Opt-out payroll saving

The regulatory considerations

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nestinsight.org.uk

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About Nest Insight

Nest Insight is a public-benefit research and innovation centre finding better ways to support people's financial wellbeing, now and in later life. We focus on understanding the needs and goals of those on low and moderate incomes, partnering with employers, product providers and policy thinkers to identify, invent and test solutions that work for people in the real world. For more information visit **nestinsight.org.uk**

About Nest Insight's strategic partner

BlackRock is a global investment manager serving the UK market for more than 30 years with a purpose to help more and more people experience financial wellbeing. BlackRock's Emergency Savings Initiative is made possible through philanthropic support from the BlackRock Foundation and the BlackRock Charitable Gift Fund. The initiative brings together partner companies and non-profit financial health experts to make saving easier and more accessible for low- to moderate-income people across the US and UK, ultimately helping more people to establish an important financial safety net. For more information, visit **blackrock.com/corporate/about-us/social-impact**

Programme partners

Our strategic partner, BlackRock, provides support for our workplace emergency savings research as well as the wider Nest Insight programme.

The Money and Pensions Service (MaPS) vision is 'everyone making the most of their money and pensions'. MaPS is an arm's-length body committed to providing access to the information and guidance people across the UK need to make effective financial decisions over their lifetimes. For more information, visit maps.org.uk

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Yorkshire Building Society (YBS) is a mutual organisation, owned by its members and customers. It's driven by social purpose and here to serve its members. It's proud of the difference it makes to people's lives by helping them to achieve their goals. It's here to create long-term member value, help people have a place to call home and support them towards greater financial wellbeing. It believes that helping people with these goals is how it can make the biggest contribution to society. For more information, visit ybs.co.uk

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Background

Strengthening financial resilience through savings

The Financial Conduct Authority's Cash Savings Market Review 2023 makes a commitment to "work with stakeholders including the Money and Pensions Service (MaPS), to identify what more can be done to support consumers to save regularly, strengthening their financial resilience."

The Money and Pensions Service's UK Financial Wellbeing Strategy identifies a "Nation of Savers" goal as one of its five pillars, with a target of 2 million more "struggling" and "squeezed" people saving by 2030.

Nest Insight is the public benefit research and innovation centre at Nest Corporation. We have been conducting real-world workplace emergency savings trials for five years, working with leading academics at Harvard and Yale, a range of different providers and employers including SUEZ, the Co-operative Group, Bupa Care Services, BT, Timpson and ITV. One of the supporters of this work is MaPS and we have collaborated closely with them throughout to inform actions against the Nation of Savers goal.

We know from our research that almost everyone wants to have money saved in case of emergencies or unexpected costs, including low- and middle-income earners.[1] Yet the level of saving in the UK is low by international standards,[2] with millions of people lacking the financial security of even a modest savings buffer:

- A quarter of UK adults have less than £100 in savings.[3]
- Almost half of UK households would struggle to cover an unexpected bill of £300.[4]

Having low savings tends to be a persistent, rather than temporary, condition. 70% of those with low financial wealth in 2018–20 also had low savings for the previous four years. This is especially concentrated in the most vulnerable groups.[5]

The potential benefits of people increasing their financial resilience though saving include:

- **Less problem debt:** an accessible fund of £1,000 reduces the risk of problem debt by almost half.[6]
- **More money saved in pensions:** better financial resilience has been shown to be a strong predictor of capacity to make higher pension contributions, while versions of payroll saving which incorporate a pensions rollover lead directly to increased pension contributions.[7]
- **Better mental health:** People who have no savings buffer are 3x more likely to report very low levels of happiness compared to those who do.
- **Higher productivity:** Over 1 in 4 employees say money worries affect their ability to do their job.

Workplace savings schemes have the potential to support saving behaviours

Workplace savings schemes (also called payroll saving) have the potential to support millions of people to save regularly if widely implemented and taken up at scale.

Workplace savings schemes allow employees to save automatically through payroll, with a nominated amount of money being moved directly into an accessible savings account or pot for them before they receive their pay.

[1] Nest Insight (2023). **Workplace sidecar saving in action.**

[2] Resolution Foundation (2023). **Isa Isa Baby**, states that on average since 1980, the UK has had the lowest aggregate saving rate in the G7 in four out of every five years.

[3] Money and Pensions Service (2022). **One in six UK adults have no savings.**

[4] Nest Insight (2023). **Workplace sidecar saving in action.**

[5] Institute for Fiscal Studies (2023). **Characteristics and consequences of families with low levels of financial wealth.**

[6] StepChange (2015). **Strengthening the saving safety net.**

[7] Suh, E (2021). **Younger adults' retirement saving and wealth accumulation in Britain quantitative investigation.**

This method of saving has a number of advantages for employees including:

- A savings solution is put in place by the employer, which can overcome provider and product choice paralysis.
- The payroll mechanism can make regular saving easier – people value the power of savings being made automatically every pay day.
- The money is automatically moved into the savings vehicle out of take-home pay before it ‘hits the employee’s pocket’, reducing ‘loss aversion’ and providing some physical and psychological separation between ‘spending’ and ‘saving’ money.
- It’s flexible so while saving is automatic once enrolled, employees don’t have to save in this way, can access their savings quickly and change or stop contributions at any time.

Payroll saving approaches have been shown to benefit employees at all income levels and can be particularly important for those on low to moderate incomes.

Workplace savings schemes put in place by employers tend to be offered by credit unions, financial wellbeing employee benefit providers and building societies. Savings are held in cash and are easy to access.

Taking an opt-out approach

In most workplace savings schemes, employees have to sign up to save. This usually involves visiting a website or filling in a form, entering personal details and choosing an amount to save each pay period.

In this model, contextual and behavioural barriers often prevent people who want to save from signing up. These include inertia, lack of awareness, low confidence around financial decision-making and frictions within the sign-up journey.

In Nest Insight's 5-employer trial of a savings scheme in which employees had to sign up to save, 46% of eligible employees thought the scheme would help them, but only around 1% signed up to save.[8] Many people want to save, and think payroll saving suits their needs, but they need more support to follow through on their intention.

An opt-out payroll autosave approach preserves individual choice while also making it easier for people to get started with short-term saving.

In an opt-out model, employees automatically start saving into their own accessible savings account or pot through regular payroll contributions unless they choose not to. If they want to start saving, they don't need to do anything. Everything is done for them. Only people who don't want to save have to take action. Employees can choose not to save during an opt-out period. Following that period, they can change the amount they save or stop saving at any point.

Why offer workplace saving accounts on an opt-out basis?

The rich and robust evidence base built from Nest Insight's trials tells us that workplace savings schemes can be powerfully effective in supporting people to build emergency savings, but only achieve their potential when offered under an **opt-out** basis.

› Participation when employees have to sign up to save is very low.
› However, when employees are supported to save via an opt-out approach we see participation boosted by around 50 percentage points. Up to 7 in 10 employees start saving when it's made easier via an opt-out rather than an opt-in approach.[9]

We now know that when opt-out workplace savings schemes are put in place:

› Barriers to getting started with saving, including inertia, low confidence and low trust in financial services are overcome.
› Employees typically save at the default of £40 or contribute more a month.
› Employees save persistently because the money is saved automatically before they 'feel' it in their pocket.
› Employees build savings, actively use them when they need them, and then replenish their savings pots again.
› Having savings to cover emergencies and unexpected costs gives people peace of mind, reduces anxiety and boosts confidence.
› Workplace payroll saving is additive to people's contributions to their workplace pension scheme.[10]

[8] Nest Insight (2023). **Workplace sidecar saving in action.**
[9] Nest Insight (2023). **Getting employees started with saving.**
[10] Nest Insight (2023). **Getting employees started with saving.**

An opt-out payroll saving approach is also inclusive and popular, supporting employees to improve their financial resilience and financial wellbeing:

- Opt-out workplace savings schemes are well received and liked by employees – over 90% of employees were in favour or felt neutral about their employer offering opt-out payroll saving.
- Opt-out approaches support a broad range of people to save, including those who do not already have savings and those who have previously struggled to save. 4 in 10 of those who started saving via the workplace opt-out approach had no savings before.
- Employees say:
-

"Now I have savings, I've never had savings before, that's a nice feeling, my financial situation is improving… I thought it was a good idea. I never would have sorted it out myself. I didn't have to do anything, that all came through the post and in emails – it was all done for me."

"I love the savings scheme, I think it's easy, it's there, take it when you want it…The offer was there, I took it up, if you don't want to take it, it's your choice."

"I think it's a very important benefit not just for the financial wellbeing of employees but also for the mental wellbeing as it acts a safety net reduce further stress."

- To hear more from workplace savers in their own words you can watch our video of real savers: **What do employees think about emergency saving via workplace payroll?**

In contrast to the results from the opt-out workplace saving pilots, other approaches to support saving that have been tested, including communications, incentives and education programmes haven't moved the dial. Only opt-out approaches have been proven to powerfully and effectively support people to start saving.[11]

[11] Nest Insight (2023). **Getting employees started with saving.**

Scaling effective workplace savings approaches

Few employees have access to workplace savings, even fewer under opt out approaches.

- Only 7% of employers say they offer a payroll savings scheme to their staff.[12]
- Those working for a larger employer are much more likely to have access to payroll savings, than the nearly half of UK employees who work for small employers.[13]

Where payroll savings schemes are in place they are almost always offered on an opt-in basis. There are only a handful of examples of employers taking an opt out approach. This means that the workplace savings scheme that are in place are not achieving their potential to support workers to save, with only a small minority of employees signed up to save.

More workers would have access to opt-out workplace savings schemes if it were easier for such approaches to be implemented by employers.

However, although there are growing levels of interest from employers in implementing opt-out workplace savings schemes they do not feel currently able to do so, due in large part to the regulatory barriers and complexity involved.

Employers say:

"Our company tends to be heavily risk-averse, so engaging in auto-savings without clear policy from regulatory authorities is something that likely would not get approved internally at this point. But I'll be watching/waiting with high hopes that you have success in your advocacy for such a policy. Just like with retirement, defaulting someone in with the option to opt-out will help those that need it the most."

UK employer with 100,000+ employees

"The evidence speaks for itself, but it will only get over the line if it's simple to implement. At the moment the contractual and legislative barriers are too great."

UK employer with 80,000+ employees

The barriers to wider roll-out of opt out workplace savings schemes include:

- Employers are worried that if they put in place such a scheme they will stray into regulated activity such as being seen to give advice on a financial product.
- Some financial services regulation currently requires active steps from consumers to acknowledge information such as account terms and conditions, rather than allowing opt-out communications as a way of fulfilling consumer protection requirements.
- It is not clear to employers that moving an employee's money into an instant-access savings account if they don't opt out is permitted under employment law.
- There are data protection considerations involved when sharing an employee's data to allow an account to be created on their behalf that are complex to navigate.
- There are anti-money laundering and international tax requirements that present risks for providers.

[12] Department for Work and Pensions (2022). **Employer Survey.**

[13] Nest Insight and YouGov nationally representative employer survey, in field 23 March to 9 April 2022

It *is* currently possible to find ways of addressing these considerations to allow opt-out approaches in a limited set of circumstances and for limited groups of employees, as employers working with Nest Insight have done to make the research pilots possible. However, these steps involve complexity and administrative burden, and are not currently more widely applicable.

Unless action is taken to make it more straightforward for employers and providers it is unlikely that these approaches will be adopted more widely.

> **"We need regulatory clarity for employers that this is not going to come back on them."**
>
> Industry body

It could be made easier for employers and providers to implement opt-out approaches in the interests of employees if, for example:

- Eligible opt-out workplace emergency savings schemes were exempt on the grounds of consumer-interest from a small number of financial services regulations, or a regulatory carve out is created for accounts meeting certain conditions, to overcome present barriers.
- Comfort was given to employers and providers that requirements of data protection and employment law can be met by opt-out workplace savings schemes.

Defining a good workplace savings scheme

Short-term accessible savings are designed to be used when needed – to smooth cash flow, manage money month to month and cover unexpected costs.

Our evidence suggests that to work effectively, a workplace savings scheme should have the following key characteristics:

1. **Simple**: The account structure needs to be straightforward and communications should be jargon-free.
2. **Flexible**: Employees value the ability to change, pause and stop their contributions at any time. They should be able to do this quickly and easily. It should be easy to close the account at any time.
3. **Payroll linked**: Employees are able to save consistently and automatically, with money moved into their savings account through payroll.
4. **Partitioned**: Savings are set aside from an employee's everyday money in a pot or account in their name that is ringfenced for saving.
5. **Protected**: Employees feel reassured that their money is safe, even if the provider were to go out of business.
6. **Fee free:** There are no fees for account management, set-up, or withdrawals ensuring any savings aren't eroded.
7. **Instant-access:** Savings are held in cash and can be accessed quickly and easily when needed.
8. **Condition-free withdrawals:** There are no conditions on taking money out of their account. Employees are free to access their money when they need it, as frequently as they need to.
9. **Good value for money:** The savings scheme offers competitive value for employees, considering all benefits for the saver in the round. This assessment should include the accessibility of the scheme, the interest rate or other return, as well as other benefits that the saver gains access to via saving. (See appendix for more detail on evaluating value for money in this context).
10. **In the interests of employees:** The employer should not benefit financially from offering the scheme e.g. be paid a kick back.

When offered on an opt-out basis, the following additional characteristics have been essential to the success of the pilots:

11. **Clear communication:** Employees should be informed about the savings scheme, including terms and conditions and protection of their savings via clear and transparent communication. Nest Insight worked with providers and employers on communicating opt-out payroll saving, and conducted research with employees around the communication materials. Our findings are summarised in an employer guide on communicating opt-out payroll saving: **Talking about payroll autosave with employees**
12. **Multiple reminders before the scheme starts:** Sufficient time should be given for employees to opt out if they don't want to save and they should receive at least two reminders after the initial communication.
13. **Simple to opt-out:** Employees who do not want to save should be able to quickly and easily opt out.
14. **Relevant default savings amount:** The default savings amount should be set with reference to the earnings of the employee population. In our trials the default savings amount was set at £40 a month which is roughly 2% of average pay for the employees covered by the scheme. We include some considerations on setting a relevant default here in this guide: **Getting employees started with saving**

Risks and benefits

If the savings scheme meets the criteria set out above, we believe the risks to the employee are very low to none:

- Employees have the choice whether or not to save and can easily opt-out if they do not want to.
- Savings are held in cash without fees and are protected.
- Savings are instantly accessible if the money is needed by the saver.

As set out above, and in line with the FCA's cash savings review and the work of MaPS, we know that the risks of not having savings are high. We therefore believe that the opt-out approach to workplace savings is an appropriate intervention to support people who want and need to save, who would not otherwise be saving, to get started without limiting choice or autonomy.

The regulatory considerations as we understand them

Here we outline the relevant regulatory considerations as we understand them. We are not experts in this field. This analysis is based on our engagement with providers, employers and other stakeholders, as well as our engagement with the FCA during the innovation sandbox. The exact regulation that applies may also vary between types of provider.

We have included here the full scope of considerations, even though only some of them relate to the FCA. Holistically addressing the considerations is likely to require joined-up working across the different organisations responsible for different regulations.

Regulated activity

What is the barrier to opt-out payroll saving?

Non-regulated firms cannot conduct regulated activities. Employers are generally not experts in services regulations and can be fearful over overstepping. In our conversations, many have expressed some concern about whether they would be introducing employees to a financial product, particularly where the provider's suite of products also includes loans, and whether this would place them in an 'advisory' role.

For example, in putting in place a payroll saving mechanism (particularly on an opt-out basis) with a credit union or fintech platform (e.g. Salary Finance, Level, Wagestream) there is some concern that this constitutes advice. Note that this concern is also present with an opt-in model of payroll saving.

Who is the regulating body?

FCA

What is the regulation?

It is an offence to carry out regulated activity in the UK unless you are authorised to do so by the FCA or are exempt. Of particular consideration is the Financial Services and Markets Act.

It seems unlikely to the legal advisors we have consulted that the role of the employer in the opt-out payroll saving scenario would present it with concerns under the Financial Services and Markets Act. The employer would not itself be taking deposits. Communicating about the availability of an emergency savings vehicle would not constitute the regulated activities of advising or arranging.

There may though be considerations around financial promotion and communication of the opt-out approach. Employers would welcome clarification in this area.

For example, guidance from the regulator would support employers to feel more confident to facilitate saving for their employees without the fear they would stray into regulated activity.

National Minimum Wage deductions

What is the barrier to opt-out payroll saving?

Employers are concerned that making savings contributions on behalf of an employee to the employee's individual savings account could be considered a 'deduction' which in some cases they fear would put them in breach of National Minimum Wage regulations.

Who is the regulating body?

HMRC

What is the regulation?

National Minimum Wage Regulations 2015, regulations 9 to 15 state that deductions an employer makes from a worker's pay will always reduce National Minimum Wage pay if they are made for the employer's own use and benefit and are not a liability owed by the worker and paid on their behalf to a third party. There is an exception for a deduction 'to repay a loan or advance of wages'.

Although our interpretation of this is that an employer making a contribution to an employee's named savings account on their behalf is not a deduction made for an employer's own use, this is regularly raised as a concern by employers.

One large employer (100k UK employees) contacted Nest Insight to tell us that uncertainty over minimum wage compliance was preventing them from implementing even an opt-in savings scheme. It would perhaps be possible to add to the exception for loan and wage advance repayment to clarify that moving an employee's money into the employee's own savings account on their behalf is also considered an exception.

Lawful deductions from pay

What is the barrier to opt-out payroll saving?

Employees must consent to deductions in their wages (where not a statutory or employment contract provision). It is not currently clear whether opt-out payroll saving involves deductions in pay. No money is 'deducted' as such – the money is still the employee's and can be accessed instantly. However this is a grey area and some employers and their advisors have expressed concerns. Concerns have also been raised about any impact on minimum wage calculations.

Who is the regulating body?

HMRC

What is the regulation?

The Employment Rights Act of 1996 (section 13) contains a section on the right not to suffer unauthorised deductions as follows:

1. An employer shall not make a deduction from wages of a worker employed by him unless:
    a. the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
    b. the worker has previously signified in writing his agreement or consent to the making of the deduction.

The Employment Rights Act 1996 sets out that an employer can make statutory deductions from salary required by law (such as National Insurance, income tax or pension contributions). Any deduction, even where agreed to, cannot normally reduce pay below the National Minimum Wage (NMW) unless it is tax or National Insurance, something you've done that your contract says you're liable for (e.g. shortfall in the till), repayment of loan or wage advance, repayment of an accidental wage overpayment, buying shares in the business, accommodation provided by the employer, and personal use (e.g. pension contributions, union subscriptions).

We understand that it is important that the employer does not benefit from the contribution into savings (e.g. through a kickback or by using their own banking services) as this may cause an employer to fall foul of NMW legislation for deductions (for example in the case of Iceland[14] which is under investigation).

The Financial Services Compensation Scheme

What is the barrier to opt-out payroll saving?

Accounts which have Financial Services Compensation Scheme (FCSC) deposit protection (as the credit union workplace savings accounts do) require active acknowledgement of the FSCS. Any step which requires this type of active acknowledgement would not be consistent with an opt-out payroll saving process.

Who is the regulating body?

We believe the regulation pertinent to opt-out workplace saving sits primarily with the PRA.

What is the regulation?

The PRA handbook includes information on the acknowledgement of depositor protection. **16.2(3)** states:

A firm must: before entering into a contract on deposit-taking with the intending depositor of deposits to be held by a UK or Gibraltar establishment of the firm:

(a) provide the exclusions list to;

(b) provide the information sheet to; and

(c) obtain an acknowledgement of receipt of the information sheet from,

each such intending depositor.

Guidance for the PRA's expectation for complying with this acknowledgement (c) is included at 3.9 in the Supervisory Statement

And the guidance on the PRA's expectations for complying with the acknowledgement requirement is at **3.9** and states:

the information sheet from each intending depositor before entering into a contract on deposit-taking where that deposit will be held by a DGS member in an establishment in the UK (or a UK firm's establishment in Gibraltar). In order to meet this requirement, prior to the contract being entered into, firms should obtain one of the following:

(a) the intending depositor's signature on the information sheet. In this case, the PRA considers it good practice for firms to provide the depositor with a copy of the information sheet;

(b) the intending depositor's signature on an acknowledgement contained in a separate document to the information sheet (which would allow the depositor to retain the information sheet for their reference);

(c) the intending depositor's acknowledgement in a separate 'tick box' in the account opening documentation; or

(d) the intending depositor's express acknowledgement over the telephone.

[14] People Management (2019). **HMRC's hard line on national minimum wage**.

Account terms and conditions

What is the barrier to opt-out payroll saving?

Account terms and conditions need to be agreed to. Any step which requires this type of active acknowledgement would not be consistent with an opt-out payroll saving process.

Who is the regulating body?

FCA

What is the regulation?

In order to make the offer of a payroll deducted savings account to an employee by remote means (i.e. not in person), the process would need to comply with distance marketing regulation, as set out in Section 3 of the Banking Code of Business Sourcebook (BCOBS 3.1.6, 3.1.8, 3.1.12, 3.1.15).

These rules state that a firm must communicate to the consumer all the contractual terms and conditions of the account in a durable medium (defined as paper, or another form which allows the recipient to store information for future reference for an adequate period of time), or that information be made accessible to the consumer in good time before the consumer is bound by those terms and conditions.

For agreements that happen at a distance (for example, over the phone) a firm may provide the contractual terms and conditions immediately after the agreement of the contract. For this to apply the contract must be set up at the consumer's request and the means of distance communication used must not allow for that information to be given in good time before the consumer is bound by the contract.

For unsolicited services where the consumer has not explicitly agreed the terms, the rules state that a firm must not enforce, or seek to enforce, any obligations under a distance contract against a consumer, the absence of a reply not constituting consent.

While the durable provision of terms and conditions is possible with an opt-out journey, active acknowledgement of agreeing to them would not be.

Anti-Money Laundering (AML) / Joint Money Laundering Steering Group (JMLSG) and Know Your Customer (KYC) checks

What is the barrier to opt-out payroll saving?

AML and JMLSG requirements mean that currently, some level of involvement from the employee may be necessary to complete the KYC checks, for example, if consent is required for the employer to share relevant data with the provider or for the provider to share data with a third party such as a fraud prevention agency.

Who is the regulating body?

FCA

What is the regulation?

The FCA requires all authorised firms to have systems and controls in place to mitigate the risk that their product might be used to commit financial crime. This requires the savings provider to assess the risks that its business may be used for the purposes of financial crime and mitigate those risks effectively through identifying its customers, understanding its relationship with them, and monitoring the way they use its services to identify anything suspicious.

The AML regulations / JMLSG guidance do not specify what KYC checks must be taken. Instead, firms are responsible for ensuring that they take a risk-based approach and have appropriate controls in place.

To establish what controls are appropriate, savings providers have to conduct a two-part risk assessment. The first part of this is a product risk assessment. This should consider how attractive the product is as a vehicle for money laundering. A payroll savings account could potentially be considered low risk, if the scheme included features such as:

- limiting deposits to only coming from the employer via payroll unless further checks are consented to by the employee
- a cap on monthly contributions and / or maximum balance at a low-risk amount, which could still be adequate for a short-term emergency saving purpose.

The second part of the assessment is the customer risk assessment to verify them as a trusted source.

We believe in some instances it may be possible for the employer to provide the information needed for KYC or it may be possible to designate the employer rather than the employee as the customer, with the employer vouching for their employees based on the employment checks already conducted.

International tax obligations

What is the barrier to opt-out payroll saving?

A self-certification of US citizens must be signed by a savings account holder (or a person authorised to do so for her/him under domestic law), or in the case of an account opened by telephone or the internet, the self-certification must be positively affirmed – that is, the account holder must confirm the information provided.

The self-certification must be dated no earlier than the date the account holder received the form; undated self-certifications may be date stamped by the receiving Financial Institution on receipt and that date will be taken as the date of signature. A self-certification is required for all accounts, including those held in the names of minors.

The challenge for the opt-out model is that the savings provider is not just obligated to hold this information but to actually obtain self-certification from the individuals, which would create an active step for the employee.

It is possible that an employer would know whether an employee was a US citizen/taxpayer.

Who is the regulating body?

US Internal Revenue Services and HMRC

What is the regulation?

The Foreign Account Tax Compliance Act (FATCA; part of the HIRE Act) requires foreign financial Institutions (and some other non-financial foreign entities) to report on the foreign assets held by U.S. account holders. The savings provider is required to file an annual submission of US citizens to HM Revenue and Customs (HMRC) who in turn need to report this to the Internal Revenue Service (IRS) in the US. This means the savings provider needs to know whether the employee is a US citizen. The penalties for non-compliance are high at 30% on total US dollar transactions for the savings provider.

For products subject to these rules, savings providers are required to collect information on tax residency at point of application. Some savings account providers simply exclude individuals who would fall under these regulations from opening savings accounts by asking for a declaration that a saver is not a US citizen/taxpayer or tax resident outside the UK in their sign-up journey.

Legal basis for the processing, storage and transfer of data

What is the barrier to opt-out payroll saving?

You must have a legal basis for the processing, storage and transfer of personal data. This is needed for the employer to share employee data (for the purpose of account set up and KYC) with the provider and for the provider to set up the accounts. In some instances (although this depends on the legal basis used) this might be deemed to require an active consent step or agreement to a contract.

Who is the regulating body?

ICO

What is the regulation?

You must have a valid lawful basis to process personal data as set out the Data Protection Act 2018 (Article 6 (1 and 2) and Recital 40). These options for lawful basis are: consent, contracting, legitimate interest, public task, legal obligation, and vital interests.

It is likely that the employer could use contracting as their legal basis for sharing data with the provider if opt-out payroll saving is included in their employment contract. However, our understanding is that contracting does not apply if you need to process a person’s data but the contract is with someone else, and therefore we don’t think that the provider could rely on contracting (as included in the employment contact). Therefore, it is likely that the provider, if not also the employer, would need to use legitimate interest for the purpose of offering opt-out payroll saving.

While the use of legitimate interest is an option for opt-out payroll saving that can be legally compliant, some employers and providers and hesitant to use it without clarification that it is appropriate and suitable for this type of data processing (subject to their own DPIAs and legitimate interest assessments).

Appendix: Assessing value for money in this context

Workplace saving accounts should represent good value for money for the consumer, ensuring savers get a fair deal. We believe this is particularly true where workplace savings schemes are offered on an opt-out basis.

Interest rates are often used as the primary measure of savings account value for money. In this context, where the main focus of the workplace savings scheme is to support employees to build a small cash savings buffer in an instant-access account, we believe several factors should be taken into account in assessing value for money, rather than only assessing interest rates.

We envisage that employers putting in place workplace savings schemes should assess the value for money of the savings arrangement for their employees, considering the needs of their employee population in the context of available options.

Interest rates

Most of the consumers who use opt-out payroll saving schemes will do so to save small amounts to manage in-month expenditure or emergencies. After 18 months in our trial, account balances for those who did not opt out were approximately £379, on average.

At this level the difference between a 1% and 3% interest rate is small, although clearly this becomes more important if savings balances increase.

		Annual interest rate		
		1%	2%	3%
Amount saved	£100	£1	£2	£3
	£379	£3.79	£7.78	£11.37
	£500	£5	£10	£15
	£1,000	£10	£20	£30

Not all workplace savings providers operate on model where interest rates are applied.

Credit unions usually operate on a member dividend model. In the research pilot with a credit union as the provider, those with saving accounts open receive a dividend, dependant on the credit union's performance, rather than an interest rate.[15]

Some providers of workplace savings schemes, including Wagestream, are currently using e-money ledgers where interest rates do not apply. It is worth noting that we understand this is, in part, because the workplace savings market is not currently seen to be commercially attractive for mainstream savings account providers. In the two research trials with Wagestream, one employer offered a 5% 'boost' to savings and the other did not. (No difference in participation is seen). The savings pot is capped at £1,000.

[15] At TransaveUK, the trial partner this was 1.5% (2021) and 1% (2022) for those saving during the trial.

According to the FCA's Cash Saving Market Review 2023, 3 in 10 people do not have a savings account at all, and approximately £250 billion in deposits do not earn any interest. In this context opt-out workplace savings schemes could play an important role in getting people started with saving.

We believe that the interest, 'boost' or dividend should be considered by employers in choosing a scheme alongside other factors that may be of benefit to their employees, some of which are described below.

If employees were to start to build high balances in an account or other vehicle when they could be getting a higher rate of return elsewhere, then the expectation should be that firms will take action to prompt consumers to consider alternatives – as per Expectation 3 in the Cash Saving Market Review.

Payroll saving mechanism

The payroll mechanism is of some non-financial value to employees. Our research suggests that payroll saving is considered to be convenient and easy. It can support saving behaviours in particular for those who lack confidence in setting up direct debits or for those for whom it is not simple (such as those without banking apps).

It also means savings are partitioned away from money that is for spending in the employees current account, reducing the temptation to access money unless needed. The payroll mechanism also supports the psychological process of mental accounting (i.e. the different values placed on money based on subjective criteria) and means people are less likely to access their savings for purposes other than which they are defined (e.g. emergencies, birthdays, short-term goal).

Membership benefits

Some providers include other benefits alongside payroll saving for savers which may be of value to consumers.

For example credit unions often include a bereavement fund which provides a lump sum to support members' beneficiaries with funeral costs from the point members join the credit union by opening a savings account. Some providers, including Wagestream, give access to benefits eligibility checkers or financial education.

Access to responsible lending options

Credit unions and some financial wellbeing platforms (not Wagestream) offer loans to members. These loans are often more accessible to customers who may be declined from other products on the high street, in part because of the purpose-driven model of credit unions, and often also because loans are repaid via a payroll deduction mechanism, reducing the risk of default. Credit unions therefore provide responsible lending to customers who may be vulnerable to payday loans or illegal lending.

The loans are varied with many offering payroll loans (which can come with better interest rates), savings backed loans, short-term loans or small loans, consolidation loans and larger personal loans. Some also offer products tailored to specific groups such as 'Giving Back Loans' which offer significant reductions on interest rates for those in front line services.

It's possible that opt-out approaches to workplace savings offered by credit unions could help raise awareness of the responsible lending options that are available to credit union members.

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