Circular 2919

MINUTES OF THE
LEGISLATION COMMITTEE
10.30 TUESDAY, 7TH DECEMBER 2021
AS A TEAMS MEETING

Present:	Mark	Bondi (Chair)	Capita Pension Solutions Limited
	Michael	Aherne	Herbert Smith Freehills LLP
	Paul	Barton	Willis Towers Watson
	Pete	Miles	Allen & Overy LLP
	Caroline	Ekins	XPS Pensions Group
	Fred	Emden	Society of Pension Professionals
	Neil	Fairchild	Aon
	Sarah	Hickling	Baker McKenzie LLP
	Martin	Hooper	Barnett Waddingham LLP
	Faye	Jarvis	Hogan Lovells International LLP
	Georgina	Jones	Sacker & Partners LLP
	Chris	McNay	Mercer Limited
	Shayala	McRae	LCP
	Judith	Sambrook	M&G
	Andrew	Scrimshaw	Isio
	Nick	Philips	Fidelity International
	Victoria	Thompson-Hill	Baker McKenzie LLP
	Nick	White	Travers Smith LLP
In attendance:	Laura	Santamarina	Society of Pension Professionals

1. APOLOGIES

Apologies were received from Jasmine Smiley (Nick Philips is deputising for her), Andy Cork (Pete Miles is deputising for him), Christopher Stiles, Wendy Hunter, and Alasdair Smith. Laura Santamarina, the new Events Manager for the Society was in attendance.

2. MINUTES OF THE COMMITTEE MEETING HELD ON 2ND NOVEMBER 2021 (CIRCULAR 2914)

The Chair thanked Faye Jarvis for her minute-taking of the November meeting. The minutes were agreed.

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3. MATTERS ARISING

1) Legislative barriers to consolidation

The Committee noted the 5 November email to Pete Searle at the DWP and will now wait for any response.

2) DWP consultation on Climate and investment reporting: setting expectations and empowering savers

The Chair noted that the Investment Committee has now prepared a draft response on Chapter 1 of the new provisions. The Committee considered the draft regulations and proposed amendments to statutory guidance in Chapter 1 and the further guidance on reporting in Chapter 2 and agreed that the draft regulations were fit for purpose and the draft responses to Chapter 1 suitable.

With regard to Chapter 2, the main focus is the reporting on stewardship with an emphasis on more information being disclosed (which will impact on schemes that have at least 100 members) and the draft response is awaited. The group drafting the response was scheduled to meet on Friday and the Chair invited anyone who would like to contribute to that meeting to do so, and also asked that the Committee consider the draft response when it circulated more widely and feedback any comments. Consultation closes on 6 January 2022.

3) TPR new enforcement powers consultation

The Chair thanked Sarah Hickling for her work producing the draft response to this consultation and Paul Barton for his subsequent input. A mark-up with further comments from the DB Committee has also now been fed in. The Committee discussed particular concerns around the potential for confusion on when the Regulator will go for fines or criminal penalties, the implications of including references to acts and breaches that may undermine public confidence and the benefits of consolidating the numerous pieces of guidance in this area.

The Committee agreed that the draft response is now ready to be circulated round the broad range of Committees to allow time for wider feedback. Consultation closes on 22 December 2022.

4. CONDITIONS FOR TRANSFERS REGULATIONS AND CONSULTATION RESPONSE

Concerns were expressed that the new transfer regulations (which came into force on 30 November 2021) are not fit for purpose.

There are a number of areas in which policy intent and regulation are not consistent and we understand both that MaPS implicitly acknowledged this at a recent meeting hosted by the ABI (at which TPR talked through the guidance and MaPS talked about their processes) and that that PSIF are talking to the Pensions Ombudsman to find out his view and how he might handle cases in these circumstances.

The message from both TPR and MaPS is that both providers and schemes should be following the policy intent but the danger– as illustrated by the Hughes case - is that this exposes trustees and providers to the risk of legal sanction for not following the regulations if something goes wrong. While TPR's stance appears to be that providers should consider the customer journey, practically speaking you will have to think about what the regulations require and the stance of the courts and the Pensions Ombudsman. The general feeling was that there will be more referrals to trustee clients as a consequence. A linked concern was that if trustees and providers followed the letter of the law, MaPS would be overwhelmed in weeks.

PSIG are also looking to redo their Code on Combating Pension Scams to reflect the new framework, but this has been delayed due to the issues in the regulations and is now expected to come out in the first quarter of 2022.

Of particular concern are the provisions applying where the receiving scheme includes any overseas investments (e.g. a global equity fund), the feeling being that this will very often be the case (or at least it cannot realistically be assumed that it will not be) and so very many transfers will now need to be referred to MaPS. There were also concerns around the residency link provisions for transfers to QROPSs in that transfers can now only be made, without a reference to MaPS, to a particular EEA state where the member is also resident, but it was suggested that this is deliberate. And there are also questions around certain interpretations – e.g., "application", "substantive response" among others.

Although we do not think that there is a list complied yet of the areas in which these regulations differ from the policy intent and regulator guidance, Judith Sambrook will be meeting with her colleagues internally to discuss how to take this forward and is happy to share with the Committee any list they of concerns they might put together.

The Chair and Judith are to liaise and produce a note to circulate round the Committee for input and expansion in the next month to six weeks and then take it up with the DWP. It was agreed to present our concerns in a strong tone but also make clear that we are very happy to engage and help improve the framework. This will also be raised at the meeting of the Chairs of all the Committees later in the week.

The Committee also considered raising at the Joint Industry Forum meeting later this week, but decided it would not be constructive, especially as the agenda is already very tight. It was also noted that the regulations are due to be reviewed within 18 months anyway so, if nothing else happens, then perhaps that would be a good opportunity for any revisions to be made.

5. FINANCE NO.2 BILL

The Finance No. 2 Bill was introduced on 4 November 2021 and the Committee's focus was on the provisions (in clauses 10 and 11) around increasing the Normal Minimum Pension Age to 57 and in particular how this will impact on members with entitlement to protected pension ages for scheme rights that existed prior to 4 November 2021.

It seems that if a scheme accepts a bulk transfer-in, any members with protected pension ages retain that right in terms of the tax legislation. Similar retention of legislative rights apply in relation to the ring-fenced rights if trustees accept a ring-fenced individual transfer in. But none of this seems to compel a scheme to change its rules or practice to allow the exercise of that right in the scheme. So, if the receiving scheme rules already provide that NMPA is 57, then it doesn't seem that accepting a transfer obliges the scheme to facilitate an earlier protected age – i.e., the tax rules will allow you to go early but the scheme rules don't necessarily have to do so. It would therefore seem that a scheme should think very carefully about accepting – in particular - a bulk transfer including members with protected pension ages if the trustees are not willing or able to make the adjustments necessary to facilitate this right.

There is however an obligation to keep records so that if the member makes a further transfer out the records should note that the member transferred in with a protected pension age and the ring-fencing provision can apply.

The Committee also discussed the tightening of the definition of "unqualified rights" such that if rules were linked to specific legislation there is no such right; whereas only if they specifically specify the ages will such unqualified rights exist. Likewise, if any there are any conditions (e.g., consents) around that right, they will not be unqualified. While this may create potential for a rules lottery, it is likely to result in fewer cases with such rights.

(It was also noted that while the HMRC guidance uses the term "unqualified rights" the legislation doesn't, instead referencing - but rather "actual" or "prospective".)

There was also mention of rumours that the insurance industry was proposing that ring-fencing proposal should be scrapped in its entirety. Judith Sambrook will investigate and let the Chair know if there is any basis to this rumour.

6. RAISING STANDARDS IN THE TAX ADVICE MARKET

The Committee noted that HMRC published its summary of responses on this consultation and next steps on 30 November 2021.

The general feeling was that it was good news that HMRC is not rushing to impose mandatory PII and that it seems to be appreciating that this matter is not straightforward as it may have first thought. The response notes that the government is "intending to" consult on further options next year which will also test a potential legislative definition of tax advice. The Committee agreed that a lot will hang on the definition of "tax advice" as this will fix the scope of regulation. Any exclusions from the definition would be of significance, particularly in relation to what is classified as guidance rather than advice.

The Committee agreed to revisit this matter when the new consultation is published in 2022 (though some suggested that the use of the words "intending to" rather than "will" signified an intention to kick this issue into the long grass).

7. FRAUD COMPENSATION LEVY CONSULTATION

The Committee noted this consultation and that it closes on 10 December. The headline proposal is that they want to raise the cap on the levy for master trusts and other occupational pension schemes in order to raise money for the fraud levy. The Committee – in line with the Society's other committees does not intend to respond, especially given the short timescale.

8. SPP EVENTS UPDATE AND POLLING SUGGESTIONS

There are many proposals bubbling for 2022! These include:

- Michael Aherne's suggestion of a session on the Long-Term Asset Fund
- Chris Stiles suggestion for reflections on the Mitchells and Butler judgement and the impact on schemes from that (this may well be first event of 2022)
- Something on rising inflation and potentially interest rates
- Potentially something on ESG risk in Covenant, possibly also ESG risk in technical liabilities (provided people can say something more than that it is hard!)
- Also, the Future Leaders Group's first event for that cohort is likely to be in the first quarter, probably on big emerging themes in DB and DC, for which support is likely to be sought from the various committees.

9. ANY OTHER BUSINESS

1) The Chair announced that Faye Jarvis would be the new Deputy Chair of the Committee.

2) It was noted that the consultation on the draft dashboard regulations looks like it is drifting so may well not be issued before the January meeting of the Committee. There has however now been a Joint Industry Forum subgroup focussed on the Dashboard set up to join up the voices in the industry, encompassing PDP, DWP, FCA, TPR etc who will update regularly at the JIF meetings and provide quarterly updates.

3) Shayala McRae reported that there had been no significant developments with regard to the draft online safety bill.

10. DATE OF NEXT MEETING

The Chair noted that, particularly if the Dashboard Regulations are not published, there may be insufficient business for the January meeting which is due to be held on 11th January 2021 at 14:30. It had been anticipated that this would be a hybrid meeting followed by drinks and nibbles as Allen & Overy had kindly offered to host at One Bishops Square, London E1 6AD. Of course this may now not be possible; it would depend on the COVID guidance at the time. The Chair asked Pete Miles to mention this uncertainty to Andy Cork and also expressed his gratitude for the offer extended.

11. MINUTE TAKER FOR NEXT MEETING

Alasdair Smith.

13th December 2021