Managing the Legal Risks of Pensions Dashboards

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The dashboards regime will introduce new legal duties for pension schemes, and transform some existing responsibilities. Our experience suggests that there has been a lot of focus within the industry on the new operational challenges dashboards will bring, notably around data digitisation, automation and system setup. However, there is also a much broader perspective beyond this: a set of more longstanding legal issues that are equally important to bear in mind. In this article we will explore some of these bigger picture risks, including outsourcing, data and communications risks, data protection and cyber security.
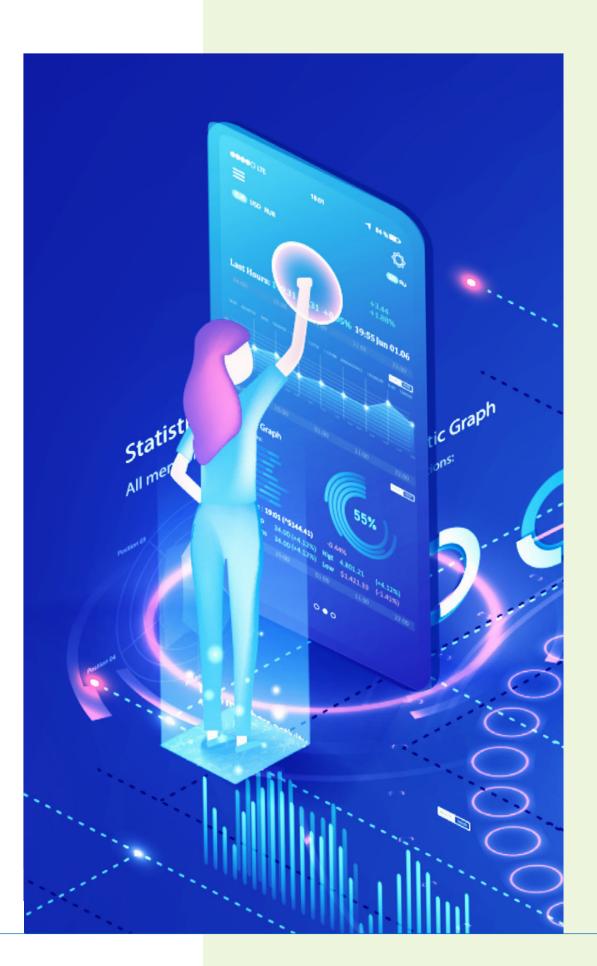
DASHBOARDS OPERATIONS

The Government intends pensions dashboards to bring about a fundamental change in the way individuals engage with their pension savings.

In order to achieve this, occupational pension schemes will need to:

- register with the Money and Pensions Service (MaPS) and connect to dashboards within specified timeframes;
- receive personal information from "find requests" when an individual uses a dashboard;
- seek to match members to their pensions based on matching criteria the scheme has decided in advance;
- if there is a match:
  - create and register a "pension identifier" (or "PeI");
  - return "view data" in respect of the member's benefits, after checking permissions against a "consent and authorisation service" ("CAS") provided by MaPS;
- if there is a partial match, invite the individual to contact the scheme so this can be investigated; and
- maintain records and report certain information to the Pensions Regulator and MaPS.

THE PENSIONS REGULATOR'S ROLE

The Pensions Regulator ("TPR") will be the supervising authority and will be able to issue compliance notices and penalties of up to £5,000 for an individual and £50,000 in other cases. Penalties are discretionary, not compulsory, but can apply per instance of a breach, i.e. potentially per individual member affected.

All schemes in scope will need to connect by 31 October 2026. A revised staging timeline will be set out in guidance indicating when different schemes (by size and type) should connect. In theory this guidance-based timetable allows schemes some scope to choose their own connection date. However, there is a very strong expectation that schemes will comply with the guidance-based timeframes: TPR has **stressed** that, when making final decisions about connecting, schemes should "keep clear and accurate audit trails" of their decisions, reasons and actions taken. Schemes will be better equipped to engage with TPR where their records show that they have adequate governance for their dashboards projects. Updated Government guidance (August 2023) also suggests that deferring connection beyond 2026 will only be possible in limited circumstances.

TPR is encouraging schemes to start preparing as soon as possible. In a June 2023 **blog post**, TPR said: **"… there is significant work involved in complying with pensions dashboards. But now that we have a roadmap for delivery, it's more important than ever that trustees and scheme managers start working collaboratively to progress dashboards quickly and efficiently…"**

PROVIDER-RELATED RISKS

In this context, dashboards projects will require extensive input from scheme administrators, software providers and other third-party suppliers. Initial steps will include exploring project plans, service levels, capacity, cost and any additional support requirements. The final deliverable will need to be a robust system that complies fully with the dashboards regime for the long term.

Trustees with a keen eye for risk will therefore want to be confident, right from the outset, about where legal accountability will sit if a dashboards project or service does not deliver for their scheme. A sensible step is to review existing and proposed contracts to ensure they achieve an appropriate allocation of project risks and responsibilities.

DATA RISKS

There are well-established legal liability principles where inaccurate information causes benefit errors or mistaken decisions. What's changing with dashboards is the practical risk of breaching these principles, if (as is hoped) members start requesting benefit information with greater ease and speed once dashboards go live.

So, whilst good data is already central to trustee duties, it will become even more important when dashboards launch. To manage this risk effectively, trustees should engage with advisors and administrators to understand what data they will need to provide, audit whether their data is "dashboards ready" (including what value data calculations can be automated) and fill any data gaps.

MEMBER COMMUNICATION RISKS

Schemes could experience significantly more member interactions once dashboards launch. For instance, members may seek to correct their personal data so that their pensions can be found, request more retirement or transfer value quotations or have follow-up queries once they have been reconnected with their pensions. Schemes and administrators would be well advised to plan ahead for this.

We also recommend looking closely at how dashboards will display and caveat value data. For example, in many cases dashboards will not be able to reflect a member's actual pension entitlement because of benefit complexities that may exist (such as underpins, tranches of benefits, early and late retirement options, etc). Trustees will have less control over how information is presented than they do when communicating with members directly. But there is still a possibility of legal liability arising if members act in reliance upon figures quoted on a dashboard.

One way to manage this is to use the scheme's own communication strategy outside the dashboards ecosystem. This requires careful tailoring, but generally there should be opportunities to explain proactively what members can (and can't) expect from dashboards and to encourage caution before making any decisions. These messages can be given before dashboards launch and on an ongoing basis afterwards. It would also be prudent to sense check any broader support for members making significant benefit or transfer decisions, together with existing transfer processes (e.g. scams checking and nudges to pension guidance, where applicable).

DATA PROTECTION AND CYBER SECURITY RISKS

Dashboards data protection issues also need to be addressed. These include establishing and recording a valid legal basis for processing data for dashboards purposes and taking steps to ensure that data will not be disclosed to the wrong recipients. Trustees will also need to update the scheme's privacy information to reflect the new use of scheme data for dashboards, the legal basis for processing and the new data sharing that results. They will also need to collaborate with administrators and software providers to ensure that new data sharing requirements are reflected adequately under the relevant contracts.

Schemes are responsible for protecting personal data with adequate security measures. The cyber security standards with which those connecting to the dashboards must comply are yet to be published but are expected to be robust. Before sharing data, it is likely that schemes will need to conduct a data protection impact assessment ("DPIA") to ensure that risks are identified and mitigated accordingly (especially in view of the sensitivity of the data that will be released onto dashboards). The Pensions Dashboards Programme is publishing a DPIA for the dashboards ecosystem which should help with this.

CONCLUSIONS

Preparing for pensions dashboards is a complex and ambitious project. Dashboards could foster greater member engagement and improve decision-making, but there are significant challenges, tight deadlines and potential pitfalls.

We would encourage schemes to review and update their existing risk management processes, communication strategies and third-party agreements to ensure that they are sufficient to meet the challenges of dashboards. Schemes which start preparing early, and which seek to address both operational matters and the broader legal issues, will be much better placed for success when dashboards launch.