

PENSIONS ON AIR PENSIONS PODCAST April 2025

Dan Schaffer	<p>I am absolutely delighted to welcome you all to Slaughter and May's very first pensions podcast, Pensions on Air. I am Dan Schaffer, one of the three pensions partners here at Slaughter and May. I am thrilled to be joined by Catrin Young who is one of the team's Senior Knowledge Lawyers.</p> <p>Catrin, this is a bit of a change for us. Do you want to let our listeners know what our plans are for the podcast?</p>
Catrin Young	<p>Happy to, Dan. As some of our listeners know, we produce a monthly bulletin called Pensions Essentials, in which we cover the main developments in pensions law and regulation.</p> <p>However, we know we all receive an avalanche of email legal updates and whilst it's my job to read them all and keep abreast of all things pensions, most of our clients don't have the time. So, we wanted to offer another option to get your pensions news.</p> <p>In what we aim will be a punchy maximum 15-minute episode, Pensions on Air will give you a rundown of the main developments to be aware of and most importantly what it means for you as clients.</p>
Dan Schaffer	<p>Indeed, some of my clients really like to chat through a bulletin. As I sat on my bike virtually climbing Alpe d'Huez on Zwift, I thought why not ask Catrin to whisper, alright speak, pensions in your ear on the way to work.</p>
Dan Schaffer	<p>Right, let's begin. So, Catrin what recent developments in March do clients need to know about?</p>
Catrin Young	<p>In short, nothing major. But strap yourselves in – lift off is coming.</p> <p>The Government has confirmed that the Pension Schemes Bill will be laid before Parliament breaks for summer recess on 22 July. King Charles' Speech on 17 July last year confirmed that the Bill will legislate for consolidating small DC pots, assessing value for money across all DC schemes and requiring DC schemes to offer retirement solutions. It will also finally contain the legislative framework for DB superfunds which may result in players other than Clara entering the market to offer additional options for those schemes that are unlikely to ever reach full-buy-out funding with their existing employer covenant.</p>
Dan Schaffer	<p>Hang on - what about surplus extraction? I know a lot of sponsors and trustees want to hear more about this. Will the Bill contain provisions on that?</p>
Catrin	<p>We don't know Dan but I expect it will as it could support the Government's agenda of ensuring more pension fund investment in private markets and infrastructure projects.</p> <p>The Pensions Minister Torsten Bell (great name TORSTEN - his mum's Swedish) confirmed at the PLSA Investment Conference in Edinburgh on 11 March that a response to the previous Government's consultation would be published this spring. So, with the Bill promised this summer, it would be logical for it to also deal with any changes to DB surplus extraction. The</p>

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	other point covered in the consultation was whether there was any interest in the PPF acting as a public sector consolidator for schemes unattractive to commercial providers so we can also expect an update on that.
Dan	Do we have any intel on what the Government is going to do on surplus?
Catrin	<p>The Minister gave little away but there were a few snippets:</p> <p>First, he referenced a surplus figure of £160bn, which commentators have pointed out assumes a surplus on a low dependency investment allocation basis. Currently, section 37 Pensions Act 1995 requires schemes to be fully funded on a s.75 buy-out basis before a surplus can be paid to the employer. A watering down of the funding level at which surplus can be repaid will require amending regulations.</p> <p>Secondly, the Minister said that surplus could be released “where it is safe to do so” and crucially “where trustees agree”.</p> <p>There was also a comment that some trustees may want to examine the position of members with non-increasing pre-1997 benefits when considering the use of surplus.</p>
Dan	<p>Many trustees will be concerned about having to decide whether to agree to a return of surplus to an employer and, if so, under what conditions. They are thinking about the risk of challenge from members should scheme funding deteriorate and affect benefit security.</p> <p>Any observations Catrin on this?</p>
Catrin	<p>The first point is that trustees can legitimately decide to run on and generate surplus - a trustee’s primary obligation is to promote the purposes of the scheme and pay benefits to the scheme’s beneficiaries in accordance with the scheme’s rules.</p> <p>Notwithstanding that, agreeing a robust and reasonable framework with the scheme sponsor for running-on the scheme and any triggers for a change in strategy would be a prudent approach. Any such framework should set out the conditions that must be met before surplus can be extracted and also how and when any surplus should be paid (little and often generally being the preferred option).</p> <p>Any such framework should be reviewed at periodic intervals to ensure it reacts to changing circumstances.</p>
Dan	What else do you want to flag to listeners from March’s Pensions Essentials Catrin?
Catrin	Well, whilst not a new development Dan, it is one that affects all schemes – it’s a reminder that the first schemes will be connecting to the pensions dashboard ecosystem by the end of this month. Master trusts with 20,000+ members and personal pension schemes are the first to connect with volunteer participants Heywood, Legal & General and Pension Fusion having already done so.

	<p>Whilst the long-stop mandatory connection deadline is 31 October 2026, DWP encourages trustees to follow its staged timetable “unless there are exceptional circumstances which prevent them from doing so”. The Regulator has also said it expects schemes to comply with these timescales. There’s a lot of information and support for trustees on what they need to do on the Pensions Dashboards Programme’s website and we’ve also produced a Dashboards Essentials publication for clients who need a reminder of what they need to do.</p> <p>However, it’s worth remembering Dan that even though many schemes will connect to the dashboard ecosystem in the coming months, it will still be some time before the information will be visible to members. There’s currently no information about when the dashboards will go live but at least 6 months’ notice will need to be given by the Government.</p> <p>Once dashboards are live, schemes and employers will need to be ready to deal with an increased number of queries from members.</p>
Dan	<p>Yes, we have been advising clients on dashboard compliance, largely around what to do about providing information about AVCs held by a third-party provider.</p>
Catrin	<p>Indeed.</p> <p>Many AVC providers want to adopt what’s known as a multi-source approach, which allows them to provide any information relating to member AVCs directly to the dashboard, instead of to the scheme’s administrator.</p> <p>Trustees need to be aware that whilst they can delegate responsibility for providing AVC data to the dashboard, they cannot delegate liability for non-compliance. AVCs are a scheme benefit and trustees are the party legally responsible for ensuring that the data is displayed on the dashboard. To ensure they are properly protected, trustees should put in place a clear, written framework agreement with any AVC providers who insist on a multi-source approach to ensure that the data is provided in a way that complies with the legislative requirements.</p> <p>Whilst we are on the subject of dashboard compliance, trustees may be interested in a recent spate of cases from the First Tier Tribunal relating to how the Regulator enforces compliance with auto-enrolment legislation. Now Dan, before you ask me what auto enrolment has to do with trustees’ dashboard duties, bear with me!</p> <p>The automatic enrolment regulations and the pensions dashboard regulations both require certain information to be provided to the Regulator to allow it to monitor compliance with the underlying statutory duties.</p> <p>Under both regimes, the Regulator has discretion to issue a compliance notice if it considers there’s been a failure to comply with the statutory duties. The Regulator has discretion to issue a fixed penalty notice if a</p>

	<p>compliance notice has not been complied with. However, these fixed penalty notices may be reviewed by the Regulator on a written application.</p> <p>The Regulator has issued a number of fixed penalty notices for non-compliance with auto enrolment legislation, with a marked uptick in such notices during the pandemic.</p> <p>However, in three recent cases, First Tier Tribunal Judge Hughes has overturned the Regulator's refusal to review penalty notices issued for an employer's failure to submit a declaration of compliance. In all three cases, the employer had complied with its underlying duty to automatically enrol members and pay contributions.</p> <p>Hopefully, the Tribunal's focus on compliance with the underlying statutory duties (and its implication that a procedural requirement to file a declaration confirming such compliance is of secondary importance) will influence the Regulator's approach to enforcing trustee duties to provide operational information in relation to dashboards compliance. Particularly when the operational information that may be required includes the number of find requests received, the matching process used, the number of actual and possible matches made and the number of view requests received.</p>
Dan	<p>An interesting development Catrin, particularly in light of the Regulator's commitment to conduct a broader review of its scheme return and supervisory returns, to rationalise and remove unnecessary burdens on schemes.</p> <p>Before we sign off, are there any other points you wanted to raise?</p>
Catrin	<p>Just something to keep an eye on for any schemes that process member data in the EU. The EU is currently reviewing the UK's Data (Use and Access) Bill to ensure that it offers an "essentially equivalent" level of protection for personal data to that provided under the EU GDPR. The Bill is currently working its way through the final stages of the Parliamentary process and is expected to become law this spring.</p> <p>If the EU decides that UK data protection law no longer offers members adequate protection, where such processing continues after 27 December this year, trustees will need to enter into new data processing contracts with any EU based processors.</p> <p>So, one not to lose sight of over this year's Christmas holiday. But, as we mentioned earlier, with the Pension Schemes Bill expected to land before we all head off on our summer break, there will be a lot for us to digest on our sun loungers before then!</p> <p>Whereas my summer reading usually involves a historical thriller written by C J Sansom or S J Parris, I know that on your holidays Dan, you love to read and re-read the latest case or piece of legislation. Where was the most extreme place you read into a pensions development whilst on holiday?</p>

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Dan	<p>Ooh that's a nice question. To date Latitudinally Sarasalka Finland Artic cross country skiing but I've booked up ski touring in Svalbard and hope to read some new regulations there.</p> <p>On that note, I think we had better bring this first episode of Pensions on Air to a close. Thanks all for joining in and listening. If you would like to hear more from me, Catrin and Karen, please do subscribe to the podcast. Our next episode will air in a month's time.</p> <p>You can subscribe to the Pensions on Air show within the Slaughter and May podcast channel on your preferred podcast platform. If you have any comments on this episode, please do leave us a review.</p>
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