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Current issues

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Mansion House: The Chancellor's vision for DC reform

On the evening of 14 November, the Chancellor of the Exchequer gave a speech to the Lord Mayor of London, business leaders and City notables, at the Mayor's official residence, Mansion House. She used the occasion to launch an interim report from the ongoing Pensions Investment Review, and a consultation exercise on proposed reforms to workplace defined contribution (DC) schemes.

The issue

With a projected £800bn of assets in workplace DC schemes by the end of the decade, the Chancellor (like her predecessor) is pursuing an agenda of getting pension scheme assets put to work in the UK. She pointed in her speech to the Australian Super schemes that invest three times as much in infrastructure and ten times as much in private equity than their UK counterparts. Her diagnosis of the problem is fragmentation in the UK's DC pensions market, and her prescribed treatment is to encourage the establishment of 'megafunds' via legislation in the forthcoming Pension Schemes Bill.

Proposals

The focus of the current proposals on which the consultation is seeking views is on the authorised master trust and group personal pension (GPP) schemes used for automatic enrolment. Single-employer schemes are for now out of scope. The hope being that the imminent new value-for-money (VFM) framework (also to feature in the Bill) will do some of the work necessary in that sector.

Defaults

To achieve its 'megafunds' aspiration in the workplace DC arena, the Government plans to limit the number of investment default arrangements in the system, whilst imposing a minimum size, by assets under management

(AUM) on those that remain. The Government is leaning toward limiting each provider to a maximum number of default funds, and requiring each fund to have a minimum level of assets under management (AUM). There's no solid indication of what those limits might be, but AUM of £25bn – £50bn were mentioned.

Providers would not have to comply before 2030. It's suggested that, in the meantime, they might have to report on progress towards meeting the requirements, and consolidate if they cannot achieve the necessary scale. There's the possibility of some flexibility over the timing for those that are on track to achieve the targets, but need more time; and a suggestion that schemes with specific characteristics might be exempt. Where investment fluctuations reduce the size of a fund, there would be a window within which it must meet the minimum AUM requirement again. The consultation document seeks views on how this policy could be applied without stifling competition, innovation, and increasing systemic risks.

Contractual override

To facilitate the desired consolidation, the Government plans to allow contract-based scheme providers to make transfers between schemes without obtaining the members' consent. The Government notes that the contractual override could help with the plan for a multiple-default-consolidator model for the automatic transfer of small DC pots to be included in the Pension Schemes Bill, and whenever schemes receive a 'red' (that is to say, the worst) VFM rating. Safeguarding of member interests would be achieved through changes to the Financial Conduct Authority's (FCA) rules for regulated firms, and potentially also requirements on receiving-scheme trustees. The FCA might need powers to prevent or mandate transfers, and to gather information. Additional protection would be provided by a requirement for independent third-party scrutiny of proposed transfers, perhaps undertaken by providers' independent governance committees.

Employers & advisers

The consultation document discusses ideas for improving employer decision-making on pensions. The Government is considering imposing upon employers a new duty to review their auto-enrolment choices, periodically (perhaps every five years). The assessment would require them to review returns, charges and service quality, and could use information gathered by scheme trustees and providers under the new VFM framework. With this additional burden on employers, it's perhaps unsurprising that the Government is considering whether to apply it only to large employers. It also moots the possibility of requiring employers to nominate someone at board level who would be responsible for staff retirement outcomes.

The subject of the (non-)regulation of employee-benefit advisers and investment consultants is raised (again). The consultation document seeks comments about whether regulation of advisers could help employers focus on value for money considerations beyond costs and charges, and could increase schemes' allocations to productive assets.

We support the drive for scale and consolidation of lower-value default pensions particularly the removal of the member consent rule for GPP arrangements. Moving too fast towards consolidation, however, could cause more harm than good. 2030 is ambitious given especially the number of GPPs which exist. It's also worth recognising the number of extremely well-governed and high-performing own trust DC schemes, which are out of scope but will want clarity about the future implications for them.

Mansion House: LGPS pooling, local investment & good governance

As was widely expected, the Mansion House speech saw the Chancellor, Rachel Reeves, deliver announcements affecting the Local Government Pension Scheme (LGPS), covering pooling, investment in the UK, and governance. A consultation exercise was launched on those subjects, with a response deadline of 16 January 2025. The Government also released an interim report on the initial phase of the Pensions Investment Review, as well as an analysis of investment trends, to provide supporting evidence for its plans.

Consultation

The consultation document sets out the Government's intentions for the LGPS. It covers three main areas.

Pooling

The Government would require all eight of the LGPS investment pools to be FCA-regulated investment-management companies by 31 March 2026. All assets would have to be invested through the pools, with implementation of investment strategies fully delegated to them. The local funds would retain responsibility for setting high-level investment strategies, but that task would be limited to determining investment objectives, and perhaps asset allocation (the Government thinks the pools are better placed to make investment-implementation decisions below the strategy-setting level). The pools would be the funds' primary source of advice on investment strategy.

Local investment

Funds would be required to invest locally, setting out their approach to local investment and including a target range in their investment strategies. They would also be expected to work with local combined authorities and mayors to achieve this investment. Details of the investments, and their impacts, would be included in annual reports. Pools would be required to undertake due diligence on and management of potential local investments.

Good governance

The Government is acting on the recommendations of the Good Governance Project, which published its report in February 2021. The proposals include a requirement that committee members have the appropriate knowledge and skill, that funds publish strategies on governance, training and administration (including conflicts of interest), and that a senior LGPS officer is appointed at each fund. A key inclusion is the proposal that funds would be required to participate in an independent governance review, biennially, to obtain assurance that they are meeting their governance obligations. One new recommendation is the proposal that local pension committees must appoint independent advisers to support them on investment strategy, governance and administration. Pool boards may need to include representatives from their funds, and improve transparency by, for example, reporting investment performance and transaction costs.

Whilst some meaningful economic impact could be achieved by local investment, the need to find suitable investments, offering appropriate returns for an acceptable level of risk, is extremely important, as is the need for strong governance and responsible management. Otherwise, harm to local areas could result, rather than positive impact and growth.

We welcome inclusion of the Good Governance Project's recommendations in the consultation proposals. There are details to consider, particularly the need to ensure that the role of the LGPS senior officer is clearly articulated, and for greater understanding of how biennial reviews and independent advisers will develop. Given the extent of change anticipated by the consultation, good governance will be key.

For more details and views on the consultation, please read our LGPS team's policy briefing note.

Dear Prudence—TPR adapts its approach

The Pensions Regulator has announced a change of posture toward '*a more prudential style of regulation*', in light of recent market and policy changes such as the Mansion House consolidation agenda for defined contribution (DC) schemes. As a consequence, it will turn its attention to potential systemic risks.

The Regulator says that in practice the change will bring new focus on investments, data quality, and—especially—trusteeship. It adds that it will need to re-equip its '*regulatory toolkit*', mentioning developments such as

- a new risk-based approach to DC-scheme supervision;
- greater use of data and technology to guide the Regulator's actions and improve its efficiency; and
- a '*pensions market innovation hub*' to facilitate safe product development.

DB Return! (To everything there is a season)[1]

The Pensions Regulator has revealed details of changes that have been made to next year's defined-benefit (DB) and hybrid scheme return. In line with its decision to focus on (among other things) data quality (see *Dear Prudence—TPR adapts its approach*, elsewhere in this issue), many of the new questions are on the subject of record-keeping.

The 2025 return will, in summary:

- (under the heading of scheme member data quality)
  - ask if trustees have measured their data within the last year (rather than the last three years), and if not, whether they assessed the need for a data review during that period;
  - ask about data-review frequency;
  - not include an option to say that (when data was measured) the data score is unavailable;
- request numbers of members in different benefit categories (DB only, money purchase only, both) at the scheme year-end in the range 1 April 2023 – 31 March 2024, for general-levy purposes; and
- ask whether investment consultants' objectives, and their performance against those objectives, have been reviewed.

The deadline for the DB and hybrid scheme returns is 31 March 2025.

[1] With apologies to The Byrds, Pete Seeger, and the *Book of Ecclesiastes*.

DB Funding Code in force

The Pensions Regulator's new Defined Benefit Funding Code of Practice officially came into force on 12 November 2025[2], having finally completed the required period of parliamentary scrutiny. The Code applies to actuarial valuations with effective dates on or after 22 September 2024.

In the press release marking the Code's becoming effective, the Regulator mentions its plan to provide an online document-submission service (currently in the user-testing stage), which will go live in the spring. Trustees who want to submit valuations in the meantime are invited to contact the Regulator for support (but won't be considered to be in breach if they wait for the launch of the new service).

The case of the missing trustee signature

In a recent judgment, the High Court in England and Wales proved amenable to making pragmatic repairs to defective pension scheme documentation—if enough evidence can be marshalled in support.[3]

Background

The case was concerned with a defined benefit scheme that obtained its administration, actuarial and legal services under a deposit administration contract with an insurance company. The scheme's amendment rule allowed the principal employer to authorize alterations without the need for an amending deed. All of the trustees then had to sign their names to the changes.

At issue were three groups of alterations made without the benefit of a deed of amendment, and a subsequent deed that was meant to consolidate historical changes, bringing the scheme's governing documentation up to date. The alterations covered, among other things, the introduction of 5% limited price indexation (LPI) on pensions in payment (the scheme had previously increased its pensions by a fixed 5% per annum), a subsequent switch to 2.5% LPI, closure to new entrants, and a change to the definition of final pensionable earnings. The amendments were intended to address a growing funding deficit.

The alterations were made using the insurer's pro-forma amendment documentation. It had spaces for one employer representative and four trustees to append their signatures, signalling assent to the amendments.

The problem was that there were *five* trustees for this scheme.

The non-deed amendments

One of the five trustees also held a senior position with the principal employer, so he signed the amendments once, in the space marked out for signature '*For and on behalf of*' the employer. Questions therefore arose about the validity of the historical amendments.

The judge reviewed the case law on the subject, including some rulings indicating that people should be treated as having signed documents only in the capacity in which they purported to sign them. The judge acknowledged the difficulty in construing the document, on first impression, as having been signed by the employer representative in his capacity as a trustee. However, he had no doubt that the official had by signing intended to

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[2] Under the *Pensions Act 2004 (Code of Practice) (Defined Benefit Funding) Appointed Day Order 2024* (SI 2024 No. 1143).

[3] *Ballard & Others v Buzzard (Re Radley College Pension & Assurance Scheme)* [2024] EWHC 2765 (Ch).

demonstrate both the authorization of the amendments by the principal employer, and his approval of them as a trustee.

The judge described the evidence pointing in that direction as *'overwhelming*', '*compelling*' and '*powerful*'. He noted, for example, that the employer-nominated trustee would have had few qualms about using the pro-forma documentation provided by the insurer, believing it to have expertise in the matter. The minutes of meetings at which the official was present indicated that the trustees approved of the amendments. He had circulated the documentation to his fellow trustees for signature, referring to the '*agreed changes*'. He had sent the signed documents to the insurer, noting that the trustees' endorsement of the changes, and saying that they had been 'duly signed'. He had taken a leading role in communicating the changes to members, putting his name to the announcements. And he had been involved subsequently in administering the scheme as though the amendments had been validly made.

The judge concluded that he should order rectification of the documents to clarify that the employer representative was also signing in his capacity as a trustee.

There was a further problem with one of the non-deed amendments, because no document signed by all of the trustees could be found. There were two partially signed copies available. The judge was willing to accept, on the basis of the evidence before him, that all of the trustees had signed. In doing to, he observed that it was '*not surprising that the definitive document has been lost some 23 years after it was signed.*'

The deed

The other problem that had brought the parties to court concerned the later consolidating trust deed. It had omitted one of the earlier (non-deed) amendments, and so ostensibly returned the scheme to its past position, under which all pensions in payment were to be increased by 5% LPI.

Looking at the case-law, the judge found support in precedent for the proposition that the absence of discussion of a change can in some cases be evidence that the parties didn't intend to make the change. In this case it was clear that the deed was intended to consolidate past amendments and ensure conformity with pensions law. No-one had suggested an intention to reverse past changes, and the recital to the deed—the part that sets out its purpose and other relevant facts—would have been at odds with such an objective. The judge noted the absence of any documentary evidence that the restoration of 5% LPI increases for all pensions had ever been under consideration, or that actuarial advice as to the costs that would flow from such a decision had been sought. Following the deed, scheme administration continued on the basis that members were entitled only to 2.5% LPI increases on the relevant tranche of pensions.

It was '*entirely clear*' to the judge that the failure to incorporate the move to 2.5% LPI in the consolidating deed *'was a pure and simple mistake.*' He ordered that the deed be rectified.

The ruling seems to offer some cause for optimism that pragmatic solutions to errors in scheme documentation can be found. That said, in other cases there might not be the same abundance of evidence of the parties' intentions, all of it pointing toward the same conclusion. The judge also counselled against reliance on judicial intervention, suggesting that the case should be treated as a 'cautionary tale', and that the time and expense that had been required to rectify the mistakes in this instance should be 'taken to heart'.

Court closes route to debtor's pension fund

The Court of Appeal in England and Wales has overturned a ruling that could have given judgment creditors access to the judgment debtor's occupational pension funds.[4] The Court said that the appealed decision was prevented by the statutory rule on the 'inalienability' of occupational pensions.

The inalienability rule prohibits various actions such as liens that would result in scheme beneficiaries being deprived of their occupational pension rights, and makes agreements intended to achieve those things unenforceable (there are several exceptions to allow activities like commutation, and to cover cases involving fraud, for example). It also says that, where the rule applies, the courts can't make orders that would prevent a person from receiving their pension.

The overturned order was part of a two-step manoeuvre that, the Court concluded, was designed to circumvent the inalienability rule. The plan was for the member to instruct his scheme trustees to pay uncrystallized funds as a lump sum into a designated bank account, held in his name. That would have removed them from the protected occupational pensions environment. The judgment creditors could then have obtained a second order against the monies in the account, to satisfy some of the debt owed to them.

This seems like a particularly nuanced and still-developing area of law. As noted, this case was concerned with a judgment debtor: his debt was established by a previous ruling that he had breached his fiduciary duties as a company director. The legal position appears different in cases of personal bankruptcy, when the benefits have already come into payment, or when personal rather than occupational pensions are involved. Anyone faced with attempts by third parties to recoup money owed to them out of pension funds will need expert legal advice.

TPR's plan for CDC oversight

The Pensions Regulator has published its supervision and enforcement policy for collective money purchase (generally known as collective defined contribution or CDC) schemes, setting out its intended approach to ensuring compliance. It says that it will supervise CDC schemes in a '*collaborative and proportionate*' manner, focusing on member outcome and preventing compliance breaches before they occur.

The Regulator will contact schemes annually to provide a report summarizing:

- its evaluation of the scheme;
- its intended level of supervision;
- the main risks observed;
- actions the trustees should take; and
- the Regulator's planned engagement timetable.

The Regulator expects those running CDC schemes to be '*proactive*' in liaising with it, by volunteering information about material developments, risks and issues that may affect the scheme's ability to meet the authorization criteria.

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[4] *Manolete Partners v White* [2024] EWCA Civ 1418.

And Finally…

Long-suffering readers, if such creatures exist, will know that *AF* has for many years looked forward to the annual Ig Nobel Prizes, which

> *'honor [sic] achievements so surprising that they make people LAUGH, then THINK. The prizes are intended to celebrate the unusual, honor [still sic] the imaginative — and spur people's interest in science, medicine, and technology.'*

Well, the Igs have returned to *And Finally*, after what *seems* like a lengthy hiatus (with *AF*'s screwed up perception of time, it might've been last year). The impetus is that, for the first time that *AF* can remember (see reference to declining mental faculties), pensions got an explicit mention. At the September 2024 ceremony (the 34th), the inaugural Demography Prize went to Saul Justin Newman, of University College London's Centre for Longitudinal Studies, for '*detective work to discover that many of the people famous for having the longest lives lived in places that had lousy birth-and-death record keeping.*'

The titles of the two articles cited for the prize speak volumes: '*Supercentenarians and the Oldest-Old Are Concentrated into Regions with No Birth Certificates and Short Lifespans*', and '*Supercentenarian and Remarkable Age Records Exhibit Patterns Indicative of Clerical Errors and Pension Fraud*'. Newman is a critic of the idea of 'Blue Zones': places like Okinawa in Japan, and areas of Italy and Greece, where a disproportionate number of people seem to have survived to great ages. Hypotheses for this hyper-longevity have suggested some providential combination of healthy diets, supportive social structures and good genes; Newman found that the regions in question were otherwise characterized by low incomes and literacy rates, high crime, and short lifespans relative to the national average.

Interviewed about his Ig Nobel award, Newman said that he had been able to track down 80% of the supercentenarians (people aged over 110) in the world, discovering that almost none had birth certificates: '*In the US there are over 500 of these people; seven have a birth certificate.*' He estimated that, in Ikaria, Greece, at least 72% of supposed centenarians were deceased, MIA, or '*essentially pension-fraud cases*' (he mentions a Greek government official with responsibility for pensions who reckoned that 9,000 inhabitants of the country aged over 100 were both (a) collecting a pension, and (b) dead). According to Newman, the best predictor of the whereabouts of centenarians around Okinawa is whether their local record offices were bombed during the Second World War. Citing a 2010 review by the Japanese government, which discovered that 82% of centenarians were in fact dead, Newman concluded that the secret to achieving supercentenarian status was '*don't register your death*'…

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