

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**



**DC SCHEME GUIDANCE ON
RETIREMENT ARRANGEMENTS
AND PARTNERSHIPS**

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EVERSHEDS
SUTHERLAND



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1. HELPING MEMBERS NAVIGATE THEIR RETIREMENT

This guidance has been written for trustees and employers of **DC occupational pension schemes** by the PLSA, in partnership with Eversheds Sutherland (International) LLP and Lane Clark & Peacock. Due to the subject matter and regulation involved, it is necessarily a technical document, however, we have included a glossary and regulatory map to help contextualise the regulatory issues involved.

As pension scheme members become more reliant on their DC savings to fund their retirement, there is increasing attention and scrutiny on what pension schemes can - and should - do to support members convert their savings into an adequate and sustainable income. People's needs and requirements in retirement are a lot more complex than in accumulation; while DB schemes largely catered for this with low maintenance and low risk guaranteed incomes, choices open to DC savers are far more varied.

Few own trust **DC** pension schemes offer their own retirement solutions, leaving members to navigate the retail market to find a suitable product or to take their savings as cash. While some own trust schemes or employers provide access to paid-for financial advice at retirement which helps to facilitate access to decumulation products and services on an 'advised' basis, it is unusual for these schemes to offer decumulation solutions themselves. With a focus on **master trusts** becoming 'full service providers' of **accumulation, decumulation** and at-retirement services, and to plug the advice gap, policy-makers and regulators are encouraging **own trust pension schemes** to 'partner' with third parties (either a **master trust** or **personal pension provider**) to offer members access to a range of **decumulation** services and products – these are known as 'partnership arrangements'.



Currently, there is no clear legal framework or regulatory guidance to assist trustees and employers in setting up and navigating partnership arrangements. This document:

1. aims to help trustees and employers - particularly those who run **own trust schemes** – manage the legal, regulatory and commercial issues connected with partnership arrangements.
2. highlights areas of focus for the government and regulators to make the partnership process simpler and more accessible.

As the DC market develops and matures, we anticipate that the provision of services for retirees will improve. There may be an increase in the uptake of financial advice to assist with retirement decisions, AI may fill some of the knowledge gaps, and there is potential for default decumulation solutions to provide savers who do not want (or do not feel equipped) to make a decision with a good retirement outcome. In the short term at least, those taking advice will remain a minority, so partnership arrangements may provide the extra layer of support DC members need at retirement.

With the new Government committing to review the pensions landscape, the **FCA's** ongoing review of the advice/guidance boundary and the continued work on value for money, there is a real opportunity to improve outcomes for savers. We also expect the new Pension Schemes Bill to introduce a duty on trustees to offer a retirement solution or range of solutions, including default investment options, to their members. Given this legal and regulatory backdrop, the Government, regulators and industry stakeholders should work together to give trustees assurance and confidence to better support their members at a critical time in their retirement journey.

We have included a glossary at the back of this guidance to explain the technical terms in **bold**.



2. GOVERNMENT AND REGULATORY INITIATIVES IN PROGRESS

There are several government and regulatory initiatives in progress that seek to encourage and support trustees of DC occupational pension schemes to offer members access to a range of decumulation services, including the potential for a ‘default’ solution.

The background briefing notes for the King’s Speech (announced 17 July 2024) stated that the new Pension Schemes Bill will include provisions that:

‘require pension schemes to offer retirement products so people have a pension and not just a savings pot when they stop work by placing duties on trustees of occupational pension schemes to offer a retirement income solution or range of solutions, including default investment options, to their members. This will improve outcomes for savers and is likely to lead to more funds being invested for longer, giving the potential for investments in productive assets – boosting economic growth’.

TPR is currently considering the need for additional guidance in this area, and we are waiting for the FCA and HM Treasury to publish further guidance following the Advice Guidance Boundary Review. When considering partnership arrangements, trustees and employers should keep an eye on these developments.



FCA

- Trustees and employers can provide ‘guidance’ to pension scheme members, but they are not authorised to provide ‘advice’. There is some uncertainty over where the boundary sits between these two forms of support. The FCA proposes to address this as part of its ongoing **Advice Guidance Boundary Review**.
- We are awaiting a response to the FCA’s consultation on the Review.
- As part of the Review, we urge the FCA to consider whether trustees should be able to provide a more tailored form of guidance to bridge the gap between advice and guidance that looks and feels like (and borrows elements of) the FCA’s proposed ‘targeted support’.

DWP

- We are expecting the new Pension Schemes Bill to introduce measures that require all schemes to provide access to suitable retirement options for their members.
- However, it is unclear exactly how trustees are expected to achieve this, when the requirement will come into force, and what the communication requirements around the retirement options will be.

TPR

- The Pensions Regulator is currently considering the need for additional guidance ahead of legislation coming into force. Further clarity on this is expected in 2025.



3. EXISTING GUIDANCE LANDSCAPE FOR SCHEMES

Under current legislation there is no obligation to offer retirement services and products, but from the outset we would stress that trustees have a fiduciary duty to act in the interests of members, which includes offering good-value pension provision and facilitating better retirement outcomes.

In our view, trustees may potentially expose themselves to more risk in taking no action to support members at retirement than if they take considered and appropriate action, accounting for their scheme-specific and member-specific circumstances. We set out below a summary of the current regulatory regime and the main activities trustees need to consider.



GENERAL PROHIBITION

Trustees and employers may not carry on a **regulated activity**, or purport to do so, **by way of business in the UK** unless they are authorised by the FCA.

A **regulated activity** is an activity which:

- is a **specified activity**; and
- relates to a **specified investment**

According to TPR/FCA guidance (in the context of giving regulated advice), **carried on by way of business** means being in the business of carrying on a **regulated activity**, but only if you receive a **commercial benefit** for helping members.

According to TPR/FCA guidance, **Commercial benefit** includes receipt of commission or reduction in commercial insurance premiums.

SPECIFIED ACTIVITY

includes:

- **Arranging** (bringing about) deals in investments and making arrangements with a view to transactions in investments.
- **Advising** (which does not have to include a personal recommendation)

SPECIFIED INVESTMENT

includes:

- Rights in a personal pension scheme, e.g. a SIPP or a GPP.
 - Units in a collective investment scheme.
 - Shares.
- Rights in occupational pension schemes, including master trusts, are not specified investments.

RESOURCES FOR EMPLOYERS AND TRUSTEES

- FCA and TPR's Guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation (March 2021).
- The Pensions Ombudsman Guide on IFAs and panels (March 2021).
- FCA's guide for helping firms provide more support to customers making investment decisions (August 2023).
- HM Treasury and FCA's Advice Guidance Boundary Review - proposals for closing the advice gap (December 2023).



4. SNAPSHOT OF THE THE MAIN RISK INDICATORS

To help trustees and employers navigate partnership arrangements, we set out a ‘snapshot’ of the key considerations explored in this guidance, together with a priority rating based on the different forms of partnership arrangement, each of which we explore in more detail below.

TYPE OF PARTNERSHIP ARRANGEMENT	WHAT DOES THIS LOOK LIKE?	ARE THERE RISKS OF CARRYING OUT AN FCA REGULATED ACTIVITY?	IS MEMBER CONSENT EXPRESSLY NEEDED TO ACCESS THE PARTNERSHIP ARRANGEMENT?	COULD THE PARTNERSHIP ARRANGEMENT BE USED AS A TO-AND-THROUGH SOLUTION?	WOULD TRUSTEES' RESPONSIBILITY FOR AN INDIVIDUAL END WHEN THEY MOVE TO THE PARTNERSHIP ARRANGEMENT AT RETIREMENT?
1: PARTNERING WITH A MASTER TRUST	Trustees agree partnership arrangement with third-party master trust to offer access to decumulation services to members at retirement.	Amber	Amber	Amber	Green
2: PARTNERING WITH AN FCA AUTHORISED FIRM	Trustees agree partnership arrangement with third party to offer access to FCA-regulated products and services to members at retirement.	Amber	Red	Amber	Green
3: PROVIDING RETIREMENT OPTIONS IN-SCHEME	Trustees add alternative retirement income options to existing offerings, such as multiple UFPLS, drawdown income payments, or blended retirement solutions.	Amber	Green	Green	Red

KEY:



GREEN – low risk, straightforward to implement



AMBER – medium risk, more factors for trustees to consider or risks to mitigate



RED – current regulatory or legislative barriers

Please note that this snapshot is for illustrative purposes only. It should not be used as a substitute for taking professional advice and employers and trustees will need to consider the issues in the context of their scheme-specific circumstances.



A QUESTION OF TIMING

Most members seek to access a tax-free lump sum from their own trust scheme before they transfer funds to a third-party partnership arrangement. In our experience, this approach reflects standard industry practice. But trustees should consider the following points in relation to this approach:

- For a tax-free cash sum (known as pension commencement lump sum or PCLS) to be an authorised payment, the tax rules require that it is linked to a ‘relevant pension’ under the same registered pension scheme. A ‘relevant pension’ includes income withdrawal (e.g. flexi-access drawdown), a lifetime annuity or a scheme pension. This means a member must designate uncrystallised funds to one of these options to become entitled to a PCLS (with timing implications for payment of both the PCLS and relevant pension).
- As a result, most own trust schemes with partnership arrangements will provide drawdown ‘in-scheme’ for a limited period (even if schemes don’t make drawdown payments, members will technically need to designate funds to drawdown, in order to take their tax-free cash). The tax rules allow trustees to pay a PCLS in these circumstances (there is a statutory override), but trustees should still check their scheme rules reflect administrative practice.
- If a member takes a PCLS from an own trust scheme, they will likely need to transfer ‘drawdown pension’ (funds designated for drawdown) to access decumulation services in the partnership arrangement. Trustees should note there are specific rules governing transfer of drawdown pension, particularly in relation to partial transfers.
- Alternatively, a member could transfer their uncrystallised funds to the partnership arrangement before they take their tax-free cash. Trustees will need to consider which approach best aligns with their scheme, taking into account member expectations, retirement trends and the structure of their existing or prospective partnership arrangement.



5. ARRANGEMENT 1: PARTNERING WITH A MASTER TRUST TO OFFER DECUMULATION SERVICES TO MEMBERS

- Master trusts are able to offer solutions which own trust trustees and their employers cannot or do not wish to due to their scale and commercial drivers.
- Trustees agree partnership arrangement with a third-party master trust to offer decumulation services to members at retirement.
- Trustees need to be satisfied that the decumulation services are suitable and appropriate for their members.
- Trustees' liability will differ depending on the level of support/guidance they provide to members.
- Trustees or employers might be able to secure preferential rates with master trust for their members.
- Involves transfer out of the '**own trust**' scheme and into the **master trust**, either on a bulk or individual basis.



KEY CONSIDERATIONS	WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT
<p>FCA implications: regulated activities</p>	<p>As a general rule, where trustees provide factual information or guidance relating to decumulation services offered by a third-party master trust, trustees will not be undertaking regulated activities that are prohibited by the FCA.</p> <p>For example, providing information on the decumulation services offered by the master trust should not come under the FCA’s restrictions on regulated activities: (i) promoting financial products; or (ii) advising; or (iii) arranging deals in investments because rights in occupational pension schemes (like master trusts) are not specified investments and trustees are permitted to provide guidance (although, they cannot provide advice).</p> <p>However, trustees will need to ensure they do not undertake any of these regulated activities in relation to specified investments provided through the master trust. For example, by suggesting members choose a particular investment strategy or fund within the master trust.</p> <p>Trustees may wish to provide members with guidance in relation to their decumulation options. For example, via tools or modellers offered by the master trust, which take into account certain factors, e.g. other savings, expenditure, retirement age.</p> <p>While any ‘recommendation’ based on this information would be classed as advice, it remains unclear whether trustees can make nudges based on limited information about what people in similar circumstances typically do – we would encourage the FCA to clarify whether trustees can provide this level of support without breaching the advice/guidance boundary. The approach would be similar to the FCA’s ‘targeted support’ proposal (as set out in its consultation paper on the advice/guidance boundary). We support the FCA providing further clarification on this issue.</p>
<p>Transfer and platform/administrator considerations</p>	<p>If the destination master trust operates on the same platform as the transferring scheme, it is likely that the partnership arrangement can be provided as a ‘to-and-through’ solution with continuity of investments and no need for disinvestment. If not, there is potential out-of-market risk and likely transition costs unless in-specie/re-registration transfers are possible. Trustees will also need to ensure that a change of platform provider at the point members move to the master trust can be facilitated in a cost-effective and efficient way; we expect this would only be practical to implement for a small number of schemes.</p>
<p>Support for members</p>	<p>Trustees need to consider carefully how they communicate the partnership arrangement to members, in order to stay on the right side of the advice/guidance boundary and the FCA’s regulatory perimeter. Currently, there is a risk of the FCA imposing penalties (including criminal sanctions) if trustees get it wrong, which means they (understandably) err on the side of caution regarding member guidance. This can result in members taking retirement decisions without the support they might want or need.</p> <p>The advice/guidance boundary in the context of decumulation should be a key focus for the new government and regulators. Trustees need clear regulatory guidance (driven by the FCA (it is the FCA who has power to impose sanctions)) on the level of support and tailored guidance they can provide to members. This would encourage trustees to provide more information on the options available to members, consider the use of retirement tools and modellers, and inform members about their retirement planning in a more holistic, meaningful and tailored way.</p>



KEY CONSIDERATIONS

WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT

Trustee duties

Trustees' fiduciary duties require them to take decisions that are in the interests of their membership as a whole. Therefore, they need to be mindful of this duty when offering access to, and guidance on, a specific master trust - the specific master trust may not meet members' needs and requirements. This risk is increased by the fact that trustees will not be aware of what other retirement savings and retirement provision their members have, or of their wider personal circumstances, for example health and whether they have financial dependants. However, trustees can seek to mitigate this risk with clear communications.

Trustees should take steps to ensure that they obtain an appropriate discharge so that their duty to members will end when the member transfers to the master trust and that, after transfer, the master trust will be responsible for the relevant transferring members. Trustees should also consider regular reviews of the master trust to ensure that it remains a suitable solution for their members, and represents value for money (noting the proposed introduction of the new value for money framework).

CASE STUDY

The trustees of the HSBC Bank (UK) Pension Scheme worked on designing and implementing a signpost to a post-retirement solution for Scheme members who wanted to drawdown their DC savings in retirement. Data analysis showed most members with larger pots were transferring out to external retail products with higher costs, to access their savings flexibly (i.e. to facilitate access to tax free cash or drawdown their pot). The trustees' objective was to improve the outcomes members experience when accessing their pot by ensuring an appropriate range of investment options are available at a competitive ongoing price. Consequently the trustees issued a competitive tender to work with a master trust in retirement.

- **Based on a typical member's DC pot size in the scheme, members could face fees of up to £689 pa in a retail product, however this has been reduced to £32 pa within the master trust, an incredible 95% fee reduction.** This compares the default options available at high-cost retail products members have generally selected in the past to the default investment option available within the post-retirement master trust.
- The trustees have also made the member journey into the retirement master trust as simple as possible for members. They created educational videos on the different ways that members can access their pots and tailored retirement seminars which cover the variety of options members can take at retirement including the master trust option. Once members have actively chosen to move into the master trust, they then use a bespoke application process which includes a simplified application form to ensure members didn't have to complete information twice for leaving the scheme and joining the master trust.

The offering was launched to members in October 2022 and since then it has become a great success - it is the most popular receiving arrangement for members looking to retire flexibly.



6. ARRANGEMENT 2: PARTNERING WITH AN FCA-REGULATED PROVIDER TO OFFER DECUMULATION SERVICES TO MEMBERS

- Trustees agree partnership arrangement with third-party to offer FCA-regulated products and services to members at retirement; some trustees of ‘own trust’ schemes and employers will already have such arrangements in place.
- Trustees need to be satisfied that the decumulation services and products are suitable for their members (and the type of FCA-regulated service/product).
- Trustees’ liability may differ depending on the level of support they provide to members.
- Trustees might be able to secure preferential rates with the third party for their members, or employers may agree to meet some or all of the costs.
- Involves transfer out of the pension scheme and into the partner’s pension arrangement (for example a **SIPP** or **GPP**).



KEY CONSIDERATIONS	WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT
<p>FCA implications: regulated activities</p>	<p>If trustees' chosen decumulation option for their members is an FCA-regulated product or proposition (e.g. consisting of one or more drawdown, annuity or other insured products), trustees need to be mindful of the risk of carrying out several regulated activities: (i) advising on investments (e.g. acquiring rights in a personal pension scheme); (ii) 'arranging' deals in investments; (iii) financial promotions; or (iv) making arrangements with a view to transactions in investments.</p> <p>Please see the summary of regulated activities for more detail. If trustees carry out regulated activities by way of business and receive a commercial benefit, there is risk of them breaching the FCA's rules. While existing FCA guidance on what constitutes a 'commercial benefit' lacks detail, current guidance says it might take the form of reduced fees payable from the trustees to the third party or the employer agreeing to subsidise fees payable by trustees for this service. We call on the FCA to provide greater clarity on what would constitute commercial benefit in the context of a partnership arrangement.</p> <p>Additionally, if trustees provide any form of recommendation for the member to choose a particular pension product or service, this may constitute financial advice, which trustees are not authorised to provide. Trustees are also at risk of straying into the territory of regulated advice if they signpost to drawdown tools on an FCA-regulated firm's website (rather than sources of independent information) or encourage members to access the decumulation services on offer. The FCA has confirmed that signposting on a purely factual basis will not constitute advice. Given these issues can be finely balanced, trustees need to consider the support they provide to members carefully.</p> <p>The FCA says that trustees can provide guidance on options 'under the scheme'. However, it is unclear whether this would limit the guidance they could provide on an FCA-regulated product under the partnership arrangement, which would not technically be provided 'under the scheme' (as retirement benefits would be provided under the partner's pension arrangement).</p> <p>We consider it is critical that the FCA and TPR work together and collaborate to provide more clarity on these issues for trustees.</p>
<p>Transfer and platform/administrator considerations</p>	<p>If the destination product provider operates on the same platform as the transferring scheme, this can be a 'to-and-through' solution with continuity of investments, however, this is unlikely given the different product structures involved. If not, there is potential out-of-market risk and likely transition costs unless an in-specie/re-registration transfer is possible.</p> <p>There is currently no statutory power available to trustees that permits them to transfer members to a personal pension scheme (such as a Group SIPP or a GPP) without their consent. The government should consider introducing a statutory discharge for trustees in these circumstances as part of its measures on decumulation solutions in the new Pension Schemes Bill.</p>



KEY CONSIDERATIONS

WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT

Support for members

Where members are given limited guidance beyond factual information, they may not have the support they need to make the key decisions, which includes carrying out the administration and paperwork themselves to complete the transfer. Where possible, schemes will want to improve this member experience, within the bounds of the **advice/guidance boundary**, as described below.

The advice/guidance boundary presents problems for this type of partnership arrangements because rights in **personal pension schemes** (like a **SIPP** or **GPP**) are 'specified investments' for regulatory purposes. The advice/guidance boundary in the context of **decumulation** should be a key focus for the new Government, TPR and the FCA. Trustees need clear regulatory guidance (driven by the FCA) on the level of support and tailored guidance they can provide to members without breaching the FCA's rules. This would encourage trustees to provide more information on the available options to members, consider the use of retirement tools and modellers, and inform members about their retirement planning in a more holistic, meaningful and tailored way.

Trustee duties

Trustees' duties require them to take decisions that are in the interests of their membership as a whole. Trustees need to be mindful of this when offering access to, and guidance on, a specific product or provider; the specific product or provider may not meet members' needs and requirements. This risk is increased by the fact that trustees will not be aware of what other retirement savings and retirement provision their members have, or of their wider personal circumstances, e.g. health and whether they have financial dependants. However, trustees can seek to mitigate this risk with clear communications.

Trustees should take steps to ensure that their duty to members will end when the member transfers to the third-party partnership arrangement and that, after transfer, the partner arrangement will be responsible for the relevant transferring members. Trustees should also consider regular reviews of the arrangement to ensure that it remains a suitable solution for their members, and represents value for money (noting the proposed introduction of the new value for money framework).



7. ARRANGEMENT 3: OWN TRUST SCHEME OR MASTER TRUST OFFERS IN-SCHEME DECUMULATION SERVICES

- Trustees add alternative retirement income options to existing offerings, such as multiple UFPLS, flexi-access drawdown or blended retirement solution combining several different products.
- Trustees need to be satisfied that the range of decumulation offerings are suitable for their members.
- Trustees' liability continues given members remain part of the scheme while taking benefits.
- Arrangement does not involve a transfer-out of benefits.



KEY CONSIDERATIONS

WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT

FCA implications: regulated activities

This model, where members do not have to transfer out of the scheme, appears to be the Government's preferred one. However, many own trust schemes may not wish to implement this model because of the additional cost, governance and administrative complexities and employers may not wish to extend the lifetime of the scheme beyond retirement for members who they no longer employ.

Under this arrangement, members remain invested within the same trust-based scheme and trustees retain responsibility for how funds are invested.

If trustees provide factual information or guidance to members who remain in the scheme only, there is low risk of breaching the **advice/guidance boundary**. However, if trustees steer members towards a particular investment option or suggest that a particular solution would be suitable for their needs, this may introduce potential liability for breaching the FCA's rules, as most trustees are not authorised to provide financial advice. While the FCA has confirmed that trustees and employers can provide information on the merits of participating in an occupational pension scheme, it is unclear whether this extends to commenting on the merits of specific retirement solutions. If trustees of a commercial master trust provide any nudge/steer to members, they would be at risk of greater challenge because of the lack of clarity over what constitutes a commercial benefit as well as the suggestion from the FCA that master trusts are more akin to a financial services product, particularly those operated by an FCA-regulated provider. There is even greater uncertainty and potential risk where a master trust provides access to a retirement solution that includes FCA-regulated products (for example, a type of annuity to provide a guaranteed income at specific stages of retirement).

Further joint-regulatory clarity from the FCA and TPR over these issues for commercial master trusts would therefore be of great use to trustees.

Transfer and platform/administrator considerations

As members' benefits remain in-scheme, there is continuity of platform provider, making it more straightforward to adopt genuine **to-and-through** retirement investment strategies (although most strategies will need to evolve to be appropriate for this purpose).

There could be other platform complexities for true **to-and-through** solutions, depending on retirement trends and how many members are taking flexi-access drawdown in-scheme (for example, if under 50% of members access drawdown, the scheme needs to hold more liquidity and de-risk to mitigate members making retirement decisions that do not reflect the accumulation strategy).

Member considerations

Members are with the same scheme in accumulation and decumulation, so they receive consistent communications and experience throughout.

There remains an open question over the extent to which members should be encouraged to shop around to make sure they choose the best deal/solution for them.



KEY CONSIDERATIONS

WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT

Trustee duties

While the Government proposes to require trustees to offer access to decumulation services, trustees' duties prevent them from guiding individual members down a particular route – the fiduciary duty is to act for the interests of members as a whole and for the generality of members. So long as any decumulation services (and potential default solution) are well designed, suitable based on membership profile and kept under regular review, it is likely trustees will be able to sufficiently mitigate the risk of poor outcomes for individual members due to unsuitable product selection.

Further guidance from the DWP and TPR in terms of risk warnings, their expectations of how trustees should select and design their scheme's decumulation options and the guidance they should be providing to members in relation to them would be helpful. There may also be additional complexities where the chosen solution is drawdown, where 'income' is treated as a 'benefit', triggering limits on transfers and future contributions.

Unlike Arrangements 1 and 2, trustees would retain the legal responsibility for members throughout their retirement where a member remains in the in-scheme solution.

Employer considerations

In the current market, in-scheme arrangements that offer full flexibility of retirement options can come at considerable cost and be complex to implement. In many cases members will meet the costs from their annual management charges, in others the employer meets the administration costs. An in-scheme solution also means the scheme will retain the risk/liability for members through retirement, whereas this can be transferred to a third party through the partnership arrangements detailed in Arrangements 1 and 2.





8. CONSIDERATIONS FOR DEFAULT DECUMULATION SERVICES UNDER THE GOVERNMENT'S PROPOSALS

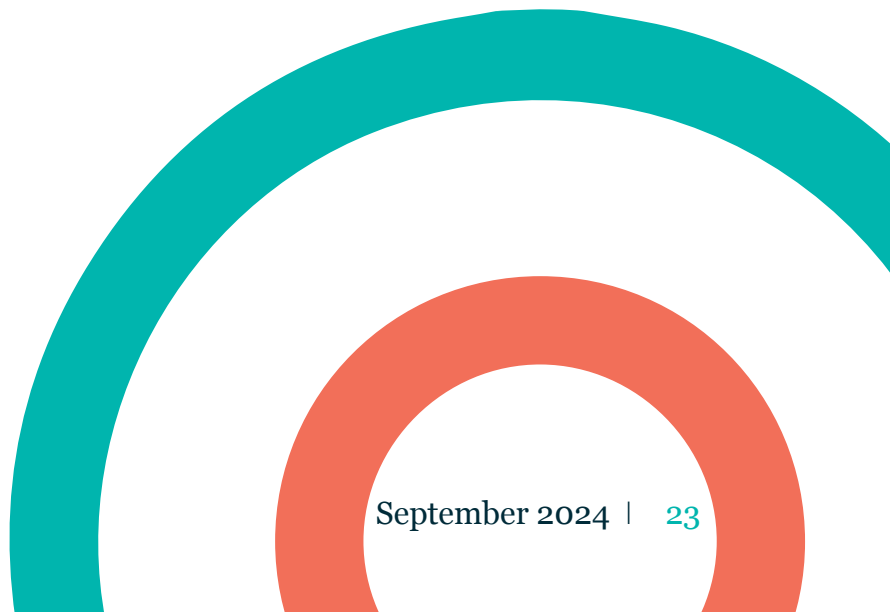
- Under the Government's proposals, schemes will have to offer a **default solution** to members at retirement, providing an automatic income solution. This default will be triggered when a member accesses their pot (e.g. takes some tax-free cash) but makes no decision over what to do with the remainder. Members may opt out of the **default solution** if they wish to access their savings differently.
- The **default solution** might be offered under any of the three arrangements above, though in the case of an own trust scheme the default is likely to involve a member transferring to a third party (Arrangement 1 or Arrangement 2), while master trusts will likely directly transition members into one of the master trust's own retirement solutions (Arrangement 3).



KEY CONSIDERATIONS	WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT
<p>FCA implications: regulated activities</p>	<p>The FCA’s and HM Treasury’s Advice Guidance Boundary Review says the boundary is not relevant where trustees provide a default solution in an occupational pension scheme. But trustees would need to communicate the default solution very carefully with members over a multi-decade period to educate and inform them about the default retirement solution (and the right to opt out), in order to mitigate the risk of complaints and to satisfy their fiduciary duties to members. In addition, the default solution may have FCA-regulated products as part of the proposition and there may be additional services (e.g. financial advice) built into the solution. So, trustees may need to carefully consider the FCA’s rules on regulated activities, depending on the type and scope of their default solution.</p> <p>It remains unclear whether a transfer without consent to a default solution with an FCA-regulated provider would breach the FCA’s rules on regulated activities. If the third party was an FCA-authorized provider, trustees would be arranging - but not ultimately managing - those investments. There is also a question of whether trustees would be doing so in the course of business, which would be necessary for the FCA rules on arranging investments to apply.</p>
<p>Transfer and platform/administrator considerations</p>	<p>Continuity of investments (to and through retirement) would be possible where a scheme offers its own in-scheme default solution and in some cases, where bespoke retirement solutions are established.</p> <p>If trustees implement a default solution through a partnership arrangement, however, a (bulk) transfer without consent would be required to move members’ savings to the third party. There are two potential issues with this:</p> <ul style="list-style-type: none"> • Current bulk transfer rules are designed for accumulation not decumulation, i.e. benefits are not in part payment. There is a statutory framework for trustees to bulk transfer members’ ‘benefits’, but this only applies where certain conditions are met, including (a) the transferring scheme rules allow bulk transfers without consent in this context; (b) the receiving scheme is an occupational pension scheme (and an authorised master trust to avoid the need for the trustees to take investment advice); and (c) the member is deferred (i.e. not an active member). There would need to be mirror transfer rules for transfers to personal pension schemes to ensure trustees would obtain a statutory discharge if they were partnering with an FCA-authorized firm. The bulk transfer rules should be supported by a staged communication strategy in the 10+ years before the transition point to inform members what will happen if they don’t make a choice. • The DWP’s proposed default solution is only triggered when a member accesses their pot (although it is unclear whether the new Government will continue this approach). For a bulk transfer, as above, trustees need certainty over when and how many members will be transferring (in practice this would need to be at a pre-determined transition point, e.g. retirement age or the target date in relation to target date funds), which would not be possible where trustees are reliant on members deciding when to access their benefits.



KEY CONSIDERATIONS	WHAT TRUSTEES NEED TO TAKE INTO ACCOUNT
Trustee duties	<p>Trustees' duties require them to take decisions that are in the interests of their membership as a whole. Trustees need to be mindful of this when guiding/directing specific members or cohorts of member towards a specific product or provider as part of the scheme's retirement solution. In practice, we expect trustees to offer multiple default solutions to reflect the specific cohorts of member, which should mitigate this issue.</p> <p>However, trustees will still need to communicate clearly to members as part of a consistent and multi-decade communication strategy and seek to collate more granular information on their members' wider retirement savings, personal circumstances and financial planning to design and implement sufficient and appropriate solutions (or offer access to sufficient solutions outside their scheme).</p> <p>For default solutions, trustees will need to consider whether the solution(s) will be provided on a member opt-in or opt-out basis (i.e. whether positive or passive agreement from members will be required) and if an opt-out basis, they will need to give members sufficient time and opportunity to make their decision.</p> <p>Please note this is a summary of trustee duties as they currently stand. The proposed statutory duty may frame trustee duties differently to align with the new requirements.</p>
Member considerations	<p>Members benefit from a seamless transition into a retirement solution which trustees have selected to suit the generality of that scheme's membership (in all likelihood based on specific cohorts of member). Schemes will need to consider the extent to which their communications encourage members to shop around and review their options, prior to defaulting them.</p>





9. CALL TO ACTION FOR GOVERNMENT & REGULATORS

FCA

- As highlighted in relation to Arrangement 2, there is a danger of regulatory arbitrage, which could lead to schemes choosing to partner with retirement master trusts rather than with FCA contract-based providers, because of a perception that there is less risk around the FCA's **regulated activities** where schemes partner with a master trust. This risks either a reduction in the innovation emerging from the contract-based market; or scheme members not being given access to innovation in the contract-based market.
- The FCA needs to clarify how far trustees can go in providing tailored guidance and nudges (adopting elements of the FCA's targeted support proposals) on retirement options offered within their own scheme. This could take the form of an express carve out where there is no commercial benefit for trustees (and clarity on what exactly a commercial benefit is), or an exemption for certain, limited information being taken into account – similar to the FCA's **targeted support** proposals. While unlikely to be a common problem for own trust schemes, this is highly relevant for commercial master trusts, especially those operated by FCA-regulated firms.
- The proposals within the Advice Guidance Boundary Review states 'where trustees are only considering the support they can provide about the options available to members solely under their scheme, the advising on investment boundary is not relevant'. Given most own trust schemes will partner with a third-party provider (with appropriate governance and due diligence), it would be helpful for the FCA to make clear whether that is included in the 'under their scheme' provision. Third-party providers need the clarity and confidence to provide this simplified support – which will be different to how they have historically addressed compliance issues.

DWP/TPR

- For trustees to have confidence of where their liability sits in relation to a partnership arrangement, the statutory framework needs to confirm when the trustees' legal responsibility ends and provide a statutory discharge, subject to trustees' implementing and reviewing the suitability of the retirement provision and partnership arrangement.

- More information is also needed as to the approach of the Pensions Ombudsman and Financial Ombudsman Service with regard to decumulation solution liability. This will be particularly important for the DWP's proposed **default solution** where member consent may not be obtained.
- Current rules lack a mechanism through which to bulk transfer members without their consent to a **personal pension scheme**, which may prevent pension schemes from being able to partner with an FCA-regulated firm (as seen in Arrangement 2 described above).
- More guidance from DWP and TPR on the communications, guidance and risk warnings around decumulation solutions is needed, in order to establish how tailored schemes' messages can and should be.

Both regulators need to help employers, trustees and providers by providing this urgent simplification and clarification. Many members of DC schemes lack the knowledge to take the complex decisions facing them, and those trying to help them face a mountain of regulation, compliance and lack of clarity which, combined, currently does not promote good member outcomes.

10. GLOSSARY

TERM	MEANING
Accumulation	The period where pension scheme members are building up their pension savings, before they reach the decumulation/retirement phase
Advice	Financial advice. Providing personalised financial advice on pension savings is an activity that is regulated by the FCA. There is some uncertainty over what constitutes “advice” in different circumstances
Advice Guidance Boundary Review	DP23/5: Advice Guidance Boundary Review – proposals for closing the advice gap FCA
DC pension scheme	A pension scheme that provides defined contribution, otherwise known as money purchase benefits
Decumulation	The retirement phase of a pension scheme member’s journey
Default decumulation solution	A retirement solution, which is provided to members of a pension scheme if they do not make an active choice and select an alternative retirement option
DWP	Department for Work and Pensions
FCA	Financial Conduct Authority
Fiduciary duty	The duty of scheme trustees to act in the best interests of their members
GPP	Group personal pension
Guidance	Generic information (not personalised, financial advice)
In-specie/re-registration transfer	Transferring assets between pension schemes or re-registering the ownership of the member’s units in the new pension scheme (without cashing-in the asset or redeeming the existing units)
Master trust	Master trust pension scheme, which is authorised by TPR
Occupational pension scheme	A trust-based, workplace pension scheme, including an own trust scheme and a master trust
Regulated activities	Specific financial services activities and operations that can only be undertaken by firms that are authorised by the FCA and that have the appropriate permissions. These activities are defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. For example, arranging deals in investments and providing advice on investments.
SIPP	Self-invested personal pension
To-and-through	A seamless transition from accumulation to decumulation where assets remain invested
TPR	The Pensions Regulator

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