THE SOCIETY OF PENSION PROFESSIONALS

making pensions work

Solving the UK investment puzzle

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Foreword

In recent years, politicians have made much of the need for pension schemes to invest more in productive finance, to invest more in the UK and ultimately to do more to help UK plc. Policymakers have also suggested that pension pots for savers in defined contribution schemes could be boosted by over £11,000 as a result of increased pension scheme investment in UK productive finance assets[1]. However, there are genuine concerns from some that these reforms have the potential to negatively impact pension savers returns as well as concerns over the challenges presented to pension trustees' investment decision-making powers.

The main focus of pension schemes is to provide savers with financial security in retirement. As such, their interests should always take priority. However, savers' interests may be different depending on the type of scheme they are in. Put simply, individual members are less directly impacted by investment allocation decisions if they are invested in the Local Government Pension Scheme (LGPS) or other Defined Benefit (DB) schemes, but their interests can take a very different focus in relation to savings in Defined Contribution (DC) arrangements.

With the LGPS and private sector DB schemes, the sponsoring employer has ultimate responsibility for funding the benefits. Although savers may also invest their own money, either through required employee contributions or additional voluntary contributions, it is ultimately the employer which has to make up the difference when investments fail, at least for the scheme's core benefits. With DC schemes and arrangements, savers bear the whole risk of investment failure, with no employer safety net.

Driving investment in UK productive finance will require government to look at both the potential incentives for trustees and administering authorities to weigh in the mix , as well as any protections which are considered necessary in circumstances where allocations to particular types of asset are encouraged, facilitated, incentivised or perhaps even mandated (although we believe that passing legislation to set a minimum allocation to particular types of asset would be problematic from a legal and practical perspective).

It cannot be ignored in all this that, as the most significant investor in the gilt market, UK DB schemes already do a great deal to invest in and support UK plc. At the same time, it is unarguable from a fiduciary duty perspective that UK companies need to offer better risk-adjusted investment returns to attract greater investment from pension schemes, as this is ultimately the key driver of trustees' investment decisions. That said, it also cannot be ignored that policy makers have identified a real opportunity for government to further encourage, incentivise, and perhaps drive, UK asset allocation.

Whatever policy decisions are made in this area, the Society of Pension Professionals (SPP) urges policymakers to ensure that they are made in consultation with industry and that a reasonable timeframe for implementation is allowed. This will reduce and potentially eliminate unintended consequences whilst maximising the chances of policy success.

The SPP recognises both the political desire for greater UK investment and the valid concerns being raised by some that this could have potentially negative consequences if not carefully implemented. As a result, this paper seeks to broadly identify the barriers to success and identify possible solutions. As well as identifying some broad issues that apply irrespective of scheme type, we have broken down our observations into three areas – LGPS, DB and DC to mirror different drivers that affect each type of arrangement. We very much hope this proves to be a useful starting point for government and industry to achieve an outcome that best serves the interests of all involved parties – policymakers, the UK economy and savers – as well as feeding into the current government review of the UK pensions landscape[2] - the first phase of which focuses on investment.

Simon Daniel, SPP Investment Committee & Sophia Singleton, SPP President

1 HM Treasury & DWP Press Release, 20 July 2024: https://www.gov.uk/government/news/chancellor-vows-big-bang-on-growth-to-boost-investment-and-savings#:~:text=Chancellor%20launches%20landmark%20review%20to,deliver%20higher%20returns%20for%20pensions.

2 Ibid

1. Political background

The Conservative Government's Patient Capital Review in 2016-17, led by HM Treasury, identified barriers to access to long-term finance for growing firms and assessed what changes in government policy were needed to support the expansion of long-term capital for growing innovative firms. The Review observed that the UK pensions market, *"…is heavily fragmented relative to other G7 nations, (e.g., Canada), with few very large pension funds. Smaller pension funds find it difficult to justify building in-house venture investing expertise alongside the relevant governance and oversight capability, given the relatively small asset allocation; and - Pension funds with a poor asset / liability funding position and / or a weak covenant from the employer are less able to invest in risky or illiquid assets. This is the case for many UK pension funds, accounting for a significant proportion of all pension assets."*[3]

In November 2020, the industry-led Productive Finance Working Group was convened by HM Treasury, the Bank of England, and the Financial Conduct Authority, to develop practical solutions to the barriers to investing in long-term, less liquid assets. In September 2021, the Group published a report[4] with a range of recommendations designed to ensure DC pension schemes and other investors could benefit from the appropriate long-term opportunities. These recommendations fell into four categories, requiring action from both industry and policymakers. This included, shifting the focus to long-term value for DC pension scheme members; building scale in the DC market; a new approach to liquidity management; and widening access to less liquid assets. The Group was disbanded in April 2023 having met its objectives of establishing a roadmap for increasing productive finance investment.

On 10 July 2023, the then Chancellor, Jeremy Hunt MP, announced the Mansion House Reforms which were said to be likely to unlock up to £75 billion of additional investment from DC and LGPS schemes, to help grow the economy, and deliver tangible benefits to pensions savers.

As part of these reforms, an agreement was reached with nine of the UK's largest DC pension providers, committing them to the objective of allocating 5% of assets in their default funds to unlisted equities by 2030[5]. This was estimated to unlock up to £50bn.

In addition, the Local Government Pension Schemes were set the target of doubling existing investments in private equity to 10%, which was said to be likely to unlock £25 billion by 2030.

The following year, in March 2024 the then Chancellor announced further pension reforms that mean by 2027 DC pension funds across the market will be required to disclose their levels of investment in British businesses, as well as their costs and net investment returns.

The new Labour government, elected in July 2024 appears just as, if not more, committed to this general direction of travel, with current Chancellor Rachel Reeves stating in her very first speech, *"…we will turn our attention to the pensions system, to drive investment in homegrown businesses and deliver greater returns to pension savers."*[6]

On 20 July 2024 the Government announced the first phase of its review of the UK pensions landscape, focusing on investment. Pensions Minister Emma Reynolds MP said, *"As the first ever joint Treasury and DWP Minister I am uniquely placed to tackle the twin challenges of productive investment and retirement outcomes. Over the next few months the review will focus on identifying any further actions to drive investment that could be taken forward in the Pension Schemes Bill before then exploring long-term challenges to ensure our pensions system is fit for the future. There is so much untapped potential in our pensions markets, with an industry worth around £2 trillion."*[7]

3 Patient Capital Review, Industry Panel response, October 2017:
https://assets.publishing.service.gov.uk/media/5a82f16b40f0b62305b95264/PCR_Industry_panel_response.pdf

4 A roadmap for increasing productive finance investment, September 2021:
https://www.bankofengland.co.uk/report/2021/a-roadmap-for-increasing-productive-finance-investment

5 HM Treasury, 10 July 2024:
https://www.gov.uk/government/news/chancellors-mansion-house-reforms-to-boost-typical-pension-by-over-1000-a-year

6 Rachel Reeves speech, HM Treasury, 8 July 2024:
https://www.gov.uk/government/speeches/chancellor-rachel-reeves-is-taking-immediate-action-to-fix-the-foundations-of-our-economy

7 HM Treasury & DWP Press Release, 20 July 2024:
https://www.gov.uk/government/news/chancellor-vows-big-bang-on-growth-to-boost-investment-and-savings#:~:text=Chancellor%20launches%20landmark%20review%20to,deliver%20higher%20returns%20for%20pensions.

2. UK pension funds contribution to UK plc.

Investments made by UK pension funds already play a vital role in supporting economic growth and are a major source of long-term investment in the UK economy.

As the Chancellor, Rachel Reeves MP, noted earlier this year, pension schemes already invest one trillion pounds in the UK economy[8]. This is in a diverse range of assets including renewable energy, healthcare, transport, utilities and education. More than half of UK pension funds invest in people and planet – with social and affordable Housing being the most popular social impact investments for these investors[9].

UK pension funds play a vital role in the success of the country; the industry broadly agrees it can still do more and is very much committed to doing so, as evidenced by the Mansion House Compact and the generally positive manner in which most of the industry has reacted to the new Labour Government announcements on the need for an increased commitment to productive finance.

3. Rationale for change

There has been a substantial withdrawal of pension scheme investment in UK equities over the last 20 years.

In 2002, 64% of DB schemes total assets were invested in equities, of which 39% was invested in UK equities[10]. By 2022 this had fallen to 15% and 2% respectively[11]. As the Investment Association notes, *"...the fall in allocation pre-dates the underperformance of UK equities. The main driver of this trend is likely a broader appetite to de-risk portfolios through more global diversification."*

With regard to DC schemes, the average allocation to UK equities is around 8% according to research from Corporate Adviser who obtained data from the 23 largest master trust and GPP default funds[12].

The long-term decline in investment in UK markets has partly been attributable to a shift from public to private investment. Many pension schemes which historically invested in listed assets now have significant holdings in private equity funds and other illiquid assets. The shift has been made for reasons which the Government would no doubt support i.e. to increase diversification and to boost long-term returns.

It is perhaps worth noting that whilst politicians of all political persuasions push for pension schemes to invest at least 5% of their assets in the UK, their own scheme does not yet do so – only £10m of its £785m fund is invested in UK equities i.e. 1.3%[13].

4. Private Sector DB Schemes

Most of the largest DB schemes are already greatly exposed to productive finance investments. For instance, more than half of the Universities Superannuation Scheme investment is in productive finance type assets[14].

For those UK private sector DB schemes which currently hold substantial surpluses, they have the potential for meaningful investment in productive finance in the near term. However, reform is needed for this potential to be unlocked – without reform, these opportunities could be missed.

UK private sector DB schemes look after the interests of 10 million members[15] and hold assets of c.£1.4trn[16]. Most of these assets are UK government bonds (gilts) and high-quality corporate bonds, as they are held to ensure the security of members' retirement income.

In aggregate these DB schemes have now accrued surpluses in excess of £225bn[17] on a low dependency basis (meaning these surpluses have been calculated based on the value of assets required to meet the schemes' liabilities, such that no further employer contributions would be expected to be required).

DB benefit promises are not only backed by the assets within the schemes but are also supported by more than 4,000 UK based sponsors operating across the globe in myriad different sectors. The combination of substantial capital and diversified sponsor backing, along with the additional security provided by the PPF lifeboat, means UK DB pension schemes are very strongly supported.

However, with limited opportunity to receive financial benefit through a refund of the surplus, there may be only incentives for sponsors or trustees to disturb a scheme in a comfortable funding position by seeking extra investment return to align with other parties' priorities.

8 Chancellor vows 'big bang on growth' to boost investment and savings, July 2024: https://www.gov.uk/government/news/chancellor-vows-big-bang-on-growth-to-boost-investment-and-savings
9 Better Society Capital, March 2022: https://bettersocietycapital.com/latest/more-than-half-of-uk-pension-funds-investing-in-people-and-planet/
10 Investment Association, 2023: https://www.theia.org/sites/default/files/2023-10/Investment%20Management%20in%20the%20UK%202022-2023%20-%20Chapter%204.pdf
11 Ibid
12 Corporate Adviser, March 2024: https://corporate-adviser.com/workplace-pensions-with-higher-uk-allocations-typically-underperforming-peers/
13 The Times, June 2024: https://www.thetimes.com/business-money/companies/article/mps-accused-of-double-standards-over-pension-scheme-29pmnnr7z
14 USS annual report and accounts, 2023: https://www.uss.co.uk/about-us/report-and-accounts
15 Occupational defined benefit (DB) landscape in the UK 2023, The Pensions Regulator, 20 February 2024: https://www.thepensionsregulator.gov.uk/en/document-library/research-and-analysis/occupational-defined-benefit-landscape-in-the-uk-2023
16 The Purple Book, Pension Protection Fund, December 2023: https://www.ppf.co.uk/-/media/PPF-Website/Public/Purple-Book-Data-2023/PPF-The-Purple-Book-2023.pdf
17 DWP, March 2024: https://www.gov.uk/government/consultations/options-for-defined-benefit-schemes/options-for-defined-benefit-schemes

DB potential for UK productive finance

Given the extent of financial and sponsor security, if invested for the long term, these schemes' surpluses have the potential to grow substantially without materially compromising the long-term security of members' benefits, whilst providing a meaningful source of capital to support the UK's productive capacity.

There are problems but these are not insurmountable. For example, many of the productive finance assets the government would like to see pension schemes invest in are complex and risky investments requiring significant due diligence. Recent high-profile problems add to schemes' nervousness about investing in such assets. For example, overseas pension funds have written off their stakes in Thames Water having declared the business *"uninvestable"* - the Universities Superannuation Scheme (USS) has a 20% stake in Thames Water.

Reform is essential to unlock DB schemes' potential for productive investment

An insurance buy-out, under which a DB scheme transfers all its assets and liabilities to an insurer, is still often framed as the prudent endgame option for private sector DB schemes. This is due in part to historical perceptions and guidance regarding trustees' fiduciary duties, and in part due to the strict regulatory regime insurers operate within and the expectation that the FSCS would fully back insurers in the event of default.

As a result, UK private sector DB schemes are some of the only long-term asset pools in the world which do not necessarily invest for the long term. This is because many pension schemes expect to transfer their assets to an insurer at the earliest available opportunity, and their investment time horizon reflects the time to buy-out, rather than being driven by when the liability is expected to arise.

It should be acknowledged that once these schemes have transferred to an insurer, the insurer itself often invests in long-term UK productive investments. However, in the run up to a transaction DB schemes gradually transition out of these assets.

With reform, DB schemes could be enabled and encouraged to make the most of the protection already in the system and harness their capacity to generate further surpluses. Releasing even a fraction of DB schemes' assets for longer-term investment in this way could support meaningful additional investment in the productive capacity of the UK.

Potential DB solutions

> **The publication of new, best-practice guidance from The Pensions Regulator (TPR) to create an environment where trustees have confidence in running on a scheme for the long-term and sharing surplus.** It must also be remembered that sharing surplus (whether with members or sponsors) could significantly boost the UK economy.

> **Legislative change to allow for streamlined mechanisms, with appropriate guard rails in place, for surplus sharing between members and corporate sponsors.** Earlier this year, the SPP welcomed DWP's expressed desire to make returning surpluses to employers easier for those that wish to[18]. Surplus can only currently be released down to a lower threshold of the buy-out funding level (a lower threshold than buy-out funding is possible when surplus is used within a scheme for specific purposes, such as funding DC benefits, and not extracted from the scheme). This threshold could be lowered to the low dependency funding level, in line with the new funding and investment regulations. This would enable more surplus to be released, and schemes could set a higher threshold if needed to suit their specific circumstances. This would not only directly help boost the economy, but also incentivise schemes to run-on and invest more productively.

> **Legislative change to increase the protection offered by the Pension Protection Fund (PPF).** The PPF currently provides only partial protection for DB scheme members if the sponsor fails, as set out in the Pensions Act 2004. The PPF could be enhanced to provide more protection (for example, up to full benefits) for all, or a subset of the lowest risk, DB pension schemes. This would give schemes greater confidence they can deploy their capital for the benefit of all. Significant care would be needed in making such a change – for example, due to the costs involved, generational fairness for members currently in the PPF and moral hazard leading to schemes investing inappropriately. However, if these issues were appropriately managed it could lead to a significant change in investment behaviour by scheme trustees.

In the SPP response to the Options for Defined Benefit schemes consultation[19] we noted some concerns around the proposal for the optional *"super levy"* as described, but it is possible that a different solution which achieves similar aims could be found.

18 Ibid
19 The SPP response to the DWP consultation, "Options for Defined Benefit Pension Schemes", April 2024: https://the-spp.co.uk/wp-content/uploads/SPP-response-DB-Options-Consultation-12.4.24-1.pdf?v=2513

- **Freeing up PPF reserves**
  Acknowledging that the primary purpose of the PPF is to ensure adequate funding to pay compensation to members and that it is the safety net of last resort, it has amassed a substantial £33bn in assets which exceed its expected obligations. Use of its reserves are limited by the Pensions Act 2004. Setting out additional uses for PPF reserves would require fresh legislation but if policymakers agreed to amend this legislation, some of its £33bn of assets could then be focused on UK productive finance.
- **Incentives to allocate capital to UK productive finance.**
  These could include a reduced levy for PPF protection, or tax incentives, linked to the size of such an allocation.
- **Government guarantee for DB schemes allocating to UK productive finance.**
  For schemes allocating a set minimum to such assets, the government could offer a backstop in a worst-case scenario, guaranteeing a scheme's ability to conduct a buy-out in the future.
- **Policymakers could set an early example.**
  Politicians should consider directing their own DB fund, the Parliamentary Contributory Pension Fund (PCPF) to invest at least 5% in the UK. The financial impact of doing so may be insignificant but it would set a helpful precedent, demonstrate political commitment and evidence that politicians are practicing what they are preaching – providing a signal of intent.
- **The role of a Public Sector Consolidator (PSC)**
  The SPP has previously cautioned that the precise rationale for a PSC is unclear.[20] Again, SPP reiterates that introducing a PSC requires significant care to avoid disrupting the well-functioning insurance market or stifling the development of the superfund market but having a strong productive finance focus would help to ensure there is a clear and important rationale for the idea i.e. that funds in the PSC be invested in the UK.
- **Superfund legislative framework**
  Larger pension funds benefit from both operational and cost efficiencies. Indeed, consolidation has been a feature of the Australian and Canadian models that policymakers often cite. Scalability can also help from an investment perspective, given increased access to illiquid opportunities such as infrastructure investments. Yet the DB market is fragmented, with 75% of DB pension schemes having assets under £100m.

  In our experience the market for small scheme buy-outs is very active – acknowledging pricing can be less attractive, the length of time needed longer and smaller schemes may have to go exclusive with a single insurer. However, the same cannot currently be said for the superfund market. Progressing with a permanent superfund regulatory regime would help this market develop and inevitably lead to more consolidation.

- If some of TPR's existing gateway tests were relaxed, for example to allow schemes that could potentially afford a buy-out in the foreseeable future to proceed with a superfund transaction, there would be a further opportunity for accelerating consolidation and releasing capital. This of course would need to be carefully balanced against the need to ensure benefit security for scheme members.

  The criteria for capital release could also be reviewed as there is a view that even after TPR's recently-announced change, the criteria are unduly conservative. There is at present only one active superfund provider. The market needs to grow and should not be confined to superfunds which operate on the *"bridge-to-buy-out"* basis, certainly if the intention is to allow *"normal"* occupational pension schemes to release surplus to sponsors more readily.

  Such changes could offer incentives for DB schemes to run on and invest for the long-term, giving scope to invest excess surplus assets in a broad spectrum of investments, including productive assets, whilst also supporting the gilt and UK corporate bond markets.

  While the focus here is on investment in productive assets, it is notable that DB schemes' ongoing investments in gilts and corporate bonds have contributed significantly to UK growth. Sharing of surplus with scheme members and corporate sponsors could also serve to boost economic activity, as well as generate tax revenues for the government, which could also be used to invest in the UK's productive capacity.

20 Ibid

5. Local Government Pension Scheme (LGPS)

The SPP believes that the LGPS does a very good job under intense scrutiny whilst facing substantial cost and resource pressures. Furthermore, it is worth noting that it already invests over 7% in UK and some overseas infrastructure (£27bn of its £364bn of assets[21]).

Financial sustainability

All schemes (funded or unfunded) need to be financially sustainable for both savers and employers. The average LGPS pension is not *"gold plated"* at £8,486 per annum for men and £4,285 for women[22], and whilst this may be primarily due to length of service and pay rather than scheme design, more needs to be done to ensure public sector workers enjoy a secure retirement.

This is becoming increasingly challenging because although the LGPS remains open to new members and future accrual, many funds are maturing (i.e. the average age of their membership is increasing) and the proportion of active members is decreasing due to wider pressures on public finances and workforces. Funds are increasingly cashflow negative (i.e. contributions coming in are less than the benefits needing to be paid out each month) which has an impact on investment strategy and could make it more challenging to increase investment in illiquid assets.

Costs

The 70% increase in costs referred to by government[23] does not tell the whole story because over the same time period the Cost Transparency Initiative that LGPS members signed up to means that they are now much better at measuring and publishing costs that have long existed but were not transparent. In addition, assets have risen in value and as the costs are charged as a percentage, so the costs in cash terms have inevitably increased.

It would be therefore be better to maintain focus on net costs, and to accept that any significant change in investment approach will likely incur higher costs in the short-term and in future years if there is more exposure to private markets.

Fiduciary duties

Administering authorities (who fulfil the role of quasi-trustees in the LGPS world) don't just have fiduciary duties to members and employers; the impact of the execution of their responsibilities can ultimately fall to local taxpayers and so they owe duties in public law too.

If a particular LGPS fund doesn't have enough money to pay benefits, ultimately the fund's own participating employers will need to pick up the deficit and that's predominantly local tax-raising bodies. Council budgets would be put under even greater pressure and ultimately council taxes might have to increase or services reduce further, which in the current climate is likely to be particularly unpalatable.

Pooling

Collaboration across the LGPS as a result of the new pooling regime has already delivered material savings in investment costs. However, this regime has not yet been fully implemented, existing powers have not been fully utilised to direct investment and many local authorities have not yet reached the break-even point for the costs associated with implementing pooling. It would therefore make sense for government to properly assess how pooling has, will and might work, before proposals to further centralise or direct LGPS investments are pursued.

Scale

The SPP acknowledges that increasing scale can have many benefits, but caution risks will increase if the scale becomes too great. This is not simply the risk of becoming too big to fail. Smaller schemes are good at investing in small, local impactful assets that make a difference to local communities – a centralised single LGPS may not be interested in making such small investments and so policymakers need to consider how such assets will attract funding in the future.

21 LGPS Next steps on investment consultation outcome, November 2023: https://www.gov.uk/government/consultations/local-government-pension-scheme-england-and-wales-next-steps-on-investments/local-government-pension-scheme-england-and-wales-next-steps-on-investments#:~:text=Overall%2C%20%C2%A327%20billion%20of,projects%20which%20support%20local%20areas.

22 Gender Pension Analysis, Government Actuary's Department, 25 January 2023: https://lgpsboard.org/images/Reports/2023/GADGenderPensionGapReport_Jan2023.pdf

23 Government press release, Chancellor vows 'big bang on growth' to boost investment and savings, July 2024: https://www.gov.uk/government/news/chancellor-vows-big-bang-on-growth-to-boost-investment-and-savings

Potential LGPS solutions

- **Pooling**
  Government should first properly assess how pooling has, will and might work before proposals to centralise LGPS investments are pursued. Much of the progress on pooling so far has come from thoughtful discussion and consideration of the now-familiar issues and concerns around costs, availability of investments and scale, which can be readily revisited in light of any change in focus.

  The Government should also consider whether the structures and resourcing around LGPS are adequate to ensure effective investment decisions. Schemes of similar size and complexity often have a well-resourced internal investment function, including captives with requisite FCA authorisation etc. This is true of various major private-sector schemes and also of the Universities Superannuation Scheme.
- **Statutory duty**
  Government could in theory compel LGPS funds to invest a specific proportion of scheme assets in UK productive finance by amending the law to impose such an obligation, noting that there are separate investment regulations for the LGPS. However, the potential for political and financial damage should this result in poorer investment or funding outcomes for LGPS employers and local taxpayers must be fully considered.
- **Exploring the prospects for a funded model for unfunded schemes**
  Although it would be incredibly complex, the practicalities of transitioning unfunded public sector occupational pension schemes to a funded model should be explored by policymakers, in partnership with industry.

6. DC Schemes

The drivers for DC schemes are different to those for the LGPS and other DB schemes, because there is a much more direct relationship between the return on assets of the scheme and the individual saver's ultimate retirement benefits.

A lot of work has gone into removing barriers to investment in UK productive finance. It is now time to address what would drive such investment. The drivers divide into investment considerations and legal support.

According to TPR's analysis of 2022 DC scheme returns, 97% of members of pure DC schemes with more than 12 members are in the default fund for their scheme[24]. The below therefore focuses primarily on the investment strategy for such default funds.

Trustee duties and obligations

A common response to a challenge on underinvestment in productive finance investment is that trustees are prevented from doing so by their overarching legal duties to members. It may therefore be time for change.

Trust law duties

Trustees of pension schemes have an overarching legal duty to make investment decisions in the best interests of pension scheme members. This comes from regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005 and is complemented by trustees' fiduciary duties. These require trustees to exercise their investment powers for the purpose of the scheme itself and not for any collateral purpose. We believe this is one of the most important issues for government to consider when formulating potential policy change during Phase 1 of its Pensions Review.

The issue can be illustrated with reference to a famous pensions case – the 1984 Cowan v Scargill judgment, where Arthur Scargill, as a trustee of the Mineworkers' Pension Scheme, argued for preventing the trustees from investing overseas or in competing industries to the coal industry. The judge, Sir Robert Megarry V-C, concluded that:

- *"...when the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests of the beneficiaries are normally their best financial interests"*, although that doesn't *"...inevitably and solely [mean] their financial benefit, even if the only object of the trust is to provide financial benefits"*;

24 The Pensions Regulator, DC trust: scheme return data 2022 to 2023: https://www.thepensionsregulator.gov.uk/en/document-library/research-and-analysis/dc-trust-scheme-return-data-2022-2023

- in *"the case of a power of investment, ... the power must be exercised so as to yield the best return for the beneficiaries, judged in relation to the risks of the investments in question; and the prospects of the yield of income and capital appreciation both have to be considered in judging the return from the investment"*; and
- investment powers *"...must be exercised fairly and honestly for the purposes for which they are given and not so as to accomplish any ulterior purpose".*

As a result, the judge could see *"no justification for holding that the benefits to [the members] should run the risk of being lessened because the trustees were pursuing an investment policy intended to assist the industry that the pensioners have left, or their union".*

Applying that decision to the present potential policy changes, trustees are prevented from treating a concept of the greater good for the UK (as judged by government in exercise of its political mandate) as a valid factor when adopting an investment strategy.

That leaves DC scheme trustees with a duty to seek a good level of overall net return within an appropriate level of prudence and diversification, and, in the period leading up to benefit age, minimising investment risks. The default fund statement of investment principles must reflect that duty.

In some cases, there may also be scheme specific restrictions or requirements on investment powers.

Therefore, as the law currently stands, for trustees to be able to select UK productive finance as an appropriate asset class for a default fund investment strategy, they must be satisfied that this asset class is at least equal to or better than other investments that fit their overall target. There are a variety of reasons why productive finance may not yet satisfy this test for a DC scheme. They are considered further below along with suggestions for removing barriers or making such assets more attractive.

We recognise that government might be minded to approach this this from a different angle, by creating an overriding legal duty (via primary legislation) to adopt an investment strategy including this asset class, and specifically UK businesses. However, while the superficial attraction of this could be that it would release trustees from their main duty for a carefully prescribed purpose, we believe that introducing a mandatory allocation to UK productive assets would be problematic from a legal and practical perspective. These issues are considered further under the Legislative duties section, below.

Alternatives to compulsion include introducing statutory or regulatory guidance, creating incentives for trustees to invest in UK productive assets (such as through the tax system) and developing protections (such as through co-investment alongside the National Wealth Fund, with the latter taking the first loss). Another option is to require trustees to report on holdings in specific asset classes to highlight how much or how little a scheme is invested in UK productive finance, but we would ask government to be mindful that reporting merely increases scheme costs and provides no direct benefit to members.

Legislative duties

As mentioned above, all DC trust-based schemes with default arrangements are required as a minimum to invest that default arrangement's assets *"in the best interests of relevant members and relevant beneficiaries and, in the case of a potential conflict of interest, in the sole interest of those members and beneficiaries"*[25].

Separately, all trust-based schemes, including DC schemes, with more than 100 members have a long additional list of obligations as regards their approach to investments, e.g. to invest prudently, to avoid excessive risk concentrations, to approach investment powers in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole, and to focus predominantly on assets admitted to trading on regulated markets.

Trustees must also regularly review their investment portfolio to make sure it remains aligned with the scheme's objectives and that diversification is maintained.

Further, there is a requirement where a scheme invests in illiquid assets to explain*"...why the trustees or managers have a policy of investing in illiquid assets including their assessment of the advantages to members of investing in illiquid assets, when compared to investments in other classes of assets;"* [26]. Therefore, to the extent that a scheme invests in unlisted and/or real assets the rationale for this will need to be set out in the Statement of Investment Principles (SIP). It is important to acknowledge that views differ as to whether, net of all fees and costs, private markets do provide the opportunity for higher returns than public markets. The trustees' investment beliefs in this regard could also be a potential barrier to investment in these sorts of productive finance opportunities.

25 Section 4A, The Occupational Pension Schemes (Investment) Regulations 2005.
26 Ibid

All of these duties colour and affect the underlying trust law duty.

If Parliament were to introduce a new, overriding duty on trustees to include certain minimum asset holdings in particular investments, careful thought would need to be given to the interaction between this and the other duties mentioned above if trustees are going to be in a position to comply with the overriding duty while still being bound by their duty to members to the extent that the two do not conflict. If the government is going to achieve its policy objectives, it will be necessary for trustees to be satisfied that they are complying with their legal duties and are therefore safe from criticism for having invested in asset classes that may not be as immediately and obviously beneficial to members. We believe it will also be necessary for the government to consider the potential for claims for infringement of property rights if the duty were expressed to override any scheme-specific restrictions on trustee powers that might otherwise block such investments.

For such time as UK productive assets are and continue to be perceived as higher risk or with lower short-term returns compared with other asset classes and other jurisdictions, this approach would effectively amount to Parliament assuming responsibility for deciding what is in the best interests of pension savers for a specific proportion of the fund. If this principle were adopted, there are a number of details which would need to be developed, such as the specific scope of the asset class (see above for considerations for defining both productive finance and UK holdings), the actual minimum holding requirements and associated valuation principles and schemes and funds in scope. We would suggest the Government publicly consult on such issues to explore the risk of unintended consequences if, despite our reservations around compulsion, it is nevertheless minded to proceed in this policy direction.

In general terms, we can see the market evolving in a similar way to the trend to climate-friendly investments, with an attendant risk of the productive finance equivalent of greenwashing and poor initial calibration of offerings, but with greater sophistication developing, albeit gradually, as trustees and their advisers start to better understand the market.

The SPP does not see this as part of the value for members project – it may not even be in members' individual financial interests. However, if trust-based schemes were to become subject to minimum investment requirements, we would expect to see those requirements also applied to contract-based arrangements, to maintain a level playing field.

Costs

There is widespread acknowledgement that the market has competed on price for many years, which has led to very low levels of charging but not necessarily the best outcomes. The SPP very much agrees that we need to shift the focus from cost to value, and welcomes the start of this process with the FCA recently publishing its long awaited proposals for a new Value for Money Framework[27], to which the SPP will shortly respond[28] and believes is a potential partial solution to the issue of costs. However, there are other aspects to this issue that need to be considered.

i) Employer decision making
Generally speaking, employers are rarely best placed to seek a pension provider for their employees as this is not the focus of their business. As a result, and especially to reduce the risk of any suggestion that they may not have chosen appropriately, they will usually hire a specialist to advise. This often results, in an increased focus on costs to the scheme members, irrespective of what they are paying for. Even with more illiquids in the portfolios, the comparison will largely continue to be whose costs are the lowest. This has been demonstrated by SPP members providing examples of employers proactively choosing pension providers that regularly underperform their competitors but have lower charges.

ii) The charge cap
The SPP agrees with policymakers that the regulatory charge cap that applies to the default funds of DC pension schemes used for automatic enrolment is important for the protection of savers from predatory pricing practices.

The SPP is also aware that the Productive Finance Working Group has previously looked at how the charge cap may serve as a barrier to DC scheme trustees in accessing less liquid investment classes and that some changes have already been made to exclude certain fees from the cap.

Potential DC solutions

i) Employer decision making

The employer clearly has a part to play in the value chain, whether approaching providers directly (in which case they often take a procurement style approach and look at costs) or take advice from professionals whose work may or may not reflect a focus on costs rather than value.

27 CP24/16: The Value for Money Framework:
https://www.fca.org.uk/publications/consultation-papers/cp24-16-value-for-money-framework#:~:text=The%20Framework%20introduces%204%20elements,VFM%20to%20be%20assessed%20effectively
28 SPP consultation responses:
https://the-spp.co.uk/document-category/consultations/

Greater transparency on and focus on reporting investment returns will assist with this, and the FCA Value for Money consultation is looking at this. If there are advisors emphasising costs over investment returns this should help ensure they change behaviours – it is hard to justify sustained underperformance for a couple of basis points.

ii) The Charge Cap
Recognising the need to balance protection with flexibility, it may be necessary to further review the regulatory charge cap to ensure it in no way acts as a barrier to productive finance.

Investment considerations

There are a variety of challenges to solve to make UK productive finance attractive whether or not pension scheme trustees are required to hold minimum investments.

> **Historic poor performance:**
The main DC pension providers, covering over 15 million UK pension savers, have long been disclosing their UK investments via the Corporate Adviser annual survey.[29] The results confirm that those with higher UK equity weightings have typically underperformed those who have little or no exposure to the UK market.

The FTSE All Share Index (made up of approximately 600 UK stocks) grew by 63% between 31 December 2013 to 31 December 2023 whereas the MSCI World Index has produced cumulative returns of 215% over the same ten-year period.[30]

Likewise, research published by AJ Bell indicates that 9 out of 10 UK pension funds (91%) have underperformed a FTSE All Share tracker over the past ten years[31] and much of that underperformance is substantial – more than a third (37%) underperformed by more than 20%.

Of course, past performance is no guide to the future but if trustees are being advised that investing in British businesses is likely to produce worse returns than investing overseas, is it realistic to expect them to invest simply because politicians suggest they do so? As discussed above, their current duties will work against them.

> **Complexity and risk:**
Many of the productive finance assets the government would like to see pension schemes invest in are complex and risky investments requiring significant due diligence. Recent high-profile problems in the sector, such as the collapse of Thames Water, add to investment advisers' nervousness about advocating investment in such assets.

> **Access to valuations:**
Many DC investment platforms are set up for instant valuation reports. However illiquid assets do not lend themselves to this model. It is worth exploring if there is scope for a consensus between platform providers on how to address such assets because although there are mechanisms for dealing with the less frequent (and less certain) valuations of illiquid assets on DC platforms and facilitating a daily price that the platforms require, there remain challenges with assets that are not marked to market daily and there is not a single, standard approach across the industry.

> **Liquidity Management**
DC schemes have to provide daily liquidity to members and illiquid/private assets that aren't able to be traded on public markets can therefore present a problem for liquidity management. Careful consideration as to how this will be managed, and the liquidity profile of the underlying assets aligned with the expected profile of the membership. Liquidity mismatch can be a substantial risk.

> **Unfamiliarity:**
DC savers currently have limited exposure to relevant assets like infrastructure – the DWP 2020 Pension Charges Survey[32] revealed that two thirds of DC schemes had no direct exposure to such assets.

Potential solutions for investment considerations

> **Consolidation**
Policymakers have already focussed on driving consolidation as larger pension funds may benefit from both operational and cost efficiencies. Indeed, consolidation has been a feature of the Australian and Canadian models that policymakers often cite. Scalability can also help from an investment perspective, given increased access to illiquid opportunities such as infrastructure investments. Of the 1,220 DC schemes, almost half (590) have less than 100 members[33].

29 Master Trust & GPP Defaults Report 2023:
https://forms.zohopublic.eu/ricardomedina/form/MasterTrustGPPDefaultsReport2023/formperma/wl2Li_0FNQZYKtL3gXNAQ8E4MJsuPRWuyG_98kuA8Z4
30 LSEG Lipper Data & Analytics, December 2023:
https://www.lseg.com/en/data-analytics/asset-management-solutions/lipper-fund-performance?
31 AJ Bell, May 2024:
https://www.ajbell.co.uk/group/news/9-out-10-uk-pension-funds-have-underperformed-simple-index-tracker
32 DWP, Pension Charges Survey 2020, published January 2021:
https://www.gov.uk/government/publications/pension-charges-survey-2020-charges-in-defined-contribution-pension-schemes/pension-charges-survey-2020-charges-in-defined-contribution-pension-schemes
33 TPR, DC trust: scheme return data 2022 to 2023:
https://www.thepensionsregulator.gov.uk/en/document-library/research-and-analysis/dc-trust-scheme-return-data-2022-2023

> **Long-Term Asset Funds (LTAFs)**
These may be part of the solution. However, whilst larger DC schemes can exert more influence, e.g. through investing via a fund-of-one structure where they have a set of controlling provisions, smaller schemes smaller schemes may be reluctant to engage due to uncertainty, operational and governance challenges (e.g. a lack of scale and access hurdles) although they could perhaps invest in comingled LTAFs, and it is possible that they could invest alongside different client types (e.g. wealth managers).

7. The insurance market

Solvency UK

Insurers are an important piece in the productive finance puzzle but the demand for UK assets which align to their risk-return profile, and meet the requirements for Solvency UK, currently exceeds the supply.

The Solvency UK reforms to insurance regulation have the potential to promote an increased deployment into UK infrastructure by annuity providers partly because the new asset eligibility rules allow insurers to offer more flexible loan profiles that suit such projects but more importantly because the overall reduction in capital requirement frees up capacity for insurers to expand and increase investment.

However, the reforms do not fundamentally alter the risk profile that their portfolios must target. They can provide large volumes of investment (viz the Investment Delivery Forum pledge of £100bn[34]) at low cost but their lending must be to highly creditworthy enterprises.

It may therefore make sense if UKIB, BBB and the NWF concentrated a little less on investing their own capital directly and more on using it to back financial instruments such as debt guarantees that would unlock these volumes to support nascent sectors that are priorities for the government.

Whilst guarantees shift risk from the private sector to the public sector, insurers have stated there is little upside beyond a modest spread above Gilts. This is a very different proposal to providing first loss protection to private equity or venture capital who would seek to keep all equity upside. Furthermore, guarantees should only be necessary in the period before technologies are proven and track records established or indeed only during the construction period of a piece of infrastructure whose useful life will likely be several decades. Where government pulls the levers that help determine the success or otherwise of the project (e.g. EV charging network where they set the rules about EV adoption and ICE phase out) they are well placed to ensure the guarantee is never called upon.

The amount of money that, in practice, needs to be raised through taxation or government borrowing in order to support guarantees of this sort is a fraction of the amount needed to make full direct investments. This is true even if the whole project comes on balance sheet according to the ONS. As the new government ponders alternative measures of the balance sheet, it should attempt to make a distinction between guarantees and fully funded investment. The government already supports UK growth through the UK Export Finance guarantee programme which has been running for decades. This will provide full credit risk guarantees where sometimes only 20% of exports are from UK companies, supporting infrastructure and other development in foreign countries, often with a high-risk profile. The National Wealth Fund could help to replicate this model in support of UK development.

Buy-outs

Insurer buy-outs may limit productive finance investment as they typically have a lower risk tolerance and operate on a shorter time horizon to pension schemes. In addition, insurers often require more liquid assets to manage any potential claims. That said, insurers are often likely to follow a 'better' approach than a typical scheme that is approaching a buy-out transaction. In the run up to a buy-out, a scheme would typically invest in a combination of gilts corporate bonds, LDI and cash but once the buy-out is completed, the insurer would then use that to invest in more productive finance type investments (albeit only contractual income, like infrastructure, so not equities)

It must also be recognised that not all buy-outs are the same. Some insurance companies may have a mandate to invest in productive finance and have specific investment vehicles for this purpose. Furthermore, if a pension scheme only buys out part of its liabilities, it can always retain assets for productive finance investments.

34 ABI Press Release, "Cross-sector co-operation to drive £100bn investment into UK projects" July 2023: https://www.abi.org.uk/news/news-articles/2023/7/solvency-uk-cross-sector-co-operation-to-drive-100bn-investment-into-uk-projects/

8. Other potential solutions:

> **Tax incentives**
New tax incentives may prove helpful in incentivising pension schemes to invest in productive finance assets. A recent poll of over 300 pension schemes by XPS Group found that over half (56%) of polled pension schemes think that new tax incentives should drive investment in productive assets[35]. Furthermore, polling at an SPP Conference event on 19 September 2024 revealed that almost three quarters (74%) of surveyed pension professionals considered some form of tax relief as the best way to achieve the Government's aim of greater UK investment[36].

> **Collective Defined Contribution (CDC)**
CDC, a pooled risk or "target" pension plan, represents a potential alternative to DB and DC pension schemes.

With Royal Mail launching their CDC scheme on 7 October 2024 and TPR expected to publish draft regulations on multi-employer CDC schemes shortly thereafter, this is an area that policymakers should perhaps consider further. Last year, Willis Towers Watson (WTW) suggested that, *"...CDC could plausibly provide £5bn of funding for such assets [productive finance] over the next 10 years, and much more if CDC proves a very popular use of DC pots at retirement.[37]"* Furthermore, this summer, LCP research suggested that the expected benefits of a CDC scheme could be 50% better than DC schemes[38], which would be very much in keeping with the Government's stated desire of increased returns for savers.

> **A *"Productive Finance"* gilt**
The Government may wish to consider creating a new *"Productive Finance"* gilt or similar, based on the success of the new green gilts which have raised almost £40bn for transportation, nature, renewable energy, climate adaptation, and energy efficiency projects since first being issued in 2021[39]. The first green gilt issued in September 2021 was heavily oversubscribed with demand for £100bn of green gilts with just a £10bn issuance, the largest oversubscription in the history of the gilt market. Although some early profit taking subdued performance, these have gone on to perform reasonably well and provide a helpful signal of government intent. This could potentially be replicated for productive finance.

9. What does success look like?

One issue with stepping up to the Government's expectations is working out what success actually looks like. What exactly are pension funds supposed to be doing, with what investments? That leads to two specific questions on the policy, which need to be answered before there can be any meaningful push for legislative change. They are: what is meant by *"productive finance"*, and what makes an investment in productive finance specifically an investment in the UK?

What is productive finance?

There is no universally agreed or legal definition of *"productive finance"*. This makes it difficult to set meaningful parameters to ensure schemes invest in qualifying assets to meet any productive finance targets.

However, most definitions have largely overlapping features, even where there are exceptions, nuances and ambiguity.

For example, the Bank of England define productive finance as, *"...spending by businesses that has the potential to expand the productive capacity of the economy, whilst also generating marginal returns to society that exceed the marginal cost of investment to society. Such investments include plant and equipment, research and development, technologies and infrastructure. Productive finance refers to the way that businesses finance this productive investment – such as cash injections from owners, loans, and external investors.[40]"*

The Pension Protection Fund states that, *"...productive finance assets are Equity (both Public and Private), and Real Assets (which includes Real Estate, Infrastructure, and Timberland and Farmland). They are investments which help support businesses and the wider economy."* It is worth noting that the PPF specifically excludes Debt of Infrastructure, Debt of Real Estate and Debt of general UK Corporate Businesses are transactions that they exclude from their classification of productive finance[41].

Potential solution:

Policymakers should agree on an unambiguous definition for *"productive finance"* so that pension schemes are clear about what qualifies and what does not.

35 XPS Press Release, 23 July 2024:
https://www.xpsgroup.com/news-views/press-releases/xps-group-poll-reveals-over-half-pension-schemes-favour-labour-government-introducing-tax-incentives-increase-pension-investment/
36 SPP Conference: Delivering better DC outcomes – what the UK can learn from the Australian experience, September 2024:
https://the-spp.co.uk/event/spp-conference-delivering-better-dc-outcomes-what-the-uk-can-learn-from-the-australian-experience/
37 WTW Pension briefing, "Boosting UK growth through Collective Defined Contribution", June 2023:
https://www.wtwco.com/en-gb/insights/2023/06/boosting-uk-growth-through-collective-defined-contribution
38 LCP Press Release, June 2024:
https://www.lcp.com/en/media-centre/press-releases/lcp-research-highlights-that-the-expected-benefits-of-a-cdc-scheme-could-be-50-better-than-dc-schemes
39 UK Debt Management Office, Green Gilts, 2024:
https://www.dmo.gov.uk/responsibilities/green-gilts/
40 Bank of England, Productive Finance Working Group:
https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/working-group-to-facilitate-investment-in-productive-finance/terms-of-reference.pdf
41 Productive finance' and how we think about it at the PPF, PPF, September 2023:
https://www.ppf.co.uk/blog-posts/Productive-finance-and-how-we-think-about-it-at-the-PPF

The SPP believes is reasonable to define productive finance as having three key features, investment that: 1) increases the UK's productive capacity, 2) improves UK growth and 3) makes a tangible and positive contribution to UK society.

Policymakers should seek to ensure this definition is applied consistently and widely i.e. not to exclude any industries and to include private equity, corporate and property bonds etc. There is some debate as to whether equities should be included given the difficulties this could create in ensuring investment genuinely assists the UK but providing the first three criteria are met, such concerns should be allayed.

What is a UK asset?

Again, just as there is no legal definition of *"productive finance"* there is no universally agreed definition of a *"UK asset"*, which may make investing in such assets challenging for some.

Some have suggested that a listing location of an organisation should be enough to reveal if an investment is in the UK or not, but the SPP does not believe this alone is sufficient. With unlisted equities already a target for higher levels of investment, the obvious gap is that, by definition, they have no listing location. Similarly, many companies list in a certain jurisdiction for tax or other purposes, not because they currently or historically undertake any activities in the UK. For example, London listed Mexican firm Fresnillo plc appears to undertake no activities in the UK. Similarly, Kazakh mining firm Polymetal International plc was listed on the FTSE 100 until 2023 despite not operating in the UK. It has since stated its intention to relist. There are various others.

Similar arguments are made for the headquarters of the company issuing the security but again many companies are headquartered in the UK for legal or administrative reasons. Some may be due to recent relocation from the UK to another jurisdiction whilst for others it may be less clear. For example, Glencore, which is headquartered in Switzerland, incorporated in Jersey, and listed in both London and Johannesburg.

Potential solution:

Policymakers should agree on an unambiguous definition for *"UK asset"* so that pension schemes are clear about what qualifies and what does not.

For productive finance investment purposes, it would appear sensible for a variety of requirements to all be met in order to define a UK asset. For example, headquartered in the UK, assets located in the UK and regulated by UK financial authorities would appear reasonable.

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Founded in 1958 as the Society of Pension Consultants, today SPP is the representative body for a wide range of providers of pensions advice and services to schemes, trustees and employers. These include actuaries, accountants, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and pension specialists.

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Further information

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