

Stronger Nudge to Pensions Guidance

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Background

The Government is introducing legislation to ensure that individuals are made aware of Pension Wise guidance as part of the application process for taking or transferring their defined contribution (DC) pension savings. The aim is to protect people by helping them make informed decisions.

Pension Wise is a government service from MoneyHelper that offers free, impartial pensions guidance about DC pension options.

LGPS administering authorities will need to offer to book a Pension Wise appointment for members as part of the application process for taking in-house AVCs. The requirement also applies when a member aged 50 or over makes contact about transferring their in-house AVCs to another defined contribution scheme to access them.

Members are able to opt out of taking Pension Wise guidance.

The regulations

The stronger nudge requirement is introduced by the Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc) (Amendment) Regulations 2022 (SI 2022/30). In this guide, these regulations are called the Nudge Regulations.

The Nudge Regulations come into force on 1 June 2022. They amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734). In this guide, these regulations are called the Disclosure Regulations 2013.

The Nudge Regulations modify the Pensions Schemes Act 1993 where the requirement to nudge applies.

They apply to LGPS administering authorities in England, Wales and Scotland.

In brief

The Nudge Regulations affect LGPS members when they apply, or contact you about applying, to take or transfer their AVCs. The requirement to refer AVC members to Pension Wise:

- applies to applications you receive on or after 1 June 2022
- applies to all applications to take payment of AVCs in the LGPS
- replaces the requirement to signpost members to Pension Wise where it applies
- only applies to transfers where the member is 50 or over and transferring their AVCs to access them in another defined contribution scheme (some exemptions apply).

A member can opt out of taking guidance. Where the member is applying to take payment of their AVC in the LGPS, they will generally need to opt out in a separate communication. Members do not need to opt out of guidance in a separate communication when they apply to transfer their AVCs.

You must not proceed with an application unless you receive confirmation that the member has received guidance or opted out of receiving guidance.

In this guide, the term 'guidance' means guidance from Pension Wise.

The Nudge Regulations refer to 'any person' applying or making contact about applying to take or transfer AVCs. In this guide, we assume it is always the member that applies or makes contact.

The requirements

From 1 June 2022, if a member contacts you about:

- taking payment of their AVCs, or
- transferring their AVCs to another scheme,

you may need to refer them to take guidance from Pension Wise.

As part of the member's wake-up journey, you must refer members to take guidance from Pension Wise in the wake-up pack. This must be provided to members at least four months before their specified retirement date or normal pension age, whichever is earliest.

Referring to Pension Wise

You must:

- offer to book a Pension Wise appointment at a time and date and of a type that is suitable for the member. They can attend an online, face to face or telephone appointment
- where the member accepts the offer, take reasonable steps to book the appointment
- provide the telephone number and website address for Pension Wise so the member can book the appointment themselves if they want to
- explain their application cannot proceed unless you receive confirmation that they have received guidance or they opt out of receiving guidance
- explain how the member can opt out of receiving guidance.

You must repeat the steps above if the member contacts you again about their application unless they confirm they have received guidance or they provide an opt out notification. Where you must deliver the nudge a further time, it may be practical to deliver it verbally over the telephone, especially if the contact from the member is by phone.

If, at any point whilst you are repeating these steps, the member confirms they have received guidance you can treat the referral as complete.

We understand there will be a specific web address for pension schemes to use to book online appointments for members. This is to allow MaPS to track when appointments are booked as a result of the nudge. It will be confirmed soon. The telephone number you need to provide is the same number that you provide in the wake-up pack. DWP has confirmed this is not changing.

Exemptions on transfers

If a member applies to transfer, or makes contact about transferring their AVCs, you do not need to refer them to Pension Wise if any of the exemptions apply:

- the member is under the age of 50
- receiving flexible benefits is not the purpose, or one of the purposes, of the transfer eg they are transferring to consolidate their pensions
- for transfers to occupational schemes, the member confirms they have already been referred to Pension Wise by the receiving scheme in relation to the application and they have either received or opted out of taking guidance. The confirmation can be given verbally or in writing.
- the member is transferring to a personal or stakeholder pension scheme which is regulated by the Financial Conduct Authority (FCA). This is because these schemes are required to provide the Stronger Nudge under FCA rules.

The requirement to refer to Pension Wise does not apply to members entitled to a cash transfer sum who make contact about transferring their AVCs.

The Pensions Regulator (TPR) and the Department for Work and Pensions (DWP) have informed us that, in their views, the requirement does apply to pension credit members on transfer. See also the section on [Transfer out time limits](#).

For clarity, the requirement to refer to Pension Wise does apply to pension credit members when they apply or make contact about taking payment of their AVCs.

Opting out of guidance

The Nudge Regulations require members to opt out in a separate communication, unless one of the conditions in the [When a separate opt out notification is not required](#) section is met.

The Nudge Regulations provide that an opt out notification can be given verbally or in writing. It will be up to each administering authority to decide whether to build verbal opt out notifications into their processes. If you decide you only wish to accept written opt out notifications, you will need to bear in mind that a member has the right to opt out verbally.

Where a verbal opt out notification is made, you will need to make sure you carry out your agreed verification process and make a record of the conversation, the date and time etc and that the sole purpose of the conversation was to opt out. You will need to make it clear to members wishing to opt out by a phone call that you cannot discuss any other matter on that call.

The opt out notification must be in connection with the application or communication in relation to the application.

In their [response to the consultation on the Stronger Nudge](#), DWP confirms a separate notification can be achieved by a separate digital form or postal form. We understand this to mean that as long as the opt out notification is recorded on a separate form (ie not a statement on an existing form which the member simply ticks), it does not have to be submitted separately either by post or as part of an online journey. The member can return the opt out notification alongside any other option forms relating to the application.

For clarity, administering authorities can include a Pension Wise declaration form with the option to opt out of guidance alongside an offer to book a Pension Wise appointment and any other information on options they send.

If you deliver the nudge verbally, the member will need to make a separate telephone call to opt out of guidance, where applicable.

When a separate opt out notification is not required

When a member applies to transfer their AVC, they are not required to opt out of guidance in a separate communication. We will change the AVC transfer out discharge forms to include a section on Pension Wise guidance in due course. In the meantime, you will need to make the changes to your local versions and refer the member to Pension Wise in the covering letter, where applicable.

When a member applies to take payment of their AVC, they are not required to opt out in a separate communication if one of the following applies:

- the member confirms they have received guidance from Pension Wise in the 12 months before you received the application or communication (excluding date of receipt)
- the member confirms they have received regulated financial advice in relation to their application in the 12 months before you received the application or communication (excluding date of receipt)
- the member is accessing their benefits as a serious ill health lump sum.

In our view, given that most administering authorities will refer members to Pension Wise in writing and will provide a specific Pension wise declaration form, it may be simpler to request that all members applying to take payment of their AVC opt out in a separate notification. Where a member does not opt out in a separate communication, you will need confirmation provided by the member that they meet one of the criteria above.

Serious ill health commutation is only an option for deferred members who left the LGPS before 1 April 2008 (England and Wales) or 1 April 2015 (Scotland) who are certified as having a life expectancy of less than one year. It only applies to the main scheme benefits. It does not apply to AVCs. Where it applies, the member needs to

first take their AVCs in one of the permissible ways eg take the AVC as tax free cash or buy an annuity on the open market.

The Nudge Regulations only provide that the member must qualify for a serious ill health lump sum within the meaning of paragraph 4(1) of Schedule 29 to the Finance Act 2004 (ie where all or part of their lifetime allowance is available and a registered medical practitioner has confirmed that they are expected to live for less than one year). Our understanding of this is that the qualification does not necessarily have to apply to the member's LGPS benefits.

No action from the member

You must not proceed with an application until you receive confirmation that the member has received guidance or an opt out notification in respect of the application. This does not stop you from providing further information or quotes by post or email, which could also include a Pension Wise declaration form for the member to complete to either opt out or confirm they have received guidance.

If the member does not provide you with an opt out notification or confirm they have received guidance and they contact you again about taking their AVC or transferring their AVC to another scheme to take them, you will need to go through the steps set out in [Referring to Pension Wise](#) again.

Transfer out time limits

Where you are required to refer a member to Pension Wise, the six-month time limit for paying the transfer from the date of the application only applies if, within that period, the member confirms they have either received guidance or opted out of guidance.

If the member does not confirm they have received guidance or provided an opt out notification, then you are not required to pay the transfer within six months of the date of the application.

However, if a pension credit member applies to transfer their AVCs, the six-month time limit for payment will always apply – even where you have not received confirmation that the pension credit member has received guidance or an opt out notification. This is because new Regulation 18D(3) in the Disclosure Regulations 2013 only provides that the six-month limit is disapplied where the scheme rules state the pension credit member must also transfer out, at the same time, any AVC benefits they have built up in their own right. The LGPS does not contain this rule.

DWP has confirmed that this is unintentional. It is an error in the drafting of the regulations. They are speaking with TPR about a possible extension to the time limit in the very few cases where this will apply.

New record keeping requirements

Where you are required to refer a member to Pension Wise you must keep a record of:

- confirmation that a member has received guidance from Pension Wise in relation to an application – we understand Pension Wise will email the member to confirm that an appointment has taken place and provide a summary of the guidance.
- the opt out notification in relation to an application
- confirmation provided by the member that they do not need to opt out in a separate communication.

The Nudge Regulations provide that you can accept verbal or written confirmation of the above. We also recommend that you keep a record of the confirmation if a member informs you one of the [Exemptions](#) applies. The Nudge Regulations do not specify how long you are required to keep the records for.

Frequently asked questions

When does the requirement to refer members to Pension Wise start?

From 1 June 2022. It applies when a member applies to take their AVCs or makes contact about taking payment of or transferring their AVCs.

It applies if you receive the application or communication on or after 1 June 2022, even if the date of retirement is before 1 June 2022.

It does not apply if you receive the application or communication before 1 June 2022 and the date of payment or retirement is after 1 June 2022.

You must also refer members to Pension Wise in the wake-up pack. The wake-up pack must be provided to members at least four months before their specified retirement date or normal pension age, whichever is earliest.

Do the Nudge Regulations apply in all cases where a member applies to take, or makes contact about taking, their AVCs?

Yes. They also apply when you contact a member about taking their AVCs eg as part of the wake up journey.

When do the Nudge Regulations apply to transferring AVCs?

In practice we think it is unlikely you will need to refer members to Pension Wise when they apply to transfer their AVCs. You are only required to refer to Pension Wise when:

- the member is age 50 or over

- the member is transferring with the intention of accessing their AVCs as flexible benefits in the receiving scheme
- the receiving scheme is **not** a personal or stakeholder pension that is regulated by the FCA – these schemes are required to provide the Stronger Nudge under FCA rules.
- the receiving scheme has not offered to refer the member to Pension Wise in relation to the application.

We think it is unlikely that a member will transfer their AVCs to an occupational pension scheme for any other reason than to consolidate. Some occupational pension schemes do provide for the payment of AVCs before payment of main scheme benefits. So technically, it is possible for a member to transfer their AVC to an AVC arrangement linked to an occupational pension scheme with the intention of taking payment of the AVCs.

Group personal pensions and self-invested personal pensions both fall within the definition of a personal pension. Therefore, there is no requirement to refer to Pension Wise when a member transfers their AVCs to one of these schemes.

We understand this outcome is line with the policy intention.

What does transferring with the intention of accessing flexible benefits mean?

Regulation 18(C)(3)(b) of the Nudge Regulations provides there is no requirement to refer to Pension Wise on transferring where ‘receiving flexible benefits is not the purpose, or one of the purposes, of the application’.

[DWP’s response to the consultation](#) also confirms that where members are consolidating or transferring without the intention of accessing flexible benefits you do not need to refer them to Pension Wise.

DWP has confirmed that it is up to each administering authority to decide in what timeframe they expect someone to access their flexible benefits in the receiving scheme. We think it would be reasonable to apply the exemption when a member transfers their AVC with the intention of accessing it within three months. We think this is most likely to happen when a member wishes to take their AVC in one of the ways that is not available to them in the LGPS eg to take flexi access drawdown.

Does the requirement to refer replace the requirement to signpost to Pension Wise?

Yes. Where you are required to refer a member to Pension Wise, it replaces the requirement to signpost members to Pension Wise.

What will the guidance provided by Pension Wise cover?

We understand the guidance will only cover the six options available to ordinary defined contribution (DC) members - most of which will not be applicable to LGPS members unless they transfer their AVC to another provider.

We have raised our concerns with DWP and DLUHC that LGPS members may be provided with information that is not appropriate. DWP has confirmed that it would be reasonable for you to include the information below when you refer members to Pension Wise:

- a list of the options that Pension Wise will discuss with them and set out which ones don't apply
- confirmation that Pension Wise will not be able to discuss the options available to them in the LGPS
- it is possible the Pension Wise adviser will refer them to the pensions arm of MoneyHelper
- they may wish to contact MoneyHelper for advice in any event, as they can provide help on their LGPS pension as well as their AVC.

The six options Pension Wise discusses are:

1. Retire later or delay taking your pension pot
2. Get a guaranteed retirement income (annuity)
3. Get a flexible retirement income (pension drawdown)
4. Taking your pension as a number of lump sums
5. Take your whole pension in one go
6. Mix your options.

Are we still required to provide a risk warning?

Yes. The risk warning should be provided with the application form or any other method that allows the member to take payment of their AVC plan. The risk warning tells the member about the risks associated with the options offered in the LGPS. We recommend that you ask members to sign a declaration to confirm they have read the risk warning.

We will update the template generic risk warning (England and Wales) shortly.

Does the requirement to signpost members to Pension Wise still apply in some cases?

Yes. The requirement to signpost still applies unless it is replaced by the requirement to refer to Pension Wise.

What is the difference between signposting and referring to Pension Wise?

Signposting only requires you to inform the member that pensions guidance is available, that it is free and impartial, how to access it etc. You do not need to

confirm that members have accessed guidance or opted out of accessing it before proceeding with an application.

Referring requires you to carry out the steps in [Referring to Pension Wise](#).

Can an AVC application form be included with a letter informing the member of their options at retirement?

In our view, yes. There is nothing preventing you from including the application form with the AVC options letter, as well as the information set out in the section [Referring to Pension Wise](#), the risk warning and the Pension Wise declaration form.

However, [the Pensions Regulator's guidance on the Stronger Nudge](#) recommends that you do not send out an application form for any options when you refer members to Pension Wise. They recommend this as best practice – it is not a legal requirement.

It will be up to each administering authority to decide their own approach. You may wish to consider how appropriate Pension Wise guidance is going to be as part of the decision-making process.

What resources will the LGA provide to assist administering authorities?

We will update the relevant AVC template letters and risk warning (England and Wales) in the next few weeks. Scottish authorities will need to check with their AVC providers that they are able to meet the new requirements.

We will also provide a template Pension Wise declaration form the member can use to confirm if they have taken guidance or are opting out of guidance.

As confirmed in the [When a separate opt out notification is not required](#), we will update the AVC transfer discharge forms in due course.

We will update the AVC technical guide and consider if any further documents are needed in due course.

Disclaimer

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