

**MINUTES OF THE LEGISLATION COMMITTEE
10.30 WEDNESDAY, 11TH JANUARY 2023
AS A TEAMS MEETING**

Present:	Faye	Jarvis (Chair)	Macfarlanes LLP
	Michael	Aherne	Herbert Smith Freehills LLP
	Paul	Barton	Willis Towers Watson
	Mark	Bondi	Capita Pension Solutions Limited
	Andy	Cork	Allen & Overy LLP
	Alex	Economides	Travers Smith LLP
	Fred	Emden	Society of Pension Professionals
	Neil	Fairchild	Aon
	Abigail	Fletcher	XPS Pensions Group
	Alison	Goudarzi	Linklaters LLP
	TJ	Hargreaves	Isio
	Martin	Hooper	Barnett Waddingham LLP
	Rebecca	Howard	Hogan Lovells International LLP
	Simon	James	Squire Patton Boggs (UK) LLP
	Chris	McNay	Mercer Limited
	Shayala	McRae	LCP
	David	Revell	EQ Paymaster
	Judith	Sambrook	M&G
	Jasmine	Smiley	Fidelity International
	Victoria	Thompson-Hill	Baker McKenzie LLP
	Oliver	Topping	Sacker & Partners LLP
	John	Wilson	Spence and Partners Limited
In attendance:	Miguel	Pelayo Serna	Society of Pension Professionals
	Carla	Smidt	Society of Pension Professionals

1. WELCOME AND APOLOGIES

Apologies were received from Caroline Ekins, Chris Stiles and Nick White. Abigail Fletcher was substituting for Caroline Ekins. Alex Economides was substituting for Nick White.

2. DEPUTY CHAIR

Shayala McRae has kindly agreed to act as the deputy chair of the Committee.

3. MINUTES OF THE COMMITTEE MEETING HELD ON 6TH DECEMBER 2022 (CIRCULAR 3098)

The minutes were noted and approved for signing.

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4. MATTERS ARISING

1) TPR - pensions dashboards compliance and enforcement policy for Consultation

The Committee agreed that The Pensions Regulator's proposed dashboards compliance and enforcement policy is broadly reasonable. The SPP will submit its comments, including observations made at the Committee's December meeting, in response to the consultation.

2) FCA Pensions dashboard and non-workplace pensions publications

The Financial Services Regulation Committee is leading on drafting the SPP's response to the FCA's consultation on the Proposed regulatory framework for pensions dashboard service firms (CP 22/25). However, there are aspects of the consultation, in particular with regard to section 5, in which the Legislation Committee holds an interest and a sub-group of the Committee (established at the December meeting) will feed into the response.

The following issues were discussed:

- The 30-day deadline for the retention of post-view consumer data appears unnecessarily unwieldy, potentially requiring consumers to 'go back through the loop' and perhaps make them feel time-pressured. There appeared to be no significant downside to extending this.
- The consultation provides considerable flexibility for dashboard providers on the wording of flags and disclaimers (for example, for underpins), which they are likely to find helpful with regard to setting their tone. However, data providers (including trustees) may find the lack of standardisation challenging, with regard to the interaction with their own communications, and certainty in their calculations and risk-based judgements. It may be appropriate for data providers to provide their own communications to address this issue.
- The FCA notes that the Government concluded that the right to data portability under GDPR is not created when a consumer uses a dashboard. It was understood that the right would be enforceable against a data provider but not a dashboard provider, which doesn't hold the data.
- It is not clear whether a data provider that doesn't have the telephone number or email address for a member can take it from a find request and add it to its own system. This might depend on the messaging within a dashboard. This may be a matter for consideration beyond the FCA, and is probably not one for this consultation. The PDP may be in a position to look into this.

Action: the Committee will formalise a question for Fred Emden to put to the PDP.

3) An update on Transfer Regs Drafting

The Chair has held meetings with other lawyers on the initial drafting of potential amendments to the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 for the DWP to consider. A wider meeting, of industry groups including the ABI, will take place on 18 January. The DWP has set a deadline of 17 February for submission of any proposed amendments.

The Committee noted that a preferred approach might be to allow for a carve-out for a 'clean list' for personal pensions provided by established firms. This would reduce considerably the number of arrangements requiring investigation. Alternatively, the flags

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could be changed; while the DWP might be reluctant to do this, the intention remains to suggest alternative wording for the Regulations.

As noted in the Committee's December meeting, the DWP is understood to have received feedback that the Regulations are working well. In part, this may arise from organisations taking a 'pragmatic' approach, by following guidance rather than the Regulations on relevant aspects.

The Pension Scams Industry Group (PSIG) is understood to be continuing work on updating its code of good practice, including its practitioner guide. It may be agreed and published in the near future. It was understood that it is intended that the code cover the flags on incentives on transfers and overseas investments but highlight the risks of not following a literal interpretation of the Regulations.

5. CMA ORDER ON INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT

The Committee noted that The Pensions Regulator has not included mention of reporting annual compliance with the requirements for tendering for fiduciary management services and setting objectives for investment consultants, as set out in the Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022, in its information on 2023 DB and hybrid scheme returns.

It transpired that a number of members of the Committee had received similar responses from the Regulator, in which it states that it will provide trustees with reasonable notice to comply, that there will be a communication programme in advance of the requirements, and schemes should continue to record data ready to provide it when collection is announced.

The Committee considered the situation to be somewhat odd given what was set out with regard to the scheme return in the explanatory memorandum to the Regulations and the consultation response. However, it was noted that all those subject to the legislation are in the same position, and one would not expect the Regulator to seek sanction where it was responsible for any omission.

6. TPR CONSULTATION - FUNDING CODE

In its meeting of 12 January, the Defined Benefit Committee will consider how the SPP's responses to The Pensions Regulator's two consultations – on a revised DB funding code of practice, and on Fast Track and its regulatory approach – will be coordinated. That Committee, the Investment Committee and the Covenant Committee will have an interest in the drafting. The Legislation Committee agreed that it would also comment, as required.

The Committee noted that there will be high level issues to raise, in particular with regard to consistency between the draft code and the draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023, on which the DWP consulted last year. While flexibility under the draft code may be welcome, it is important that this be allowed for under the final regulations – for example, with regard to the "principle that funding deficits must be recovered as soon as the employer can reasonably afford" for recovery plans.

While recognising how protracted the process of formulating a new funding regime has been, the Committee noted that the intended effective date of the regulations and the code, of 1 October 2023, may be challenging – in particular, with regard to ensuring that appropriate changes are made to the draft regulations, with industry sight. It was not known whether David Fairs leaving his position at the Regulator, in March 2023, would have any impact. It was understood that the Regulator would issue its consultation on revised covenant guidance in spring 2023.

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The Committee commended the Regulator on allowing 14 weeks for responses, with the consultations closing on 24 March 2023. The consultation will be included on the agenda for the February Committee meeting, for further and more in-depth consideration.

7. RETAINED EU LAW (REVOCATION AND REFORM) BILL – FURTHER DISCUSSION

In its December meeting, the Committee agreed to raise a list of legislative provisions that appear to have been missed in the Government's Brexit Opportunities catalogue of retained EU law, with the DWP.

Though some commentators have questioned the utility of the Government's exercise, the Committee concluded that providing such a list would have minimal impact on any decision by the Government to proceed or not. It also noted that the House of Commons Library issued a research briefing on the 'Progress of the Retained EU Law (Revocation and Reform) Bill 2022-23' on 9 January, which may be an indication of the intent of the Government to progress with the Bill.

Action: at its February meeting, the Committee will ask Nick White for his view before producing any letter for the DWP.

8. SPP EVENTS UPDATE

The first events for 2023 are as follows:

- 19 January: Understanding the new DB funding regime
- 24 January: The Future of LDI & Hedging
- 25 January: Residual Risks Upon Winding Up
- 2 February: Dashboards - Where are we now and what does 2023 hold

9. ANY OTHER BUSINESS

Single code of practice

The Committee noted that updates in late 2022 suggested that the single code of practice was expected to be published in 2023, potentially early in the year. It is not clear whether the Retained EU Law (Revocation and Reform) Bill could have any impact on its publication.

10. DATE OF NEXT MEETING

The Committee noted that its next meeting was due on 7 February 2023 at 10.30.

11. MINUTE TAKER FOR NEXT MEETING

Nick White

25/1/2023

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