

Department for Work & Pensions
Email to: pensionsguidance.consultation@dwp.gov.uk

2 September 2021

Consultation: Stronger nudge to pensions guidance

Thank you for your consultation seeking views and evidence on the draft Regulations for delivering a stronger nudge to pensions guidance.

I respond on behalf of the Local Government Association (LGA) and the Local Government Pensions Committee (LGPC).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. 328 councils in England including district, county, metropolitan, unitary, London boroughs and the City of London are members of the LGA. There are 22 Welsh unitary authorities in membership via the Welsh Local Government Association (WLGA). The LGPC is a committee of councillors constituted by the LGA, the WLGA and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS).

This response sets out the LGA's view, where appropriate, on the questions asked in the consultation.

I hope the content is helpful; if you have any questions, please do not hesitate to contact me.

Yours faithfully



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Head of Pensions

Background to the response

This response is submitted in the context of the Local Government Pension Schemes (LGPS) in England and Wales, and Scotland. The LGPS is one of the largest defined benefit (DB) schemes in the world. In England and Wales there are 16,300 employers, 6.2 million members and £276 billion of assets. The scheme is administered locally by 86 administering authorities in England and Wales, and 11 in Scotland.

The LGPS is a defined benefit (DB) public service pension scheme with an in-house Additional Voluntary Contribution (AVC) arrangement provided for within its regulations. Each administering authority is required to establish an arrangement with an approved AVC provider to allow members to pay in-house AVC contributions. The in-house AVC arrangement is a defined contribution (DC) scheme. It will, therefore, be impacted by the proposed changes to the Pension Schemes Act 1993 and the Disclosure of Information Regulations 2013.

Preliminary remarks

The draft regulations appear to have been drafted with standalone occupational DC schemes only in mind. Because of this, some of the proposed changes have unintended consequences for members of the LGPS with both DB and DC benefits.

For example, if an LGPS member with an AVC plan wishes to take payment of, or transfer, only their main scheme (DB) benefits, the administering authority will still be required to provide the nudge. In relation to a transfer, this applies even if the transfer is going to a scheme which does not provide flexible benefits (the exemption in new regulation 18C(3)(a) only applies to flexible benefits), or if the member already must get regulated financial advice in accordance with section 48 of the Pension Schemes Act 2015. This point is demonstrated further in our answers to the consultation questions.

We understand the policy aim is to only provide the nudge when individuals seek to access or transfer their DC benefits and that Pension Wise only provides guidance about DC options. Given this, and the fact that the transfer of DB benefits is covered by different legislation¹, our response assumes that the nudge should not apply in relation to DB benefits.

¹ Section 48 of the Pension Schemes Act 2015

The consultation does not mention whether Pension Wise will be sufficiently equipped to deal with the additional requests for guidance this policy will create. If the availability of appointments causes a delay in a relevant beneficiary (RB) being able to access guidance, people are likely to opt out and the policy objective will not be achieved.

Question 13 in the consultation is a repeat of question 12. Our question numbering therefore differs from yours from question 12 onwards.

For ease, we have used the term scheme manager rather than 'scheme manager or trustee' in our answers.

Questions raised in the consultation

When is the Stronger Nudge delivered?

Q1. Do you agree with our proposed approach to defining when the Stronger Nudge should be delivered? If not, what changes do you consider necessary?

It is appropriate for the RB to be mandated to act on the nudge at the application stage; however, we think it is more appropriate for the RB to be directed to access guidance at an earlier stage in the process. This should include all the various scenarios under 18A(1) and 18B(1) of the Disclosure of Information Regulations 2013. To achieve this the information that must be supplied in accordance with Schedule 10 should still be provided where the nudge applies, but the Schedule should be amended to include a statement that the pension scheme cannot process an application to transfer or take DC benefits under the scheme unless the RB has received or opted out of guidance.

Booking a Pensions Guidance Appointment

Q2. Do you agree with our proposed approach to appointment bookings? If not, what changes do you consider necessary?

No. The proposed approach would appear to be somewhat cumbersome and impractical. The regulations state that the trustees or managers must offer to book the appointment on behalf of the RB on a suitable date and time. If the RB accepts, they must book that appointment. This seems doomed to fail as that appointment could no longer be available when the scheme manager tries to book it, particularly if the RB's request is made by email or in writing. The scheme manager could end up going back and forth many times, which will be time consuming and frustrating for all involved.

Also, what happens if the RB decides at a later date the appointment is no longer

suitable? Is the RB responsible for rearranging it themselves, or is the scheme manager supposed to do this also?

In addition, the regulations provide that the scheme manager must only provide the RB with details of how to book a pensions guidance appointment once they have turned down the offer of having an appointment booked for them. In our view, this information should be provided from the outset to give RBs the choice. The Freedom and Choice agenda is about trusting people to make their own decisions with their pension savings and this hand holding approach seems in direct contradiction to this.

In our view, it would be more appropriate for RBs to make their own appointment.

Opting Out of Guidance

Q3. Do you agree with proposed approach to requiring an opt out in a separate interaction? If not, what changes do you consider necessary?

As mentioned in our answer to question one, in our view the notification of the nudge should occur much earlier in the customer journey. However, if at the point of application, the RB has not been nudged, and is not exempt, then it seems appropriate that they make an opt out in a separate interaction.

However, if the notification of the nudge is delivered earlier in the customer journey then we think they should be allowed to submit an opt out form with the application. We do not think anything will be achieved by making them submit this evidence in a separate communication. In our view this could be an unnecessary obstacle for our members in accessing their DC pension benefits.

Also, it would be helpful if the term ensuing interaction is defined.

We do not agree that RBs should be allowed to opt out verbally. This could leave the pension scheme open to challenge at a later date.

Trustees and Managers Cannot Proceed with the Application until Members Have Opted Out or Received Guidance

Q4. Do you agree with our proposed approach to prevent trustees and managers proceeding with the application until they are in receipt of confirmation that the individual has opted-out or received appropriate pensions guidance? If not, what changes do you consider necessary?

We don't agree that the wording in the regulations would prevent the scheme manager

from providing a quote or giving an application form. We would interpret the regulations to mean taking any action to proceed with processing the application form once received.

If a member is to access guidance about transferring or taking their AVC plan in the LGPS, this will only be meaningful if they have information about how much the plan is worth? We understand that not all pension providers provide the whole range of pension flexibilities and those that do may only provide certain options depending on the size of the plan. It is, therefore, of paramount importance that LGPS administering authorities be able to provide RBs with information about the size of their AVC plan and the options they have within the LGPS itself, which are often more favourable, before they access guidance.

It seems more practical for this information to be provided with a clear message that the RB cannot move on until they either access guidance or opt out.

Exemptions

Q5. Are the proposed exemptions sufficient? If not, what changes do you consider necessary?

Not entirely. Regulation 18C(11)(a)(i) only provides that the RB must have received appropriate pensions guidance in the previous 12 months. It does not specify that the guidance must have been received in relation to that application. In our view the guidance should be specific to the application, as it is with regulated financial advice.

We do not agree that evidence of an exemption under regulation 18C(11)(a)(i) or (ii) can be submitted verbally. This could lead the pension scheme open to challenge at a later date. What happens if it later transpires that the RB did not receive guidance from Pension Wise or a regulated adviser? The RB may confirm that they have received regulated advice (because they believe that they have) but they could have received advice from someone running a scam, or someone unqualified.

Pension scheme members are required to provide written confirmation that they have obtained appropriate independent advice when transferring from a DB to a DC scheme², and we don't see why the requirement for written confirmation should not apply here.

² Regulation 7 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015

Also, in relation to the serious ill health lump sum exemption – we assume this only applies where the RB intends to take payment of their pension rather than on transfer. Otherwise, how would the scheme manager be able to ensure that the intention was carried out?

Q6. Is an exemption for small pots necessary? If so, how should a small pot be defined?

It would seem logical to set the level appropriate to the minimum level DC pension scheme providers generally require to provide a full range of pension flexibilities.

In the LGPS members must transfer their AVC plan to access the pension flexibilities introduced in 2015 (apart from Scotland where an UFPLS is available). Therefore, we do not have any information about what this minimum level is.

Q7. Will our proposed exemption for those accessing their pension benefits as a Serious Ill Health Lump Sum cover all those who should be exempted from the enhanced opt out on ill health grounds? If not, what changes do you consider necessary?

No comment

Record Keeping

Q8. Do you believe our proposed approach to record keeping is proportionate? If not, what changes do you consider necessary?

As mentioned in our answers to question 3 and 5, we do not agree that the RB should be allowed to confirm they have received guidance or regulated advice verbally. We also do not agree that RBs should be allowed to opt out verbally. We also think the reason for exemption should be recorded.

The LGPS is currently receiving a high level of Data Subject Access Requests from claims management companies in relation to past transfers. Administering authorities will be keen to ensure they retain as much information as possible to mitigate the risk of similar future challenges.

The Nudge and Scams Guidance

Q9. Do you agree with our proposed approach for coordinating the Stronger Nudge and Scams Guidance appointments? If not, what changes do you consider necessary?

We think it would be preferable if the RB is offered a single appointment covering the two sets of guidance. In our view, members could see having to attend two appointments as a barrier to exercising their rights, rather than a useful resource.

The Nudge and Existing Signposting Provisions

Q10. Do you foresee any problems with the interaction between the Stronger Nudge and existing signposting provisions? If so, what changes do you consider necessary?

Yes, as mentioned in our answer to question 1, we think it is more appropriate for the RB to be directed to take guidance at an earlier stage in the process. This should include all the various scenarios under 18A(1) and 18B(1) of the Disclosure of Information Regulations 2013. To achieve this the information that must be supplied in accordance with Schedule 10 should still be provided where the nudge applies but it should be amended to include a statement that the pension scheme cannot process an application to transfer or take benefits under the scheme unless the RB has received or opted out of guidance.

The Nudge and Statutory Right to Transfer

Q11. Are you content that regulation 2 successfully achieves its purpose? If not, what problems do you foresee and what changes do you consider necessary?

Not in relation to pension credit members. Regulation 2(3)(b) provides that the time limit in 101J of the Pension Schemes Act 1993 is disapplied **only** where section 101G(4) applies. Section 101G(4) only applies if a member also has transferrable rights in the same category under 95(1) and the scheme rules provide they also have to make an application under section 95(1).

This means the nudge would not apply to a member who has only pension credit rights, or to a member who is transferring both pension credit rights and benefits in their own right, but the pension scheme rules do not require it.

We think the regulation should refer to section 101F instead.

Cost of Transition

Q12. What do you anticipate will be the on-going impact of implementing the Stronger Nudge in to each channel (phone/post/digital) you offer? Where costs are incurred, please provide an estimate and any information you feel would be useful to us in understanding these costs.

As already mentioned, the LGPS is administered by 86 different administering authorities in England and Wales and 11 in Scotland. The impact will be significant especially if the requirement to book appointments for RBs is taken forward. We have not been able to obtain estimated costs in the timeframe.

Q13. Where costs are incurred, would you expect the cost to be absorbed, passed on to employers, or passed on to individual members?

We would expect the cost to be passed onto the employers as part of the triennial valuation process.

Q14. Do you anticipate any benefits to your business from implementing the Stronger Nudge? Please provide a monetary value where possible.

Not applicable

Q15. Do you anticipate any wider non-monetised impacts from the Stronger Nudge?

LGPS members with AVC plans generally take their AVC at the same time as their main scheme DB benefits. They usually make use of the in-scheme options when taking their AVC, as these are generally more favourable. We do not anticipate that this will change with the nudge. There is a concern that the nudge will be seen by our members as an obstacle to accessing benefits.

Regulatory burden and costs to Industry

Q16. Do you believe there are reasons to include a statutory review provision in the proposed regulations?

No comment

Additional Questions

Q17. Do you consider the proposed regulations achieve the policy intent?

As mentioned in the preliminary comments, the draft regulations appear to have been

drafted with standalone occupational DC schemes only in mind. Because of this, some of the proposed changes have unintended consequences for members of the LGPS with both DB and in-house DC benefits.

Regulation 18C(2) does not specify that the regulation only applies where an application is received in relation to flexible benefits, so it applies to a RB with both DB and DC benefits under the scheme. In addition, in relation to transfers, the exemption in 18(3) only includes an application to transfer flexible benefits to a scheme that does not provide flexible benefits.

The result of this is that, if an LGPS member with an AVC plan wishes to take payment of, or transfer, only their main scheme (DB) benefits, the administering authority will still be required to provide the nudge. This does not seem logical given that the stated policy aim is to provide the nudge when individuals seek to access or transfer their pension flexibilities and Pension Wise only provides guidance about defined contribution options.

In relation to a transfer, this applies to the DB benefits even if the transfer is going to a scheme which does not provide flexible benefits. This is because the exemption in regulation 18C(3)(a) only applies to flexible benefits. However, the nudge would not be required if the same member applied to transfer only their DC benefits to the same scheme. We assume this is an unintended consequence.

The nudge will also apply if the RB is only transferring their DB benefits but is required to take appropriate financial advice in accordance with section 48 of the Pension Schemes Act 2015. Again, we assume this is an unintended consequence.

In addition:

- See our answer to question 11 about pension credit members
- Regulation 18C(6)(e) appears to duplicate what is achieved by (d)
- Regulation 18C(11)(a)(i) – should include the words in connection with that application.

Q18. Do you foresee any unintended consequences in our proposed approach?

See our answer to question 17

Equality Duty

Q19. Do you have any comments on the impact of our proposals on protected groups and/or views on how any negative effects may be mitigated?

No