Sackers

Quarterly briefing

June 2025

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

Q2

June 2025

On the front cover this quarter: Andy Lewis (partner) and David Saunders (partner)

Abbreviations

AVC: Additional voluntary contribution

CDC: Collective DC

DB: Defined benefit

DC: Defined contribution

DWP: Department for Work and Pensions

FCA: Financial Conduct Authority

HMRC: HM Revenue & Customs

ICAEW: Institute of Chartered Accountants in England and Wales

ICO: Information Commissioner's Office

IHT: Inheritance tax

PASA: Pensions Administration Standards Association

PDP: Pensions Dashboards Programme

PPF: Pension Protection Fund

PSC: Person with significant control

TPO: The Pensions Ombudsman

TPR: The Pensions Regulator

VFM: Value for money

WPC: Work and Pensions Select Committee

In this issue

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Current legal agenda

Topic	Summary	Timing
Virgin Media[1]	A case has been heard considering various section 37 issues and the DWP is "actively considering" its next steps	Judgment isn't expected until later in the year (see page 11) DWP hasn't given any timings on further updates
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" Pension Schemes Bill is expected before the summer recess
Pensions dashboards[3]	Statutory connection deadline is 31 October 2026	First connection date in DWP connection guidance was 30 April 2025 (see page 7)
CDC[4]	DWP consulting on expanding CDC regime to unconnected employers	Consultation closed in November 2024 and regulations are expected in the autumn
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)

Surplus

Surplus proposals are expected imminently

The Government plans to lift restrictions on how well-funded, occupational DB schemes that are "performing well" will be able to invest their surplus funds.[6] It believes that legislative changes could enable "all DB schemes to change their rules to permit surplus extraction where there is trustee-employer agreement".

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 imminently. Related legislative changes could be in the forthcoming Pension Schemes Bill, which is expected before Parliament's summer recess.

What options are on the table?

In 2024, the DWP consulted on proposals to make it easier to make payments from scheme surplus to sponsors and scheme members.[7] The following options were proposed:

Statutory override
A statutory override was proposed to ensure that all schemes could choose to share surplus either in the form of a power to amend scheme rules to allow for payments, or a statutory power to make surplus payments. However, an override may only provide trustees with an answer to "can you pay surplus to the employer", not the second question, "should you do so"? There is already a well-established body of case law surrounding distribution of surplus and the exercise of trustee duties, so it will be interesting to see how any legislative change is framed.

Allowing one-off member payments
One-off payments would currently be "unauthorised" (and therefore subject to penalty charges) under the pensions tax rules. As scheme rules might not cater for such payments, the possibility of a statutory power to facilitate them was also explored.

Eligibility criteria for surplus extraction
Eligibility criteria for surplus extraction would be based on factors such as funding levels and covenant strength, to safeguard member benefits. The funding level for return of surplus is currently buy-out, but TPR's research includes low dependency figures which suggests the Government may be considering a lower threshold.

Super levy
As part of its 2024 consultation, the then Government wanted to understand whether giving employers the option of paying a higher "super levy" in return for 100% compensation in the event of the employer's insolvency would enable increased surplus extraction. Many commentators felt this proposal was unworkable and we don't expect it to be pursued.

Are there surpluses in DB schemes? ?

TPR's data[8] shows that, as at 31 December 2024, the overall aggregate funding of DB schemes saw:

85%
in surplus on their technical provisions basis

76%
on a low dependency basis

54%
on a buy-out basis

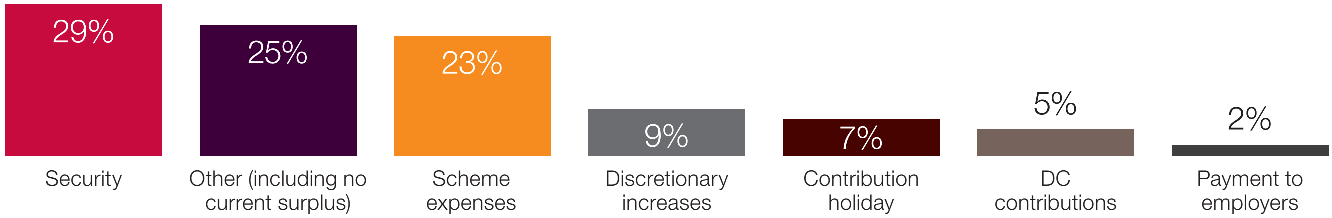
6 See our Hot Topic: DB surplus options – something for everyone? (March 2025)
7 See our Alert: Consultation on options for DB schemes (27 February 2024)
8 Source: TPR's annual funding statement 2025 (29 April 2025)

Sackers' surplus survey

As part of a recent webinar, we asked attendees to answer a few questions on surplus.[9]

Question 1:

If you have a surplus, what is it currently being used for?

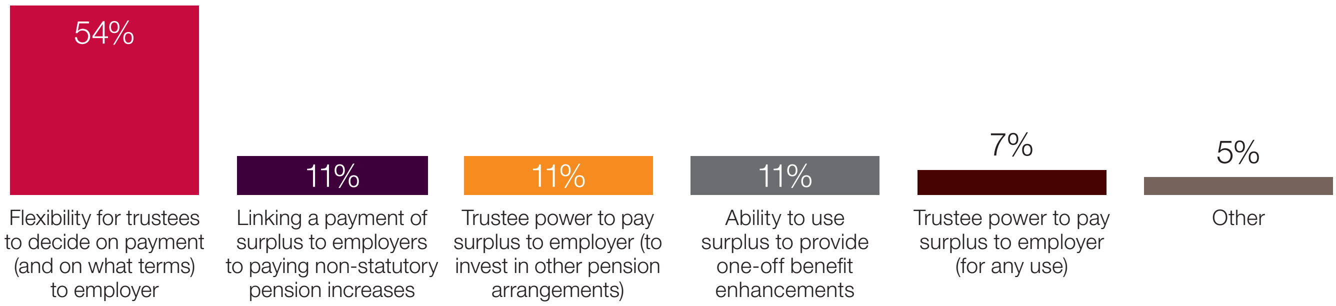


Comment

Schemes are largely using surplus to improve scheme security, with a further 23% using the surplus to fund scheme expenses. This makes sense given the current restrictions on using surplus but it is interesting to see that some schemes are using surplus for discretionary increases, with only a small minority having gone as far as paying surplus to the employer.

Question 2:

What would you like to see in a new surplus regime?



Comment

It isn't surprising that the majority of trustees would like flexibility when it comes to surplus payments to sponsoring employers, as each scheme's circumstances can be very different and trustees need to consider their fiduciary duties to beneficiaries when making any decision.

Question 3:

Do you think a more permissive surplus regime would change your scheme's endgame strategy?

Comment

Although the majority of those surveyed have said that a change in surplus regime wouldn't change their endgame strategy, about a third of respondents nonetheless felt it would. Given the Government's hope that pension schemes assets can help boost the economy, this is a potentially powerful lever in support of the Government's growth agenda.

9 Figures may not add up to 100% due to rounding

Small DC pension pots

The DWP has confirmed plans to introduce small pot consolidators in the Pension Schemes Bill. Under the reforms, an individual's deferred small DC pots would be brought together into a "consolidator" scheme.[10]

How did we get here?

Consolidator schemes to be introduced for small pots

Having explored available options over a number of years, the DWP published proposals in November 2023 for a multiple default consolidator system, under which members with certain deferred small pots would be automatically consolidated into a small number of authorised consolidator schemes. The Small Pots Delivery Group (the "Group") was then formed to support the DWP in developing and designing its multiple default consolidator policy.[11]

What is being proposed?

The Group has issued a report, setting out its recommendations, which include:

- a "small pots data platform" to identify and source the pension pots that could be consolidated
- a framework setting out the rules a scheme would need to follow to become a consolidator scheme. These include being an automatic enrolment qualifying scheme, having a specified level of scale to manage expansion, providing good value for money for their members, and providing additional protection for members from flat fee charges
- safeguards for savers whose pension pots would be consolidated, including a member opt-out option.

Which pots will be eligible under the proposals?

- ✓ A pot will become eligible for automatic consolidation 12 months after the last contribution was made into it.
- ✓ Initially pots of up to £1,000 will be in scope. The Secretary of State will review this limit at regular intervals.
- ✓ There will be no minimum pot size.

Proposed timetable

Although the Pension Schemes Bill, which is expected before the summer recess, will include measures to introduce the multiple default consolidator approach to help manage deferred small pots, further work is needed to work out the details.

The Government will continue engaging with industry and interested parties on the implementation of this policy, and intends to undertake a feasibility review to determine the key components of the small pots data platform and the necessary underpinning primary legislation.

Related trustee duties not expected until 2030

Consultations on the authorisation and supervision requirements for consolidator schemes, the data standards for the platform and the content of member communications will then follow, with the DWP currently expecting regulations to be drafted during 2026 and elements of the legislation to come into force during 2027/28.

Duties on pension schemes to transfer and consolidate eligible pots are likely to come into force from 2030.

10 See our Hot Topic: Government announces small pots proposals (April 2025)
11 See our Alert: Autumn Statement 2023 – it's a bumper pensions crop (23 November 2023)

Dashboards

The first cohort of schemes were due to connect to the dashboards ecosystem by 30 April 2025. Other schemes are following in line with a staged timetable set out in the DWP's connection guidance, ahead of the overall statutory connection deadline of 31 October 2026.[12]

All trustees should continue with their dashboards preparations. For those schemes who are yet to start, such as smaller schemes whose "connect by" date isn't for some time, it is a good time to make some headway. Trustees need to:

Trustees should be preparing for connection

- keep a clear audit trail of the steps taken to comply with dashboard duties
- liaise with their administrator to ensure everything is on track for connection (including any data improvement work)
- consider any 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)
- check whether any contractual terms need to be put in place or updated
- consider how their existing trustee protections apply to dashboards.

Don't forget about your AVCs!

Trustees are ultimately responsible for ensuring AVCs are connected, so will need to check:

- **how the AVC provider will connect** – there are two main options: a single connection point (where the AVC provider sends data over to the main administrator) or multiple connect points (the AVC provider connects directly to the ecosystem, creating multiple connection points for the scheme)
- **matching criteria** – the AVC provider may have its own matching criteria, so trustees should understand the rationale and how they differ from the main criteria
- **contractual terms** – these should be updated to cover dashboard-related activities and to address associated risks
- **co-ordinating illustration dates** – all of a member's scheme benefits must be shown using the same illustration date, which can be difficult in practice. Where it hasn't been possible to align illustration dates immediately, TPR expects schemes to have a "working plan" with their AVC providers to align the dates in a reasonable timescale.

What if you won't meet your "connect by" date?

Whilst schemes must "have regard" to the DWP connection guidance, there may be situations where a scheme won't meet its "connect by" date. Schemes planning to connect more than a month before or after their "connect by" date should agree a new date with their administrator and notify PDP via its website. They do not need to separately notify TPR or the FCA.

Notify PDP if "connect by" date will be missed

PDP continues to work with "volunteer participants" (ie those organisations connecting directly to the ecosystem) to complete their connection journeys "as soon as possible". Both the FCA and TPR have confirmed that there will be "no regulatory intervention at the current time" for providers and schemes which are unable to meet their connect by dates solely due to their dependence on a volunteer participant which has yet to connect.

12 See our Hot Topic: Dashboards are here! Are you ready? (April 2025)

TPR update

DB annual funding statement

TPR's latest annual funding statement was published in April 2025.[13] The statement is primarily aimed at schemes with valuation dates between 22 September 2024 and 21 September 2025 but, as it captures key information regarding the new DB funding code of practice and updated covenant guidance, the statement is relevant to all DB schemes. Recognising that trustees and employers will be undertaking their first valuations under the new DB funding regime, the statement clarifies some key areas surrounding covenant and trustees' assessment of supportable risk.

Well-funded schemes should focus on endgame planning

Accompanying analysis found that most DB schemes continue to see positive funding levels, with TPR estimating that, as of 31 December 2024, around 54% of schemes were in surplus on a buy-out basis, rising to 76% on TPR's derived low dependency basis and 85% on a technical provisions basis.

With such a "strong funding position", TPR expects most schemes to be shifting their focus from deficit recovery to endgame planning. However, despite healthy funding positions, trustees should keep in mind the potential for heightened trade and geopolitical uncertainty, as they need to understand any risks posed to the scheme's investment strategy and employer covenant.

Oversight of professional trustees

TPR plans to introduce a framework for the oversight of professional trustee firms. It is "formally extending" its oversight following evidence gathering with 11 of the biggest professional trustee firms to understand their businesses, the risks and opportunities that arise and any conflict issues.

TPR has also published a market oversight report setting out what it has learnt from engaging with professional trustee firms. It identified several potential risks to savers' outcomes where it plans to focus its engagement including:

TPR to extend oversight of professional trustees

- firms' relationship with the sponsoring employer
- their profit and remuneration models, and
- sole trusteeship.

TPR's Market Oversight team plans to establish ongoing supervisory relationships with professional trustee firms from summer 2025, with the intention to cover all firms by the end of the year.

Transfers to superfunds

Building on its experience from the first three transfers to superfunds, TPR has set out some "top tips", including:

- trustees don't need to obtain a buy-out quote to determine whether buy-out is affordable, an "objective estimate" from an experienced actuary will suffice
- trustees need a "comprehensive rationale" for transferring, including the pros and cons and why the transfer is in members' interests, along with supporting advice and evidence

Top tips on transfers to DB superfunds

- TPR acknowledges that assessing whether a transfer will improve the likelihood of full benefits (TPR's third "gateway test") is a matter of judgement, so it doesn't necessarily expect mathematical quantifications of likelihood.

Trustees who are "seriously considering" a transfer to a superfund are encouraged to contact TPR and all trustees should look out for its "forthcoming" DB endgame guidance, which "will explore the wider range of options" available on the market.

13 See our Alert: TPR publishes annual funding statement 2025 (30 April 2025)

TPR update cont.

Pledges to foster economic growth

TPR has set out "measurable commitments" to the Government to "significantly boost business confidence, improve the investment climate, and foster sustainable economic growth". These commitments include:

- reviewing the amount of capital reserves that master trusts are required to hold
- reducing "unnecessary regulatory burdens" and improving data sharing. TPR plans to monitor the quality and value of regulatory interaction, and to review its scheme return and supervisory return data collection requirements
- encouraging consolidation and consideration of investment in productive assets. TPR believes the VFM framework will help drive "competition, growth and enhanced member outcomes". TPR will also encourage the voluntary disclosure of asset allocation data.

Market oversight report

TPR has published a report on current market volatility, in response to recent trade and geopolitical tensions brought about by US trade tariffs that continue to cause volatility in the market. TPR expects trustees to:

- consider and review their arrangements and ensure they are fit for purpose
- have "robust" governance and operational resilience to adapt to changing market conditions, and
- have "clear communication lines" with employers, advisers and other delegated authorities so they can take action when needed.

TPR will continue to monitor how the current market environment affects schemes, and will update its guidance where appropriate.

Small schemes to "improve or consolidate"

TPR has published its Climate adaptation report 2025, which outlines the climate change risks relevant to UK schemes and the steps that TPR has been taking to raise standards of investment governance and systemic risk management. Data shows that larger DC schemes are performing better than smaller DC schemes in relation to the governance of climate change risks. There are "too many" DC schemes where the trustees' knowledge of the scale of the financial risks posed by climate change is "limited", and TPR is calling on these trustees to improve their knowledge or consider consolidating into a larger scheme.

TPR's powers in action

TPR published a regulatory intervention report in relation to the MGN Pension Scheme after a failure to agree the 2019 triennial valuation, having been informed at the expiry of the 15-month deadline that agreement between the parties was "extremely unlikely".

Following intervention by TPR, the parties eventually reached agreement on the 2019 valuation and the subsequent 2022 valuation, having failed to reach agreement before the effective date for this valuation. Deficit recovery contributions of £46 million per year were agreed (an increase of £5 million per year compared to the previous recovery plan).

TPR was "pleased" that the employer and trustee were able to agree their valuations without the need for TPR to formally use its powers. It encourages all schemes to be "open and transparent" and engage with TPR early, allowing it to be clear on its expectations. Trustees and employers can then "work together" to resolve issues.

In other news

Corporate director identity verification

The Economic Crime and Corporate Transparency Act 2023 introduced new requirements for company directors and other individuals to verify their identity.[14] Details of the requirements are set out in regulations, with Companies House publishing Rules and Guidance setting out the verification process.

Directors to verify their identity with Companies House

Directors and PSCs can currently choose to verify their identity. Verification is due to become mandatory for all company directors and PSCs on incorporation and appointment from autumn 2025. There is expected to be a 12-month transition period for existing directors and PSCs, who will be required to provide identity verification credentials when their confirmation statement is due.

Directors and PSCs who do not comply with the identify verification requirements will commit a criminal offence and/or could incur a civil penalty.

WPC inquiry on DB schemes

The Government has responded to the WPC's report on DB pension schemes, addressing various recommendations from the WPC including:

- **pre-97 pension increases** – TPR's research has found that around two-thirds of schemes allow for discretionary benefits to be paid (usually requiring trustee and employer consent). However, in most cases, these schemes had not provided any such benefits over the previous three years. The Government plans to work with TPR to understand why schemes are not making discretionary increases on pre-97 benefits and to "monitor trends"
- **governance of trust-based schemes** – the Government is aiming to consult on the governance of trust-based schemes later in 2025. The consultation will focus on issues such as sole trusteeship, accreditation and support for lay trustees
- **DB scheme consolidation** – the Government will continue to explore whether a small, focused public consolidator run by the PPF could be an option for schemes that are "less attractive" to commercial providers.

Neonatal care leave

Parents of babies who are born on or after 6 April 2025 and require neonatal care will be entitled to statutory neonatal care leave, and may be eligible for associated pay provided certain conditions are met. Where a member is being paid, employer contributions should continue to be based on the member's usual pay but member contributions should be based on pay actually received. There is no requirement for contributions to continue where the leave is unpaid. Trustees should check whether their scheme rules need updating at the next suitable opportunity.

PASA buy-in and buyout guidance

PASA has updated its guidance on data readiness for buy-ins and buyouts. The guidance offers practical support for trustees and administrators and should be read in conjunction with its 2023 guidance. The new version offers a "deeper insight" into the data elements that insurers usually consider significant for ensuring a smooth and successful transition process. Insurers expect trustees to focus on providing data that is as complete, accurate and up to date as possible. The principles in the guidance can also be applied to schemes exploring alternative endgame options.

14 See our Hot Topic: Corporate trustees – new requirements for identity verification (April 2025)

Courts and TPO

Virgin Media update

By way of recap, the Court of Appeal confirmed in *Virgin Media* that a written actuarial confirmation (a "section 37 confirmation") was required where an alteration to a scheme's rules affected pension benefits attributable to past or future service benefits related to certain contracted-out rights. Without such a confirmation, an amendment would be void.[15]

Another case on section 37 issues

A separate case has been heard by the High Court, which considered (among other matters) various issues around the impact of failing to obtain a section 37 confirmation, including what elements of pension actually fall within the scope of section 37 and what might count as an "alteration" for these purposes. However, the judgment is not expected for some time.

Away from the courts, and acknowledging the potential impact on affected schemes, the DWP is "actively considering" its next steps, including whether regulations should be made to retrospectively validate any amendments held to be void in light of the *Virgin Media* case.

The steps trustees should take will depend on their scheme's specific circumstances. This is something that they should discuss with their advisers.

Dealing with auditors

The sponsoring employer (and its auditors) and scheme auditors are likely to ask trustees whether any reviews of scheme documents have been carried out in light of the ruling. The ICAEW has published guidance, which is primarily aimed at sponsoring employers and their auditors but "may be of use" to trustees. This identifies three approaches that most trustees are considering:

- a wait-and-see approach
- an information-gathering approach, or
- performing a detailed analysis.

Whilst the guidance doesn't change the legal position of trustees, it helpfully recognises that there are valid reasons for adopting each approach, and that the appropriate course of action will depend on the specific circumstances of each scheme.

Mr H (TPO determination)

TPO has upheld a complaint against an employer and a trustee for their respective failures to provide "mirror" benefits to a member following his transfer to a new scheme, despite pre-transfer commitments to do so.[16]

Record any benefit entitlements on bulk transfers

On the facts, TPO's view was that there was an enforceable contract between Mr H and his employer to procure that he was offered membership of the new scheme on terms mirroring his previous scheme. TPO found that the employer was responsible for maladministration and a breach of law for failing to provide and document these benefits (and then seeking to avoid them once the error had been discovered). TPO also found that there was a breach of trust by the trustee for failing to grant Mr H the promised benefits in the new scheme.

TPO's decision highlights that promises given to members can become contractual entitlements even if the governing documents of the scheme are never amended. If promises are given to members about benefits during a transfer process, these should be clearly documented to avoid future confusion over entitlement.

15 See our Alert: Court of Appeal upholds High Court's Virgin Media decision on failure to obtain a s37 confirmation (26 July 2024)
16 See our Case Summary: Mr H (CAS-50353-Y4X5) – complaint against employer and trustee upheld for failing to pay promised benefits (26 February 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	24/07/2025	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 – May 2025 reviews recent case law and examines the practical lessons for trustees and employers.

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

Future briefings

Going forward, we will be merging the Quarterly briefing with our Finance & Investment briefing. This means that the Quarterly briefing will also contain relevant financial and investment developments, so that all content is easily accessible in one place.

There is no need for you to take any action – the change will happen automatically.

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