

## Corporate briefing

March 2026

Highlighting the latest developments in pensions for employers and corporate investors



### Welcome

Employers and investors have rarely had cause to celebrate legacy DB pension schemes over the past 20 years or so. However, in this Corporate briefing we reflect on some recent developments and forthcoming changes which may mean that many legacy DB schemes can be seen as an opportunity rather than a problem.

Most DB schemes are better funded and better hedged, having effectively locked in unexpected gains from the aftermath of the “mini-budget” in autumn 2022. For sponsors of these schemes, this has reduced the funding burden and brought forward the point at which they might expect to be able to buy out the scheme with an insurer – getting it off the balance sheet altogether – or potentially extract surplus. These developments have changed the way that employers and investors should look at pensions in the context of corporate activity. Our first article examines recent trends in the M&A market, particularly relating to well-funded DB schemes. We then take a look at the Government’s proposals to make it easier for trustees to release scheme surpluses to employers.

The revised DB funding requirements, which apply to actuarial valuations with effective dates on or after 22 September 2024, are starting to bed in. They build on what many employers and schemes had already been working on – having a long-term funding and investment strategy in place. We consider these requirements and what they mean for sponsoring employers, before wrapping up with a summary of other key pensions developments relevant for employers.

### M&A deals and well-funded schemes

A DB scheme with a significant deficit can often be an obstacle to corporate activity. After so many years of large deficits, strong funding requirements and increased regulatory requirements, it’s easy to see why pricing for DB pensions on M&A transactions became increasingly conservative.

However, pricing the DB scheme on a buy out basis could benefit the purchaser, as the funding level will tend to improve over time (as the scheme matures and, hopefully, through investment gains). Unless they are expecting the trustees to insure the liabilities immediately, a buy out-based price is very likely to result in a “profit” for the purchaser.

It therefore became increasingly common for sellers to retain the DB scheme, taking it outside the sale perimeter. Depending on the structure of the sale, this might well require the trustees’ agreement, but the cost of that agreement (see below) might

be worth it to avoid value leakage in the purchase price. This option would normally only be available if there will be a seller of substance left behind (eg it would not work for a takeover).

#### How has this changed as funding levels have improved?

In many ways, the logic described above still applies. However, the improvements in scheme funding levels combined with other changes, especially reduced volatility arising from more cautious investment strategies, have changed some of the dynamics.

Even if the scheme has a buy out deficit, it may no longer require deficit contributions on an ongoing basis (see the article below on the changing statutory funding regime). Combined with lower volatility, this means that a DB scheme no longer represents an unpredictable strain on future cashflows.

# M&A deals and well-funded schemes cont.

## Change in funding levels may impact M&A work

The fact that the numbers are smaller may mean that the parties are more willing to take a view on pricing. Perhaps the seller is prepared to accept a buy out-based price adjustment if it is small relative to the overall size of the deal. Some purchasers may be attracted by a well-funded pension scheme, with forthcoming reforms around surplus (see the article below) raising the possibility that an investor could potentially extract money out of the scheme.

### Buyer beware



Purchasers still need to know what they are getting themselves into. A robust due diligence exercise is essential when assuming DB liabilities, not least because contractual protections can be of limited value in practice. Specialist legal and actuarial advice should always be obtained, as even benign looking DB schemes can harbour unwelcome surprises.

Lower deficits have led some to question the materiality of the DB scheme in the overall process. While any due diligence exercise should be proportionate, a well-advised purchaser will judge this by reference to the size of the **scheme** relative to the size of the transaction, not by reference to the size of the deficit. If the exercise highlights an issue with the seller's understanding of the funding position, even a small change could represent a massive liability if the scheme is particularly large.

## What if the scheme has already been bought in?

A purchaser may take a more pragmatic approach if the scheme is already bought in, but the due diligence process is still important to understand whether there may be further liabilities for the sponsor. Alternatively, the seller might avoid the need to engage with these questions by moving the scheme outside the deal perimeter. Typically, this will be easier to negotiate with the trustees where they already have the security of the buy in, and are therefore less reliant on the continuing covenant of the sponsor.

## What about negotiating with trustees?

We have seen a shift since the Pension Regulator's powers were expanded by the Pension Schemes Act 2021. The threat of these powers (and even prison sentences for individuals) means that it is generally in the interests of commercial parties to carefully consider any DB scheme, and ensure that any adverse impact is adequately mitigated. In this context, they have tended to involve trustees earlier in the process and initial proposals to trustees have generally been more balanced.

Better funding levels are also changing these conversations. We have seen some trustees take extremely conservative positions, seeking a level of security well in excess of full buyout funding, which would have been unthinkable 10 years ago. Commercial parties should be able to push back on this, but it is a good illustration of the importance of engaging with the trustees before committing to the wider transaction (ie before the bargaining position is lost).

More typically, we are seeing that trustees of well-funded schemes can be more pragmatic because they are much less reliant on the employer covenant going forward. Nevertheless, their duties require them to assess whether the transaction will give rise to detriment and, if so, what mitigation should be provided. Mitigation proposals may need to be more creative for a well-funded scheme, where cash contributions may make less sense. If time allows, it may be helpful to tie this into a longer-term plan for the scheme – another good reason to engage with the trustees at an early stage.

## Talk to trustees early

### What's next?



It looks as though higher funding levels are here to stay, so these changes can be seen as the "new normal". The prospect of extracting DB surplus seems certain to be a driver for some M&A deals, but whether this be at the margins or a significant trend remains to be seen.

# Surplus

## Restrictions on using surplus are being relaxed

### New legislative requirements for DB surpluses

Surpluses in DB schemes were a significant theme of the 1990s but had generally been in hibernation since. Their reappearance over the last few years has reignited interest in their possible use. As current legislation around surpluses is highly restrictive, most of it is being repealed and replaced by new requirements.

#### Proposed powers in brief

- ✓ DB trustees will be given the power to amend their scheme rules to pay surplus to sponsoring employers, subject to “stringent funding safeguards”, which will be set out in regulations.
- ✓ Schemes will be able to pay one-off lump sums to members from surplus.
- ✓ The Government is minded to lower the minimum funding threshold at which trustees can release surplus.
- ✓ The new powers will not apply when a scheme is winding-up.

## Trustees are the gatekeepers

### What does this mean for employers?

While the new regime will make it possible to release surplus in many situations where it is currently impossible, it will be the trustees of the DB scheme who will have the responsibility of deciding whether, and if so how, to use them. The employer’s view will be relevant but not determinative, as trustees will have to take a range of factors into account. In practice, this will often mean that the benefit of surplus will need to be shared with scheme members. These deals have the potential to be a “win-win” for employers and members.

### What should sponsors be discussing with trustees?

The new resolution-making powers will complement, rather than remove, existing surplus options (including covering scheme expenses and paying DC contributions).

Although the new powers are not yet in force, employers may wish to engage with trustees now, especially if they are keen to explore the possibility of running the scheme on over the medium/long term, rather than pursuing an insured buy out.

## Discuss surplus policy with trustees

### When are the new surplus powers expected to come into force?



# New DB funding requirements

## New requirements sit alongside existing regime

New DB funding requirements apply to actuarial valuations with an effective date on or after 22 September 2024. As with the previous regime, valuation documents under the new regime must be submitted within 15 months of the effective date of the valuation. Changes under the new regime include a requirement for DB schemes to have a funding and investment strategy (an “F&I Strategy”) and putting the requirement to carry out a covenant assessment on a statutory footing.

The valuation process is still led by the pension scheme trustees, with a scheme’s liabilities being calculated on a scheme-specific basis, the same documentation and the same timings. The new requirements simply sit alongside the existing regime.

## F&I Strategy

The F&I Strategy is essentially a journey plan for how a scheme is going to achieve a state of “low dependency” on its sponsoring employer by the time the scheme is “significantly mature”. In summary, the trustees need to work out how the scheme is going to be sufficiently well-funded when the balance of its members shifts to the point where most of its members are pensioners, so that the scheme isn’t materially reliant on the sponsoring employer for funding. Trustees must obtain the employer’s agreement to the F&I Strategy, except in limited circumstances where the employer must be consulted.

## Employers must agree the new F&I Strategy

## What does this mean for employers?

The concept of having a long-term journey plan in place is not new. For schemes and sponsoring employers that already have some sort of long-term target or plan towards self-sufficiency, the focus will be on moulding their current journey plans to fit the new requirements. For schemes that don’t currently have a long-term journey plan in place, the new legal requirement for an F&I Strategy provides an opportunity for the sponsoring employer to be more involved. Some employers may be happy keeping their involvement at a high level but if an employer wants to be more hands on, this will give them a chance to exert influence on the long-term direction of the scheme.

## Opportunity for employers to influence the future of their DB scheme

## Assessing the employer covenant

Aligning employer covenant strength with the risks a scheme is taking has long been a key element of the Pensions Regulator’s current “integrated risk management” approach. However, the need to carry out such an assessment is now a **statutory requirement**.

Employers are used to sharing information with trustees and their covenant advisers. However, trustees are now expected to have “robust” information sharing protocols in place with employers (although there is no legal requirement for employers to agree to any such protocol). Where protocols are proposed, careful consideration is needed around early notification of corporate events, given potential confidentiality requirements and commercial implications.

## Contingent assets

TPR’s [covenant guidance](#) provides detail on how to value contingent assets, including different types of guarantees, with worked examples. If you are considering whether to offer some sort of contingent asset or other support, then the guidance is a good starting point to understand the benefits and limitations of the different types of support.

### What’s next?



These reforms reflect the shift which many schemes and their sponsors had already made towards thinking about an eventual “endgame”. However, since the reforms were initially proposed, the market has started to shift again. While many schemes are still working towards a particular endgame solution, more employers are actively exploring options for a purposeful run on.

# Other pensions developments

## Proposed cap on salary sacrifice contributions

### Salary sacrifice

Under a pensions salary sacrifice arrangement, an employee agrees to give up (sacrifice) part of their entitlement to salary or bonus in return for an employer contribution to their pension scheme, resulting in an NIC saving.

Pensions salary sacrifice contributions are due to be capped at £2,000 a year from **6 April 2029**. Any contributions exceeding that cap will be made subject to employee and employer NICs, in the same way as other employee workplace pension contributions. Contributions will remain “exempt from Income Tax (subject to the usual limits)”.

Although the detail will be set out in due course, [initial guidance](#) suggests the administrative burden will be placed on employers.

### Inheritance tax changes

The Government is going ahead with plans to include most unused pension funds and death benefits in the value of a person’s estate for inheritance tax purposes from **6 April 2027**. However, death-in-service benefits payable from registered pension schemes will be out of scope of inheritance tax, whether discretionary or non-discretionary.

This has the potential to create some headaches for schemes which are not set up to administer it, but HMRC has promised guidance to help the industry prepare.

### *Virgin Media case*

In summer 2024, the Court of Appeal confirmed that a written actuarial 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.

Given the potential ramifications for many schemes, the Government will give affected schemes “the ability to retrospectively obtain written actuarial confirmation that historic benefit changes” met the necessary contracting-out standard, subject to certain conditions.

Our view is that this decision doesn’t expose pension schemes to any new risks, and the new legislative provisions should provide a fix for most of those schemes which have a potential issue. However, we are aware of some sponsoring employer auditors raising questions about the impact that the ruling has on their pensions liabilities. We can help to resolve any difficulties with your auditors on this issue.

### Automatic enrolment

Automatic enrolment reforms remains on pause, despite proposals for change in the mid 2020s (including lowering the minimum age and removing the lower earnings limit). Although the legislative framework to enable these changes has been in place since 2023, progress has been deliberately deferred while wider work on pensions adequacy, and the many other changes to pensions legislation, continues. The pensions industry continues to support reform but any changes are now more likely to emerge over the longer term rather than imminently.

### Collective DC schemes

The Government has published final regulations expanding Collective DC (“CDC”) to unconnected employers, which will come into force on **31 July 2026**. It is also consulted on proposed for creating pensioner-only CDC arrangements. CDC is a type of DC arrangement where member and employer contributions are invested in a single collective fund, rather than individual pots.

## Contact

Sackers is the leading law firm for pension scheme employers, trustees and providers. Over 75 lawyers advise employers on all aspects of their pension arrangements. This includes getting automatic enrolment right, advising on corporate pensions strategy, managing DB risk and funding solutions, advice relating to DC schemes including transfers to DC master trusts, and advising on the pensions aspects of M&A activity and corporate group restructuring. For more information or to arrange training, please get in touch with David Saunders, Philippa Connaughton, Fuat Sami, Tom Jackman, Ferdy Lovett or Vicky Carr, or your usual Sackers contact.



**David Saunders**  
Partner  
D +44 20 7615 9582  
E david.saunders@sackers.com



**Tom Jackman**  
Partner  
D +44 20 7615 9548  
E tom.jackman@sackers.com



**Philippa Connaughton**  
Partner  
D +44 20 7615 9524  
E philippa.connaughton@sackers.com



**Ferdy Lovett**  
Partner  
D +44 20 7615 9585  
E ferdy.lovett@sackers.com



**Fuat Sami**  
Partner  
D +44 20 7615 9584  
E fuat.sami@sackers.com



**Vicky Carr**  
Partner  
D +44 20 7615 9570  
E vicky.carr@sackers.com



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Sacker & Partners LLP  
20 Gresham Street  
London EC2V 7JE  
T +44 20 7329 6699  
E [enquiries@sackers.com](mailto:enquiries@sackers.com)  
[www.sackers.com](http://www.sackers.com)

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