

## MEETING FUTURE WORKPLACE PENSION CHALLENGES: IMPROVING TRANSFERS AND DEALING WITH SMALL PENSION POTS

### Sacker & Partners LLP's response to consultation

#### 1. Introduction

- 1.1 The purpose of this document is to set out our comments on the DWP's [consultation](#) on "Meeting future workplace pension challenges: improving transfers and dealing with small pension pots".<sup>1</sup>
- 1.2 Sackers is a firm of solicitors specialising in pensions law. We act for in excess of 800 pension schemes, including household names and a number of FTSE-100 clients. The views expressed in Sackers' response to this consultation have been collated following discussions with a sub-group of the firm's solicitors.
- 1.3 We have focused on the practical issues arising from the consultation which are most relevant to our clients and primarily consider the potential consequences of the proposals from the view point of occupational pension scheme trustees. We have therefore not attempted to answer every question.

#### 2. Background

- 2.1 In a bid to avoid "poor outcomes for individuals and inefficiency for the pensions industry", the Government wants to encourage individuals to consolidate their pension savings over their working lives, to reduce the risk of small pots becoming "lost" or "stranded".
- 2.2 Three options are proposed in the consultation:
- minor changes to the current system to make member initiated transfers easier and less expensive;
  - a transfer system which allows easy consolidation of small, dormant pension pots into an "aggregator scheme"; and
  - a system where small pension pots follow individuals from job to job.
- 2.3 We note that the DWP favours the second and third options, which are seen as being more likely to overcome the ongoing problems of individual inertia and lack of engagement with pensions.

#### 3. Automatic transfers: General comments

- 3.1 The consultation proposes ways in which a default transfer process could be used to avoid pension pots becoming lost or stranded. It envisages that an automatic transfer system should apply to both DC occupational pensions and workplace personal pensions.

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<sup>1</sup> Published on 15 December 2011

3.2 While we support moves which will assist individuals to maximise their pension savings, we have concerns regarding proposals that would impose automatic or compulsory transfers using the existing legislative framework. We make a number of general comments in this section on the DWP's overall aims, which also apply to the specific proposals of the aggregator scheme and the pension pots which follow individuals from job to job.

3.3 In the current pensions landscape, a wide variety of schemes are used by employers to provide pensions for their employees, including DB, DC and hybrid arrangements as well both contracted-out and contracted-in schemes. It will not always be straightforward for an employer to accept a transfer from another arrangement. Therefore while some employers may be pleased to have the opportunity to streamline their membership by transferring out the benefits of deferred members, the advantages may be outweighed by the additional burden for schemes taking on responsibility for any compulsorily transferred-in benefits.

*Transfers-in*

3.4 We envisage that a system of compulsory transfers could leave employers forced to take on small and unprofitable pension pots. Those employers who currently use trust based pension arrangements may do so out of a desire to provide a benefit to their employees over which they have a significant degree of control. If forced to accept transfers-in, they may choose to abandon such models in favour of contract-based arrangements, leaving the provider to deal with the increased administrative burdens and likely increases in costs.

3.5 In the event that a compulsory transfer requirement is introduced, we suggest that it is not compulsory to accept transfers-in, so that employers are not forced to accept transfers-in to their existing arrangement. Any moves to implement an automatic transfer process should be limited to contract-based DC schemes.

*Transfers-out*

3.6 In our view, members should be permitted to retain a degree of choice over their pension savings and be permitted to opt-out of any automatic transfer process. This would be consistent with the forthcoming auto-enrolment rules, under which members will be able to opt-out.

3.7 We believe that individuals should also be permitted to become or remain deferred members of an existing pension arrangement (perhaps subject to a de minimis provision), potentially allowing them to benefit from favourable provisions, such as charges or investment options, which they might otherwise lose.

3.8 It will also be necessary to consider the impact of any change in the system on individuals who become self-employed or take a career break. In our view, the options put forward in the consultation do not cater sufficiently for such individuals.

*Costs*

3.9 We note that one of the aims of the current consultation is to reduce the fixed costs of administering small pension pots. However, it is not clear at this stage who would bear the costs of the proposed default transfers. Placing this burden on individuals or

employers may produce an inequitable result and consequently jeopardise the process.

#### **4. Automatic transfers into an aggregator scheme**

- 4.1 Of the proposals for reform put forward in the consultation, the aggregator scheme model, in our view, has most merit.
- 4.2 A single aggregator scheme would have the benefit of simplicity. However, the existence of multiple aggregator schemes could lead to competition in the market, which may be beneficial.
- 4.3 If more than one aggregator scheme were to be used, we consider that a legal duty could arise for trustees and others to monitor the various schemes, to ensure that their selected destination for transfers-out remains appropriate. In this situation, we consider that safe harbour provisions would need to be introduced to protect trustees and others against claims from members who are dissatisfied with the aggregator scheme selected.
- 4.4 Any aggregator scheme must be shown to be fair and reasonably priced. There are a number of approaches which could be used for meeting default transfer costs. The costs may, for example, be included in the annual management charge of any aggregator scheme. In our view, it would not be appropriate to pass on any additional costs to existing schemes.
- 4.5 If an aggregator scheme were introduced, it should be subject to regular formal review to ensure that it remains fit for purpose.
- 4.6 It would be helpful to have an analysis from the DWP as to how the set-up costs of any aggregator scheme would be met if a new arrangement is to be used.

#### **5. Pension pots following people from job to job**

- 5.1 In our view, this option may create a significant burden for employers and trustees, as it is likely to involve considerably more administration and higher costs.
- 5.2 The success of this option will depend in part on the take-up of pension saving following the introduction of automatic enrolment. It remains to be seen how many individuals will opt-out - if the numbers are high, this could defeat the object of a pensions pot designed to move with a person from job to job.

**Sacker & Partners LLP  
22 March 2012**