



THE SOCIETY OF PENSION  
PROFESSIONALS  
*making pensions work*

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Department for Work and Pensions

1 September 2021

Dear Consulting Team

### **SPP Response to consultation on Stronger Nudge to pensions guidance**

We welcome the opportunity to respond to this consultation.

#### **Executive Summary**

Key points from our response include the following:

- We have concerns that the requirement to take guidance (or opt out), especially (but not only) for small pots, may be seen by pension savers as a nuisance rather than helpful and that it will delay transfers, especially if Pension Wise is unable to give guidance very quickly. Guidance quality levels may also be affected by recruitment difficulties. The effect may be to adversely affect confidence in the pensions industry and so in pension saving generally.
- We were surprised by the degree of difference between the DWP's and the FCA's proposed approaches. We do not see any policy reason for there to be differences. Differences may cause confusion to individuals who have more than one type of pension and will create additional expense for those firms who administer both trust-based and contract-based arrangements. The FCA's proposed approach appears to us to be more suitable in several respects, outlined below, to the wide range of scenarios in which the nudge may be triggered. Time is of the essence as regards the need for providers to prepare. Final regulations are therefore needed urgently, or with delayed commencement, especially if the rules are to differ for trust- and contract-based schemes.
- It is important that there is flexibility as to when schemes give the nudge. This should not have to be after an application is received, by which time the member's mind will very often already be made up. The draft regulations require that it is given after an application is made even if it has been given before that.
- Flexibility is needed on the approach to assisting individuals with booking appointments. Otherwise, there will in many cases be a lot of work and expense for no benefit.
- Serious ill health lump sums should be outside of the requirements altogether, to help ensure that these urgent benefits for people with very short life expectancies can be paid as quickly as possible.
- We think that there is no statutory authority for the regulations to cover transfers of pension credit benefits. In any event, we do not consider it appropriate that these benefits are included.

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## **Detailed Response**

### **Question 1**

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

We are concerned that the nudge will come in most cases after the individual has already decided what they wish to do – that is the point at which they make an application. Schemes and providers may then appear obstructive, rather than helpful, when applying the nudge.

We note that the policy intention is that schemes may be able to give the nudge before the individual has made their decision. The effect of the draft regulations would appear, however, to be that they then need to give it again after the application is made.

Many transfers are made under the Origo transfer system. Here, the individual makes the transfer request to the receiving scheme and very often has no communication with the transferring scheme. It could be argued, in those cases, that the requirements are not triggered because there is no communication from the beneficiary to the transferring scheme. We note that the FCA's proposed corresponding requirements apply to whichever scheme is contacted first, presumably for this reason.

### **Question 2**

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

We do not think that having trustees/managers operating as booking agents is at all helpful. For example, they will not know what date or time is convenient to the individual, or what kind of guidance suits, and there may be a lot of time-consuming (and so expensive) to-ing and fro-ing that can be avoided by simply giving the individual a web link and phone number so that they can make the booking themselves. If more than this is to be required then perhaps it should be an obligation to offer assistance with the booking, rather than offering to make the booking.

The burden and cost on schemes would be exacerbated if trustees/managers were expected to rearrange appointments if the member subsequently found it inconvenient (we understand that appointments available from Pension Wise are often some time in the future from booking) or had missed the appointment.

### **Question 3**

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

We understand the policy here but we do not think that the draft regulations work as intended. They prohibit the opt-out "during the ensuing interaction". We cannot see that a separate communication falls outside of that. It might be easier to say how the opt-out can be communicated, rather than how it cannot.

This is not a requirement under the FCA's proposals for contract-based schemes. Organisations who administer both occupational and personal pensions will incur additional costs if the regimes are different. It will also take longer to prepare. In any event, we see no reason why they should be different. Individuals with more than one kind of pension may also find different approaches confusing.

#### Question 4

**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?**

Regarding commencement of benefits and non-statutory transfers, trustees/managers will face an unfortunate conflict between the legislative prohibitions and a scheme rule / trust law obligation to provide the benefits or pay the transfer. In other words, there is nothing in the draft regulations to disapply those trustee obligations, in a way that there is for statutory transfer obligations. If the statute allows, clearer language in the regulations could help to resolve these issues.

#### Question 5

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

We think that applications for serious ill-health lump sums (SIHLS) should be exempted from these requirements altogether, not just exempted from the requirement for an opt-out to be in a separate interaction. Individuals seeking a SIHLS are by definition in serious ill-health. They have short life expectancy and other priorities in the short time they have left. The proposals here therefore involve a high risk of many people who are in an awful situation missing out on their desired benefit. We think these people should have their lives made easier.

We think there should also be an exemption from the nudge requirement for transfers from an occupational pension scheme to a personal pension for the purposes of consolidation. This is not currently to be exempted, for reasons we do not know, whereas transfers between occupational pension schemes for that purpose are.

As regards reasons for transferring, only consolidation transfers are exempted from the nudge requirement but perhaps it would be better to say when the nudge requirement applies, rather than when it does not (i.e., it applies when the transfer is for the purpose of accessing benefits). We can think of one example of a situation where the nudge will be needed but would not seem to be needed: if a beneficiary is transferring from a high-charging scheme to a low-charging scheme, wholly or in part in order to benefit from those lower scheme charges, there is no exemption and the nudge would need to be applied. There may be other examples. The FCA's corresponding proposals take, we think, a better approach. They specify when the nudge requirement applies, rather than when it does not. Under the FCA's proposals, it applies when the individual applies to access benefits using a decumulation product, or to transfer for that purpose. Providers may assume that this is the purpose if the person is age 50 or over. This excludes consolidation transfers from the requirement without the need to say so and also excludes other transfers where the nudge does not seem to be needed, such as the example we have given above.

Any exemption for consolidation should apply based on trustees'/managers' understanding of the reason for the transfer rather than the actual reason, which trustees/managers often cannot know. Trustees/managers should be able to rely on the reason they are given, in the absence of manifest falsehood.

Organisations that administer both occupational and personal pensions will incur additional costs if the regimes are different, as is currently proposed. In any event, we see no reason why they should be different.

#### Question 6

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

If there is no such exemption, affected individuals will certainly consider the nudge regime excessive. An exemption for small pots would be consistent with the DWP policy of helping to reduce the number of such accounts. In our experience, individuals with small pots often will have

limited options available if they are unable to consolidate their pot with another one as drawdown and annuity purchase options may not be open to them.

In particular an exemption for “small” pots arising from additional voluntary contributions in a predominantly defined benefit scheme should be considered. Here “small” could relate to the size of the AVC fund relative to the DB benefit, rather than absolute value.

In these circumstances, there is often interaction between the DB and AVC benefits (for example the AVC fund may be used to fund all or part of the pension commencement lump sum instead of commuting the DB benefit). Imposing a requirement to seek Pension Wise guidance in these circumstances could either result in a member being unable to access DB benefits pending the guidance or could mean the member having to take DB benefits in isolation which may not be the best choice for them. In any event, the guidance is only helpful in these circumstances if it considers the interaction between DB and DC benefits.

#### **Question 7**

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

Please see our answer to question 5. In short, we do not think applications for serious ill health lump sums should be within these requirements at all.

#### **Question 8**

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

In order to comply with the proposed regulations, we expect trustees, administrators and scheme managers would want to keep records to evidence whether or not guidance had been taken or an opt out made before settlement of the requested transaction. This would allow them to self-certify or self-audit (or support external audit) that they are complying with the regulations. As such we are a little unsure why it is necessary to mandate record keeping requirements in the way that has been done – it would be better to simply require schemes to maintain records as evidence.

If the intention is that pension schemes will be required to report information on take up of guidance or opt out rates to DWP, the Pensions Regulator or some other authority then it would make more sense to set out the reporting requirements and allow schemes to develop record keeping practices that support that reporting.

#### **Question 9**

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

The approach here is to leave it to schemes to work out what best to do. We think, however, that this is the best way of proceeding, if the Government is not minded to switch off or amend either requirement in these circumstances.

We note, however, that members are unlikely to understand why they should have to take different guidance from two different sources in respect of the same transfer. They may find it very frustrating. There is already a misplaced perception that schemes seek to obstruct transfers and this will not help.

### Question 10

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

No comment.

### Question 11

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

It appears to us that the second part of this regulation (i.e. regulation 2(3), regarding pension credit benefits) is not within the amendments permitted by the statute. The amendments to statute in the first part (i.e. regulation 2(2), regarding member transfers) are permitted by section 153(1) Pension Schemes Act 1993 because the section being amended (section 99) is in Chapter 1 of Part 4ZA. But the amendments in the second part are to a section in Part IVA (section 101J) and we cannot see that there is any statutory authority for regulations to amend that part of the statute.

In any event, we do not think that pension credit benefit transfers should be subject to the nudge requirement. Many schemes require the transfer out of pension credit benefit, i.e., they decline to hold a scheme benefit for members' ex-spouses/civil partners, which they are entitled to do. To include such transfers in this regime would stop them from being able to do that.

### Question 12

**What do you anticipate will be the one-off 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 an organisation, the SPP does not provide pension administration services. We therefore are unable to comment directly on the impacts and costs that will be incurred by those that do.

We expect that member firms who do provide such services would have to invest significantly in amendments to processes, systems, documentation, online services and staff training in order to implement these proposed regulations in a very short timescale.

Any administrators who deal with both FCA-regulated and non-FCA-regulated schemes would incur greater costs if the two regimes are not aligned. It will also take longer to prepare. Especially if the requirements are to differ, either the regulations and FCA rules need to be finalised urgently or there needs to be a delay in commencing them.

### Question 13

**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 an organisation, the SPP does not provide pension administration services. We therefore are unable to comment directly on the impacts and costs that will be incurred by those that do.

Once the regulations were in place we anticipate that the costs and impacts would be centred around additional work required in arranging guidance appointments for members, in dealing with evidence that guidance had been taken and opt out declarations and in dealing with complaints from dissatisfied scheme members who feel the requirement for guidance is obstructing them in accessing their savings.

#### **Question 14**

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

This will vary widely. Undoubtedly some members will bear additional costs.

#### **Question 15**

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

Not applicable to the SPP.

#### **Question 16**

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

We have concerns that these proposals will lead to a poor member experience when transferring or claiming benefits. We anticipate the proposals will result in real time delays in members transferring their benefits between schemes and having their retirement benefits settled. This will result in frustrated and upset members who perceive that their pension scheme, and the pensions industry in general, is putting obstacles in the way of them doing what they want with their pension pot. This could potentially create an environment for scammers to offer help to vulnerable members in getting round the perceived obstacles.

Using pension schemes to nudge individuals towards Pension Wise guidance can only ever be part of the solution. For Pension Wise to be successful, it needs awareness and trust among the general population. That will not be achieved by forcing people to engage before they can get their pension. For the nudge to succeed, there needs to be greater publicity and more awareness campaigns.

There is a risk that member frustration from the experience may have the opposite policy effect to that intended.

#### **Question 17**

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

Yes, we do. We have concerns that the policy intent will not be achieved, indeed an opposite effect to the intent is possible, and it is important to have a review to assess that.

The SPP does not have access to information about how much implementation and ongoing costs would amount to for those affected. Spreading £5 million of costs amongst the schemes/providers/administrators affected by this would be spreading it very thinly, as we do not doubt that costs will be substantial. We also anticipate there may need to be higher levies in order to fund the significant increase in Pension Wise's activities. We therefore expect that legislation does require a statutory review provision.

#### **Question 18**

**Do you consider the proposed regulations achieve the policy intent?**

Please see our answer to question 1. We think the nudge will come too late in very many cases and that individuals may think that schemes are being obstructive.

We have concerns about the potential for a sudden increase in capacity at Pension Wise – many additional qualified advisers would seem to be needed. If appointments cannot be made at very short notice, the beneficiary can be expected to opt out. Quality of advice could also be affected if enough good candidates cannot be secured. The Pension Wise brand reputation (and those of associated brands) could then suffer.

As noted in our response to question 11, it appears to us that the second part of regulation 2 is not within the amendments permitted by the statute and cannot be introduced.

As noted in our response to question 5, the exemption for transfers made for the purposes of consolidation only covers transfers between occupational pension schemes and not transfers from occupational pension schemes to personal pensions. We do not see that this accords with the policy intent. We also comment there that we think that the FCA's different proposed approach accords better with the policy intent, in describing what applications are subject to the nudge requirement rather than what is not.

Pension Wise guidance includes substantial online guidance. We are not clear about the extent to which the requirements can be, or are intended to be, satisfied by a beneficiary reading that and choosing not to avail themselves of the face-to-face guidance option.

### **Question 19**

#### **Do you foresee any unintended consequences in our proposed approach?**

There is a risk of a loss of confidence in the pensions industry if schemes are seen as obstructive where individuals have already decided what they wish to do.

If a beneficiary tells trustees/managers that a transfer is for the purposes of consolidation but in fact it is not, the trustees/managers are in breach of the legislation and receive no statutory discharge when they make the transfer on that understanding. That seems inappropriate. Trustees/managers should be able to rely on what the individual tells them, in the absence of manifest falsehood.

Other new regulatory requirements are to be introduced in or before April 2022. There may be a 'capacity crunch' for administrators having to make a raft of changes at the same time. The member experience may be adversely affected.

As noted in our response to question 4, regarding commencement of benefits and non-statutory transfers, trustees/managers will face an unfortunate conflict between the legislative prohibitions and a scheme rule / trust law obligation, which is not switched off, to provide the benefits or pay the transfer.

We mentioned in response to Question 18 concerns about capacity at Pension Wise. If there is a lack of capacity this could have the effect of causing lack of availability of appointments for individuals who want to avail themselves of Pension Wise Guidance in preparation for their forthcoming retirement but are not currently being nudged towards it.

It seems likely that the significant expansion of Pension Wise's activities will result in higher levies. It would be helpful if information about this can be provided. This should also be included in any assessment of the cost to the industry.

## Question 20

**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?**

Please see our answer to question 5: we are concerned about the position of individuals with very short life expectancy urgently looking to be paid a serious ill-health lump sum. Their applications should not be subject to any pause.

The possibility of unlawful age discrimination needs to be considered, in that different rules are proposed for those below and above age 50.

***Response ends***

Yours faithfully

**Fred Emden**  
Chief Executive, SPP

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