

**MINUTES OF THE
LEGISLATION COMMITTEE
10.30 TUESDAY, 2ND NOVEMBER 2021
AS A TEAMS MEETING**

Present:	Mark Bondi (Chair)	Capita Pension Solutions Limited
	Michael Aherne	Herbert Smith Freehills LLP
	Paul Barton	Willis Towers Watson
	Andy Cork	Allen & Overy LLP
	Caroline Ekins	XPS Pensions Group
	Neil Fairchild	Aon
	Sarah Hickling	Baker McKenzie LLP
	Martin Hooper	Barnett Waddingham LLP
	Wendy Hunter	Squire Patton Boggs (UK) LLP
	Faye Jarvis	Hogan Lovells International LLP
	Georgina Jones	Sacker & Partners LLP
	Shabana Masavi	Hymans Robertson LLP
	Chris McNay	Mercer Limited
	Shayala McRae	LCP
	Judith Sambrook	M&G
	Jasmine Smiley	Fidelity International
	Alasdair Smith	Linklaters LLP
	Christopher Stiles	Gowling WLG (UK) LLP
	Nick White	Travers Smith LLP
	John Wilson	Spence and Partners Limited
In attendance:	Lauren Collins	Buck
	Carla Smidt	Society of Pension Professionals

1. APOLOGIES

Apologies were received from Andrew Scrimshaw, Joanna Smith (Georgina Jones is substituting for her) and Fred Emden. Carla Smidt will attend the meeting in Fred Emden's absence. Lauren Collins, a member of the Future Leaders Group will be observing at the meeting.

2. MINUTES OF THE COMMITTEE MEETING HELD ON 5TH OCTOBER 2021 (CIRCULAR)

The minutes were agreed. The Chair thanked Chris McNay for his minute-taking of a complicated October meeting.

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3. MATTERS ARISING

1) Monitoring of Hughes Judicial Review

F Emden has passed on the Committee's views to the Defined Benefit Committee, who are monitoring this issue (although they are not proposing to take any action at this stage).

2) Response on Notifiable Events

The Committee noted the SPP's response to the DWP Consultation: Strengthening the Pensions Regulator's Powers: Notifiable Events (Amendments) Regulations 2021. The Chair extended thanks to Nick White in particular for his help in producing such an excellent response.

3) Code of Practice 12

At the last meeting, the Committee had discussed the fact that the code-related guidance appears to have got itself into a tangle on the issue of what is materially detriment, with the guidance being written in such a way that what is materially detriment forms part of the new tests, whereas in practice it is not a component of the 2 new tests. The Committee considered whether it should provide some comments to the Pensions Regulator on the guidance, but ultimately decided not to do so.

4) Correspondence with DWP – Legal and Regulatory Barriers to DC Consolidation

As discussed at the last meeting, following a discussion the SPP Council had with the DWP the Defined Contribution Committee was tasked with coming up with a list of legislative issues that could act as a barrier to DC consolidation. Chris McNay, on behalf of the Legislation Committee, inputted into this.

The Defined Contribution Committee concluded that the change that would most help to alleviate barriers to consolidation would be a change to the tax legislation on protected pension ages and scheme specific lump sums so that they were protected on transfers, even if they didn't satisfy the block transfer requirements. However, there may be other issues that are more of a barrier, for example member consent issues in relation to group personal pension plans and trustees concerns about complying with their fiduciary duties.

The Committee discussed the issue and concluded that the issues were interlinked. The issues around preserving protected pension ages and scheme specific lump sums feed into the question of whether trustees would be complying with their fiduciary duties by agreeing to the transfer.

The Committee also noted that the Defined Contribution Committee felt that there was no point in the DWP looking at this issue unless the Treasury was also going to look at the relevant parts of their legislation. The Committee agreed with this view.

The Chair agreed to liaise with Judith Sambrook to finalise the Committee's comments to send back on this issue.

5) LC Hybrid Meeting – update on plans

It was noted that the January meeting had been rescheduled to 11th January at 14.30 as a hybrid meeting. Allen & Overy had kindly offered to host this at their offices at One Bishops Square, London E1 6AD with drinks and nibbles afterwards.

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4. TPR NEW ENFORCEMENT POLICIES CONSULTATION

The Committee is taking the lead on responding to this consultation on behalf of the SPP. Sarah Hickling agreed to assist the Chair and the Committee in preparing the first draft response.

Overlapping Powers Policy

On Question 1 in the consultation, it was agreed that further clarity could be sought in relation to the overlap between their powers to prosecute for criminal offences and their power to make financial penalties.

Question 2 is whether the policy is clear on the factors the Regulator will take into account when they have a choice of which power to use? The Committee discussed the fact that the policy was contradictory in places and so the short answer was “No”.

Question 3 is ‘Are the examples useful in illustrating what [the Regulator takes] into account when considering which power to use? Are there any other examples that you would find useful?’ The Committee discussed the question and felt the examples were useful and that they were probably sufficient.

Question 4 asked for any other feedback. The Chair requested that if any of the Committee members had any further comments on the overlapping powers policy, they get in touch with the Chair, Sarah, and John Wilson as soon as possible. The draft response also needs to be circulated around the other committees and so time needs to be allowed for that.

Monetary Penalty Powers Policy

The Committee then discussed the draft monetary penalties policy. On the first question regarding whether the policy is clear on the approach for calculating a fine, it was felt that the minimum fine for the low culpability, low harm banding was too high. The minimum level is £100,000, but it was felt that it would be better to lower this to £50,000 so that it starts at the top of the normal fine band (because currently companies can be fined up to £50,000). Except for that the Committee considered that the approach for calculating fines was relatively clear.

The Committee discussed the fines that could be awarded in relation to section 69 and the new 69A when it comes into force. It was noted that a fine could be issued under both s69 and s69A for the same event because someone could fail to make the initial notification and then fail to follow up with the more detailed notification under section 69A. It was noted that the fines under section 69A could be issued against people other than the employer and so it was probably the intention that fines could be issued under both sections for the same event. However, the Committee agreed that how this would work in practice could be made clearer. Aside from this one point, it was felt that the Policy was relatively clear.

The Chair asked that if any of the Committee members had any further thoughts after the meeting to contact him as soon as possible.

Information Gathering Powers Policy

The Committee considered that this Policy was relatively clear as well.

5. AUTUMN BUDGET AND SPENDING REVIEW 27 OCTOBER 2021

The Committee noted:

- 1) The Government’s proposals to allow individuals on net pay arrangements to make a claim for the tax relief. It was agreed that trustees of schemes who operate net pay

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arrangements should consider communicating to members about this change and the ability to claim.

- 2) The Government intends to have a further consultation on the DC charge cap.

6. DWP CONSULTATION: CLIMATE AND INVESTMENT REPORTING: SETTING EXPECTATIONS AND EMPOWERING SAVERS

The Investment Committee are taking the lead on drafting the response to this consultation and this Committee has been asked to feed into their work. The consultation is broken down into two main parts and the drafting of the response to each part has been allocated out to individuals. Their intention is to draft the response during the course of November and then circulate to circulate the draft to the different committees in December. It was noted that while this initially only affects larger schemes, the policy intention is to include smaller schemes over time and so it is in the interests of everyone in the industry to get the design right now.

Michael Aherne agreed that he would feed into the group drafting the response on behalf of the Legislation Committee. It was also noted that as the Consultation does not close until next year, there would be an opportunity to discuss this further at the December meeting.

7. DWP CONSULTATION OUTCOME: SIMPLER ANNUAL BENEFIT PENSION STATEMENTS

It was noted that the new requirements had been pushed back to 1 October 2022 and the Committee agreed that this delay was welcome.

The Committee discussed the fact that the requirements will only apply to auto-enrolment schemes that are pure money purchase. Therefore, it doesn't apply to hybrid schemes and so these schemes can decide whether or not to adopt the simpler statements. These schemes often have bespoke materials that go over two pages and so it was felt that they would probably welcome the fact that they had flexibility.

8. SPP EVENTS UPDATE AND POLLING SUGGESTIONS

There are a number of SPP events coming up in November and early December, which were noted by the Committee.

9. ANY OTHER BUSINESS

- 1) The Committee discussed the draft online safety bill and the fact that there are now three committees who are dealing with this, the Joint Committee (launched by the House of Commons and the House of Lords), the DCMS sub-committee and the Treasury Committee enquiry on economic crime. At least some of these committees are due to report in December and so following this might be the point at which the SPP has an opportunity to engage with Government on this topic.

It was agreed that this was a topic that the Committee would keep under review and then it could determine when would be a good time to provide formal input. Shayala McRae had prepared a summary document of the issues and Carla agreed to circulate this to the Committee after the meeting. The Chair also agreed that he would discuss this issue with Fred Emden as a point to raise with Council.

- 2) The Committee discussed the fact that the expectation was the new Transfer Regulations would be issued at the beginning of November, with implementation around 30th November.

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10. DATE OF NEXT MEETING

The Committee noted that its next meeting was due on 7th December 2021 at 10.30 anticipated to be as a Microsoft Teams meeting.

11. MINUTE TAKER FOR NEXT MEETING

Shayala McRae

File: 4.7
25th November 2021

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