Sackers

# Protecting DB Pension Schemes – the Government's White Paper

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## Introduction

"Protecting Defined Benefit Pension Schemes", the DWP's long-awaited follow-up to its 2017 Green Paper on DB private sector pensions, was published on 19 March 2018.

## Key points

- Satisfied that there is "no systemic problem in the regulatory and legislative framework" for DB schemes, the Government's proposals are aimed at improving the way the current system works (through changes to the scheme funding regime and the potential facilitation of consolidation) and increasing the protection of members' benefits.

- The White Paper therefore makes TPR the star of the film, and any star aiming "to be clearer, quicker and tougher" in an all pro-action film sense, needs box office powers which is what the Government proposes. These are:

  — new TPR powers, to be used "proportionately" (Chapter 1)
  — various areas of the DB system being reconfigured, including scheme funding, with the Code of Practice to provide clearer guidance on key areas of funding (Chapter 2)
  — a new requirement for a DB Chair's statement (Chapter 2)
  — proposals to review consolidation vehicles and a refocus on vulnerable schemes (Chapter 3).

- There is no proposal for an RPI/CPI "statutory override" for now, and no changes to the employer debt legislation – though no doubt these issues are not gone forever, simply resting.

- There will be a "phased delivery" of the White Paper's themes, with consultations on key areas during 2018/2019 to ensure the industry and the regulators (TPR and PPF) get to shape the future. Like many Hollywood blockbusters, the White Paper promises several sequels and possible spin-offs.

## A stronger TPR – Chapter 1 of the White Paper

The Government does not believe that there is wide-scale deliberate activity by employers to avoid pension scheme liabilities. However, in its view, "the system must guard against the risk that a small number of people may take action detrimental to a scheme's prospects of paying full benefits". In line with its 2017 manifesto commitment, it therefore proposes:

- giving **TPR powers** to punish those who deliberately put their pension scheme at risk by introducing punitive fines

- legislating to introduce a **criminal offence** to punish those found to have committed **wilful or grossly reckless behaviour** in relation to a pension scheme, which will build on the existing process to support the disqualification of company directors

- working with TPR to strengthen the existing **notifiable events framework** and **voluntary clearance regime** so that employers have appropriate regard to pension considerations in any relevant corporate transactions. This includes improving the effectiveness and efficiency of TPR's existing anti-avoidance powers. However, the White Paper states "we will work with the relevant parties to ensure that these measures do not have an adverse effect on legitimate business activity and the wider economy"

- legislating to give TPR enhanced **information-gathering powers** across all its functions, including the power to compel any person to submit to an interview, the power to issue civil sanctions for non-compliance and an inspection power.

# Optimising scheme funding – Chapter 2

The Government thinks that the "flexible nature of the current statutory funding objective [(SFO)] works well to balance the security of members' benefits and the needs of the sponsoring employer, taking individual scheme circumstances into account". But, with the aim of "improving decision-making and governance across the sector", it plans to implement a new package of measures which are intended to "optimise" scheme funding and "ensure [TPR] has the right tools to respond to poor decisions".

It proposes:

- strengthening TPR's ability to enforce DB scheme funding standards, through a revised DB Funding Code of Practice, focusing on how prudence is demonstrated when assessing scheme liabilities, what factors are appropriate when considering recovery plans, and ensuring a long-term view is considered when setting the SFO

- requiring DB trustees to appoint a Chair

- following in the footsteps of DC arrangements, requiring a DB Chair's statement (with information on the trustees' key funding decisions) to be provided to TPR, alongside the scheme's triennial valuation

- retaining the 15-month valuation period.

TPR intends to carry out a programme of further research, initial testing and extensive informal consultation with the industry to inform the revised DB Funding Code of Practice and guidance, as well as the contents of the Chair's Statement.

# Consolidation of schemes – Chapter 3

With more DB schemes approaching maturity, and their sponsoring employers seeking to secure members' benefits or transfer risk, the Government is persuaded that there is "a space that new commercial consolidators could fill". Under this model, a private company would set up a new DB scheme and take over the responsibility for meeting the liabilities of other pension schemes in return for a one-off or structured set of payments from the previous sponsoring employer. The company then acts as the sponsor with a new board of trustees, the covenant being provided by additional capital supplied by external investors (who would expect a return for their investment).

Drawing on the trio of reports by the PLSA's DB Taskforce, which set out some of the consolidation mechanisms available, the Government is looking for options that will help balance affordability and member protection. It therefore plans to consult, this year, on:

- proposals for a legislative framework and authorisation regime within which new forms of consolidation vehicles could operate, and
- a new accreditation regime which could help build confidence and encourage existing forms of consolidation, such as the use of shared administrative services, asset pooling, fiduciary management and DB Master Trusts.

In addition, the DWP intends to:

- work with TPR to raise awareness of the benefits of consolidation with trustees and sponsoring employers through, for example, TPR's Trustee Toolkit and updating guidance
- consider making minor changes to the GMP conversion legislation to support benefit simplification, with a view to reducing complexities in existing scheme benefit structures (which is consistent with the Government's proposals relating to the equalisation of GMPs).

# Other live areas – Chapter 4

The Government has decided **not** to take forward changes in the following areas:

- **RPI/CPI** – for the time being, the Government has ruled out a so-called statutory override to allow employers or trustees to change the measure of inflation used to calculate annual increases to pensions. It will, however, continue to monitor developments in the use of inflation indices.
- **Employer debt provisions for multi-employer schemes** – noting the recent introduction of the deferred debt arrangement (see our Alert), the Government considers that the existing arrangements provide a sufficient range of mechanisms for dealing with an employer debt
- **Regulated Apportionment Arrangements ("RAAs")** – however, further work will be carried out to see whether it is possible, without increasing risk to scheme members, to make improvements to the RAA process, thereby increasing the potential for positive outcomes for businesses which might otherwise fail.

# More consultation – Chapter 5

During the rest of 2018 and into 2019, the DWP and TPR will consult on the policies detailed above, before moving to legislation when parliamentary time allows.  Where primary legislation is required, this is unlikely to be before the 2019–20 parliamentary session at the earliest.

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