- dashboard providers will only be able to store data for the short-term purposes of displaying information to the user.

Further videos are expected in due course.

TPR update

TPR's Corporate Plan

DB funding changes delayed to April 2024

TPR has published its Corporate Plan for 2023 to 2024. The Plan confirms that the new DB funding code and the new funding and investment strategy regulatory framework are now expected to come into force in April 2024. This is a delay to the October 2023 in force date which had been suggested in TPR's second consultation on the code.[6]

The Corporate Plan also outlines TPR's key priorities for the next 12 months, including ongoing work with the FCA and the DWP to develop a value for money framework following the joint consultation earlier this year (see page 9 for more on value for money), and reviewing guidance on DB superfunds.

General code expected by June 2023

Finally, TPR aims to publish its general code of practice (previously known as the single code) by the end of June 2023.[7]

Annual funding statement

TPR has published its latest annual funding statement.[8] Key points include:

- funding positions of DB schemes have improved in general, but TPR stresses the importance of avoiding "complacency" when monitoring the employer's covenant
- if trustees have not yet agreed a long-term funding target, they should do so "as a priority"
- schemes whose funding levels have fallen may need to reset their funding and investment strategies to meet their long-term targets.

TPR intends to publish proposed changes to its covenant and other related guidance "later this year".

Trustee engagement when sponsoring employers are in difficulty

Involve TPR at an early stage when your employer is struggling

TPR has published a blog setting out its expectations of trustees engaging with TPR when their scheme's sponsoring employer is in difficulty. The blog will be relevant for trustees who may be concerned their sponsor is struggling financially, or who are already involved in discussions about a restructuring plan, a company voluntary arrangement, or some other form of restructuring or insolvency process.

TPR expects trustees to consider several key factors where their sponsor is challenged, including having a "comprehensive financial information-sharing package", and involving TPR at an early stage. TPR emphasises that early engagement can assist in achieving "robust settlements with other creditors", and ensuring "the best outcomes for savers is achieved".

6 See our Alert: TPR consults on its new DB funding code (19 December 2022)
7 See our Hot Topic: TPR's Single Code – what should trustees be doing now? (April 2023)
8 See our Alert: TPR publishes annual funding statement 2023 (28 April 2023)

DC and CDC update

Proposed value for money framework

Proposed value for money framework to apply to default funds initially

TPR has published a blog by Sarah Smart, TPR's Chair, to clarify its approach towards and the aims of the value for money framework proposed in its joint consultation (alongside the FCA and DWP) which closed in March 2023.[9] The framework will apply to default funds initially, before potentially expanding, because of the importance of savers receiving value for money "by default" where they have not made an active choice.

The overall goals of the framework include driving improvements across the whole market, with poorly performing schemes "either improving or getting out of the market".

New value for members initiative

TPR to contact DC schemes with assets of less than £100m

TPR is also working on an initiative to check compliance with the value for members requirements which apply to DC schemes with assets of less than £100m, after finding in 2022 that only 17% of schemes required to complete the assessment had done so.

By way of recap, trustees of schemes in scope are required to undertake a detailed assessment of the "value for members" offered by their scheme, and to report on it in their chair's statement. If the trustees conclude that it is not delivering good overall value, then it should be wound up and consolidated.

Communications reminding schemes in scope of their obligations will begin "later this year".

TPR authorises first CDC scheme

TPR has authorised the UK's first CDC pension scheme. This follows the introduction of the legislative and regulatory regime enabling such schemes in August 2022.[10]

CDC schemes, which are authorised and supervised by TPR, are an alternative to traditional DB and DC occupational pension schemes. In CDC schemes, employers and employees contribute to a collective fund, which provides members with an income in retirement. Unlike a DB pension, the income level may be adjusted depending on investment performance and the available assets.

Currently, CDC schemes can only be established by single and connected employers, though the DWP has consulted on proposals to enable non-connected multi-employer CDC schemes.[11]

A list of authorised CDC schemes will be maintained on TPR's website.

9 See our Alert: The DC deluge (31 January 2023)
10 See our Alert: DWP Collective Money Purchase Schemes consultation (20 July 2021)
11 See our Alert: The DC deluge (31 January 2023) and our consultation response (23 March 2023)

ESG and climate change

TPR campaign on climate and ESG compliance

TPR has launched a new campaign to ensure trustees are meeting their ESG and climate change reporting duties.[12] TPR wants to see trustees demonstrate they are considering financially material ESG factors, including climate change. It encourages trustees to develop a climate action plan setting out what actions (if any) they expect to take and when.

TPR to check SIPs and statements over the summer

As part of its campaign, TPR will review a "cross-section" of SIPs and implementation statements in the summer, and will share the outcome of the review with industry to highlight good practice.

After finding that many schemes failed to provide correct web addresses for their SIP and implementation statements through last year's scheme return, TPR is "monitoring the situation" and warns that enforcement action may be taken in relation to compliance failures, which includes a potential fine of up to £50,000 for corporate trustees.

TPR review of climate (or "TCFD") reports

TPR has published the results of its review of a selection of annual climate reports, which schemes with relevant assets of £1bn or more are required to prepare.[13]

The report highlights areas for improvement, as well as emerging good practice. TPR found that almost all reports were published on time, and the reports showed an "encouraging level of trustee engagement" with the requirements. Some reports included helpful non-technical summaries for savers. Data quality and coverage "remain a challenge", but TPR thinks this is likely to improve over time.

Trustees should consider providing more background information in future reports

Trustees are asked to consider some areas for improvement when preparing their next report, including providing sufficient background information on the scheme. Reports should also be fully accessible to savers with different needs, including being compatible with accessibility software and printable.

Government's updated green finance strategy

The Government has published a 2023 Green Finance Strategy. As part of the pensions-related measures in the strategy, the Government will "engage with interested stakeholders" during 2023 on clarifying trustees' fiduciary duties in the context of the net zero transition, and will provide "further information and clarity" on these duties by reviewing the DWP's Stewardship Guidance in late 2023.

Alongside the strategy, the Government published a consultation on whether ESG ratings providers should be brought into the FCA's regulatory perimeter and how this could be done. The consultation closes on 30 June 2023.

12 See our latest ESG Guide: ESG and climate change for pension funds in 2023 (April 2023)

13 See our Hot Topic: £1bn plus schemes – are you ready? (June 2022)

In other news

Expansion of automatic enrolment

New legislation to support the extension of AE

A Private Members' Bill is currently working its way through Parliament. The Bill will not result in any immediate change but will give the Secretary of State powers to:

- abolish the lower earnings limit for contributions, so that statutory default DC contributions are paid from the first pound earned, and
- reduce the age for being automatically enrolled, which is currently 22.

There will be a statutory requirement to consult before using these powers.

Laura Trott, the Pensions Minister, has confirmed that the Government hopes to consult on the implementation approach and timetable for expanding AE "in the autumn" this year.

PSIG's interim guidance on pension transfers

Trustees and administrators should review the new PSIG guide

PSIG has published an Interim Practitioner Guide, along with a short summary of the guide. The guide aims to help trustees and administrators follow the conditions on transfers that came into force in November 2021.[14] It contains useful guidance on the use of discretionary transfers, and explores the trickier issues in relation to incentives and overseas investments.

PSIG decided not to update the PSIG Code, as there are elements in the regulations that "need to be clarified or amended". When those issues have been resolved, PSIG intends to update both this guide and the full PSIG Code. The DWP is due to revisit the regulations by May 2023 as part of a scheduled review.

Reporting concerning pension transfer requests to the FCA

Trustees should report transfer concerns to the FCA

The FCA has published a webpage requesting that trustees report serious concerns about pension transfers to the FCA by email. The FCA requests reports about issues including:

- individuals providing unauthorised advice on pension transfers, and
- increases in the volume of transfers advised by the same adviser,

as well as other issues which would raise a red or amber flag under the transfer regulations.

This is in addition to, and does not replace, other existing reporting processes.

Data Protection and Digital Information Bill

The Data Protection and Digital Information Bill has been reintroduced to Parliament. The Bill is intended to update and simplify data protection requirements in the UK. The reintroduction was welcomed by the ICO, which is working with the Government "to monitor how these reforms are expressed in the Bill".

14 See our Alert: Combatting pension scams – new conditions on transfers (9 November 2021)

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Upcoming seminars and webinars

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

Quarterly legal update	13/07/2023	Online webinar This session will provide an essential overview of significant developments affecting occupational pension provision in the UK for employers and trustees.
Key issues for DC pensions	18/09/2023	Online webinar This session is aimed at those running DC arrangements. It will look ahead to 2024 and focus on the issues likely to be of most interest, including value for money, dashboards and the General Code.
Getting dashboard ready	03/10/2023	Online webinar In this webinar, our dashboard experts will be joined by Angela Bell from TPR to discuss the latest developments, including the impact of the latest "reset" and any new regulations. They will also share highlights of clients' experience to date.

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

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Recent publications

The Finance & investment briefing – June 2023 takes a look at current issues of interest to pension scheme investors.

The DC briefing – May 2023 highlights topical news on DC pensions from a legal viewpoint.

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