

The Pensions Brief

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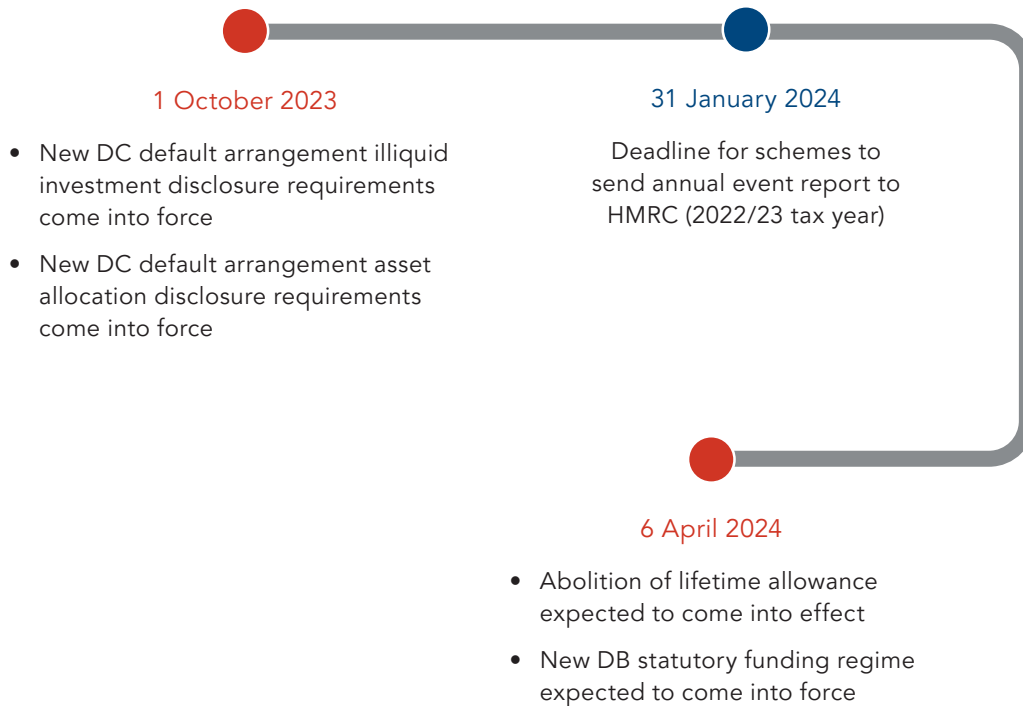
Pensions Regulator blog post on protecting members

▲ Action required


▲ Follow development and keep under review



Dates to note over the next 12 months



Key:

-  Important dates to note  For information

Issues affecting all schemes

Statutory transfer conditions – review

The government has published a [review](#) of the statutory transfer conditions that were introduced in November 2021 to protect members from pension scams. The review concludes that:

- The original policy intent of the conditions (i.e. to protect members from scams) remains appropriate.
- Industry feedback suggests the incentives red flag and the overseas investments amber flag are the main concerns with the application of the conditions.
- The government will therefore conduct further work with the industry and the Pensions Regulator to consider if changes could be made to the conditions to improve the pension transfer experience without undermining the policy intent.

Action

Trustees and administrators should keep the progress of the government’s further work in this area under review.

Pensions dashboards – connection

The Pensions Regulator has updated the connection [section](#) of its guidance on pensions dashboards to reflect the new connection deadline of 31 October 2026. The updated section says that the revised staging (i.e. connection) timetable will be based on scheme size and type (as the original timetable was) and will be published in guidance to be issued by the government and the Money and Pensions Service. The Regulator has not indicated when this guidance will be published.

In addition, the Pensions Dashboards Programme (PDP) has published two sets of FAQs on the revised deadline. The first [set](#) confirm that the revised staging timetable will not be mandatory, but will provide the framework for when schemes should connect. Trustees will be required to have read the guidance and will be expected to demonstrate how they have had regard to it. The FAQs also note that the PDP will update its standards to reflect industry feedback and technical developments.

The second set of [FAQs](#) cover:

- The benefits to following the guidance setting out the revised timetable.
- How much notice and support the industry will have for connection.
- How the PDP will collaborate with the industry.
- What effect the new timeline will have on the dashboards available point (i.e. when the public will be able to use the dashboards system).

Action

No action required.



Pensions dashboards – data

The Pensions Administration Standards Association has published [guidance](#) setting out good practice approaches to providing value data to pensions dashboards. The guidance is designed for use by both DB and DC schemes and covers twenty topics including late retirements, underpins and guarantees, partial retirements, split normal retirement ages and GMP equalisation.

In addition, the Pensions Regulator has published a [blog post](#) on the need for trustees to get their scheme data ready for pensions dashboards. The post notes that trustees must:

- Understand the data required to match members to their pensions and the data that must be sent for members to view.
- Audit whether that data is in a dashboards-ready format – data needs to be accessible, accurate, and available digitally.
- Fill any gaps as much as possible.

The post also notes that schemes have a very limited time to provide value data and urges trustees to work with their administrators to assess how much value data can be frontloaded.

Action

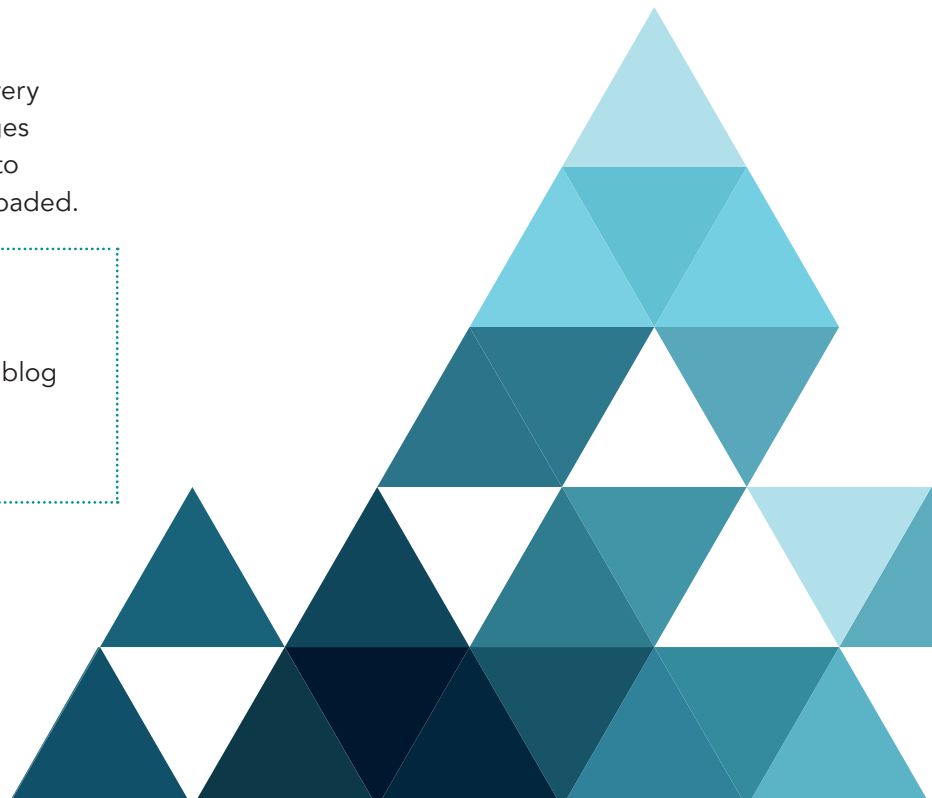
No action required, but trustees and administrators may find the guidance and blog post helpful when preparing for pensions dashboards.

Equality, diversity and inclusion – survey

The Pensions Regulator has [launched](#) an online trustee survey to gather data on the level on diversity in trustee boards. Trustees of all schemes will be eligible to take part in the survey which will be anonymous. Invitations to participate were sent out by post at the end of June and emails containing a link to the survey will be sent out in July. The deadline for responses is 4 August 2023 and the Regulator expects to release the survey results by the end of 2023.

Action

No action required, but trustees should consider whether they wish to complete the survey.



Issues affecting DB schemes

Contracted-out rights – validity of amendments

In a case concerning the validity of amendments to contracted-out rights for post-April 1997 service (section 9(2B) rights), the High Court has held that:

- An amendment to section 9(2B) rights that was made without the actuarial confirmation required under section 37 Pension Schemes Act 1993 (a section 37 confirmation) was void.
- Prior to April 2013, the requirement to obtain a section 37 confirmation applied to amendments to section 9(2B) rights in respect of both past and future service.
- The requirement to obtain a section 37 confirmation applied to all amendments to section 9(2B) rights, whether or not they would or might have an adverse effect on those rights.

For more information, please see our [legal update](#).

Action

Trustees of schemes that hold section 9(2B) rights should wait and see how the situation develops – in particular whether the decision is appealed and/or whether there is any government intervention – before taking any action. The exception to this is where the scheme is currently undertaking a transaction such as a buy-in or buy-out, a scheme merger or other bulk transfer, or a benefit change project. In those cases, trustees should consider speaking to their legal advisers to understand the impact that the decision may have on the transaction.



Issues affecting DC schemes

Active member discounts – guidance

The Pensions Regulator had added a paragraph to the section on active member discounts in its [guidance](#) on value for members to clarify that the existence of an active member discount needs to be checked at an individual member level, as opposed to a cohort level, and that the obligation to check for active member discounts is ongoing. An active member discount is where deferred members are charged more than active members. Employers are still permitted to pay charges on behalf of active members provided the total charge payable is the same for both active and deferred members.

Action

No action required, but trustees of DC schemes should ensure that they are carrying out checks for active member discounts correctly.

Economic volatility – protecting members

The Pensions Regulator has published a [blog post](#) on the need for DC trustees to focus on protecting members from economic volatility. The post emphasises the need for trustees to:

- Support members in lifestyle funds.
- Ensure investment strategies support stronger future member outcomes.
- Ensure their bond investments align with member choices at retirement.
- Focus primarily on outcomes, not just on driving down costs.
- Ensure their default pre-retirement strategy is targeting the right outcome and is fit for purpose in the current market environment.
- Provide more up-to-date context in annual benefit statements and supporting materials, given the retrospective nature of such statements.
- Use the annual benefit statement cycle to explain the implications of current economic conditions and signpost members towards sources of appropriate advice and guidance.

Action

Trustees of DC schemes may want to give consideration to whether there are any actions they wish to take in light of the post to better support members.

Mayer Brown news

Upcoming events

For more information or to book a place, please contact [Katherine Carter](#).

- **Trustee Foundation Course**
6 September 2023
6 December 2023
- **Trustee Building Blocks Classes**
8 November 2023 – Pensions dashboards
- **Quarterly webinars**
27 September 2023 – topic TBC
13 December 2023 – topic TBC

Mayer Brown legal updates

- [Validity of amendments to contracted-out rights – important High Court decision](#)

Our legal updates from the last three months are available [here](#).

Pro bono and CSR

- As part of the Afghan Pro Bono Initiative, [Liam Kellett](#) has obtained a waiver of the requirement for a client to pay a fee of approximately £5,000 to apply to be reunited with his siblings. The client had no realistic prospect of being able to pay the fee. The client, a British national of Afghan origin, is the guardian of his minor siblings who were left in Afghanistan when he was evacuated during Operating Pitting in 2021. The Afghan Pro Bono Initiative is an ambitious collaborative project with 13 other law firms and the NGOs Safe Passage and Refugee Legal Support.
- Also as part of the Afghan Pro Bono Initiative, [Giles Bywater](#) and [Beverly Cox](#) have provided further legal assistance to an Afghan citizen seeking resettlement in the UK for himself and his family through the Afghan Relocation and Assistance Policy (ARAP) scheme. The applicant worked at Camp Bastion in Helmand Province and he and his family are at serious risk of reprisals from the Taliban. His ARAP application was submitted in December 2022, but was rejected by the Ministry of Defence. A review of the decision has been requested on the grounds that the decision-makers applied the ARAP requirements incorrectly, and further evidence in the form of a witness statement and an expert report have also been submitted.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



Jay Doraisamy

Co-Head of Pensions, London
E: jdoraisamy@mayerbrown.com
T: +44 20 3130 3031



Andrew Block

Co-Head of Pensions, London
E: ablock@mayerbrown.com
T: +44 20 3130 3366

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