employer covenant working group

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Submission to the December 2018 Consultation by the Department for Work and Pensions on Superfunds (the "Consultation")

a) The Employer Covenant Working Group

The Employer Covenant Working Group Limited (the "ECWG") is an organisation formed in 2012 and incorporated in 2015 with the following objectives:

1.1. To discuss technical, legal and regulatory issues relevant to providing financial advice to clients – trustees or sponsoring employers – on matters connected with the employer covenant;
1.2. To participate in discussions on relevant matter with bodies such as the Department for Work & Pensions ("DWP"), the Pensions Regulator ("tPR"), Pension Protection Fund ("PPF") and, where appropriate, to promote the views of the ECWG with those bodies;
1.3. To produce and circulate reports, guidance and other documents related to the employer covenant or associated matters; and
1.4. To act as a vehicle for raising the profile and standards of, and promoting, the employer covenant financial advisory industry generally amongst the pension community, including trade bodies, regulatory bodies, professional groups and potential clients.

The views expressed in this submission are those of the ECWG and do not necessarily represent those of the member firms.

b) Executive summary

The ECWG is a body formed to promote leading practice financial advice on the "employer covenant". The comments below are based on our members' views. We have focused in this Submission on section 5 Superfund transactions, but have also responded to other questions where our members' collective experience in the covenant field is relevant.

As with DC Mastertrusts, the proposed authorisation and supervision regime for DB superfunds would put considerable responsibility in the hands of the Pensions Regulator; but it is also important to support the trustee boards of both ceding schemes and superfunds, which have ultimate responsibility for the security of their members' benefits.

We welcome the importance given in the consultation to a principles-based gateway and the recognition of the value that independent professional advice can provide. Given the existential nature of any decision to move to a superfund vehicle, we are strongly of the view that external covenant advice, provided by appropriately qualified and regulated practitioners, should be a mandatory requirement of the process with an entry hurdle based on gateway principles. Consistent with the principle of regulation we also believe that such advice should be scheme specific and risk based; so we would suggest caution about imposing 'one-size fits all' modelling or funding tests.

Responses to questions

Question 1: Are these characteristics wide enough to define a superfund? If not, how could superfunds be defined for the purposes of a future regulatory regime?

There is an increasing number of types of fund in the pensions universe and we agree with the DWP's view of the main characteristics of a superfund.

Question 2: Given the differences of superfunds and traditional DB occupational pension schemes, what are the additional risks and challenges associated with tPR regulating superfunds?

The authorisation regime will be critical to the success of superfunds, both on entry and ongoing. As with the newly established regime for DC master trusts, the Pensions Regulator is exposed to reputational risks if a fund should fail. Unlike the master trust regime, entry into a super fund would pose an additional challenge to tPR to ensure good quality of decision-making by the ceding trustee board and sponsor and the receiving superfund trustee board, which will be a pension scheme subject to tPR oversight. Subject to any contingent support mechanisms which may be agreed, the superfund effectively replaces ultimate reliance on a corporate covenant with reliance on capital; so in practice tPR will need to guard against regulatory arbitrage since superfunds fall between the pensions funding regime and the insurance type entities, which would require it to ensure that its approach maintains consistency with that of the FCA / PRA even if the supervisory methodology is pensions rather than insurance based (see further Q21).

Question 3: Are the proposed authorisation criteria the right ones for the superfund regulatory regime?

It makes sense to minimise differences between the master trust and superfund authorisation criteria; however, the financial sustainability criteria would be significantly more challenging to assess. This is because of the lack of a conventional covenant and the reliance on the investments and member capital to provide for DB liabilities, as well as the fact that insurance type concepts will be used as part of the regulation of ongoing financial sustainability.

Question 4: Are there any circumstances in which it would be advantageous, or necessary, that the authorisation criteria are not applied to the whole superfund but instead to individual segregated sections when the superfund scheme is sectionalised?

As with industry wide DB schemes which operate on a sectionalised basis, there may be circumstances in which it would be relevant to apply the authorisation criteria to the individual section(s) if these are to be separate. However, in the ECWG's view this should be within the discretion of tPR rather than being governed in primary legislation, because much will be case specific and depend on where exposure to other sections lies. For example, if investments and calls on member capital are not fully ringfenced, or the sponsor entity for the superfund has obligations across sections, then a purely sectional approach to authorisation would not seem appropriate.

Question 5: Are these restrictions the right ones to ensure that superfund corporate structures are transparent and compatible with regulatory supervision? Are there any other measures that would aid tPR's ability to supervise superfunds?

We agree that the structures need to be transparent and within the UK's jurisdiction in order to be compatible with regulatory supervision. In some more complex situations tPR may lack resources in-house and might need to take external advice.

Question 6: Should the corporate entities of superfunds be permitted to be established as partnerships or should they be required to be set up as a UK limited company?

We do not see a reason from a covenant perspective to have a prohibition on superfunds being established as partnerships subject to the necessary access to capital being beyond doubt in circumstances such as a Partner withdrawal.

Question 7: Should tPR have a discretionary power to require evidence that individuals outside the superfund structure meet the fit and proper persons requirement?

Yes, tPR should have a discretionary power to require evidence that individuals outside the superfund structure meet the fit and proper persons requirement where they could exert material influence on the decision-making and/or can impact member outcomes.

Question 8: Would these requirements be sufficient to allow tPR to identify those subject to a mandatory fit and proper persons requirement?

Such governance structure requirements should be sufficient to allow tPR to identify those who are subject to a mandatory fit and proper persons requirement.

Question 9: Should tPR have the power to interview individuals for the purposes of the fit and proper persons test?

Yes, by congruence with the FCA and PRA powers, tPR should have the power to interview individuals for the purposes of the fit and proper test. Indeed, given the importance of this and the variability of experience and trustee credentials, there is an argument that this should be a mandatory rather than discretionary component of the authorisation process by tPR.

Question 10: Are there other areas that should be included as part of the mandatory fit and proper persons requirement?

We presume that the superfund would in practice have the equivalent of a pensions manager or chief operating officer and that such function should also fall within the regime. We also suggest that the governance of trustee and corporate officer compensation and capital provider returns should be covered since these are now profit making enterprises, unlike pension schemes. So, for example, there could be compensation and 'capital reduction' committees on which it might be helpful for trustees to have representation.

Question 11: Would introducing a set of standards of conduct for the superfund's corporate board be proportionate?

The trustees' fiduciary duty is a key characteristic of scheme governance and we presume this would be maintained by the superfund trustee board. The corporate board of the superfund sponsor will owe duties primarily to its shareholders as would any other company under the Companies Acts. While this provides a necessary underpin, it might be useful to have additional governance requirements. For example, in order to address conflicts of interest, there may be a restriction on individuals being both trustee and corporate board members, and a provision that a majority of trustees should be independent.

Question 12: What in your view should form the basis of any standards of conduct?

See response to question 11

Question 13: In your view, are there any other elements that should form part of a potential integrity test, conduct requirement or competency test?

A practical starting point is equivalence with the standards of trustee competency currently promoted by tPR but noting the increased importance in a superfund of investment performance and the complexity of the business model there is an argument for setting the bar higher through specific governance codes (to be developed in consultation with tPR).

Question 14: Should there be a minimum requirement on the proportion of independent NEDs on the superfund's corporate board or should this be left to tPR discretion? If so, what would be a suitable proportion?

We suggest the majority should be independent.

Question 15: Should superfund trustee boards consist entirely of independent trustees?

Yes, noting the points made at 10, 11 and 13.

Question 16: Should there be a non-affiliation requirement for the appointment of trustees to a superfund's trustee board?

Trustees should be independent, at least by majority i.e. non-affiliated with serving service providers.

Question 17: Should superfund trustee boards be subject to the MNT/MND requirement?

We can see the case for superfund trustee boards not being subject to the MNT/MND requirement but refer also to point 11 above and suggest additional governance requirements.

Question 18: Should superfunds be required to establish member panels? Would such panels be an effective and proportionate way of ensuring that members' views are represented?

Depending on the size and profile of the ceding scheme, a member panel may be helpful but should be at tPR's discretion.

Question 19: In your view, would the areas outlined in this section enable tPR to assess the effectiveness of a superfund's systems and processes? If not, what alternatives would you propose?

Q19-31: we have not commented in detail to the questions on superfund systems and processes (Q19-20) nor on authorisation (Q21-52) and aspects of supervision (Q53-57) given that at this stage the 'covenant' is replaced by a capital buffer, contingent capital, and an investment portfolio. However, the decision to transfer in is a relative one given that the level of capital and investment risk taken are replacing a specific covenant and may affect the funding levels and risk for members We would make a general point of caution about imposing a 'one size fits all' approach to fund targets, trigger levels, modelling and funding tests given the principle of pensions regulation being scheme specific and risk based in approach. So, while modelling would provide insight in many cases, it would be best used in conjunction with, rather than in replacement of, conventional financial analysis to minimise input and model risks.

Question 20: Are there other areas that should be included as part of the systems and processes requirement for superfunds?

Given that superfunds will sit within pensions regulatory regime it would be logical for their financial adequacy to be regulated through a pensions-based funding requirement approach. This would lead, though, to the need for the 'covenant' of the superfund to be assessed on a periodic basis (i.e. not just on entry) by the superfund trustees, who would need to look behind the adequacy of capital (and any contingent support), as with current resourcing tPR would not seem to be in a position to act as a regulatory supervisor under the much more intensive Solvency II regime.

Question 21: Should superfund financial adequacy be regulated through a pensions based funding requirement approach with an added test of probability of success or an insurance based approach using a Solvency II type balance sheet?

The replacement of the corporate covenant by a capital based covenant structure means that superfunds sit between the pensions and insurance regimes. It would seem most appropriate for them to be regulated by the Pensions Regulator using a pensions based approach should be used ie considering funding levels (however modelled) as part of a risk based approach to regulation.

If a Solvency II approach is used, then logically the supervisory regime would need to be brought up to the more intensive levels of the PRA /FCA with a three 'Pillar' approach to capital, governance and disclosure.

Question 22: Which of the suggested models would best ensure appropriate financial adequacy, and balance the interests of the various parties? Are there elements of other options that you think should be combined with your preferred option?

We are agnostic as to the relative merits of one approach over another, while open to the use of some basic standardisation to enable a relative comparison to be made.

Question 23: Does a 99% probability of paying or securing members' benefits over the lifetime of the scheme adequately protect members' benefits, and effectively balance the competing priorities of employer affordability and member security? If not, what would an appropriate probability be, and why?

Question 24: Should a superfund have a long term objective to secure benefits with an insurance company?

Each superfund will have its own long term objective. As long as it is clearly understood and the risks are properly assessed, we are open minded about objectives being set.

Question 25: Is the proposed authorisation basis suitable for this purpose? If not, what basis, if any, would you propose for this purpose?

Q25 N/A

Question 26: Is a 97.5% probability of being 100% funded on an authorisation basis by the earlier of 2040 and the date the scheme reaches its estimated peak cash outflows consistent with the principle of a superfund having a 99% probability of paying or securing members' benefits at all times?

We do not think a predefined hurdle such as this would fit all situations.

Question 27: Is the earlier of 2040 and the independently assessed point at which the superfund's membership reaches peak maturity a reasonable target date?

Question 28: Are the additional minimum standards in (iii) needed, in order to ensure a high level of protection for member benefits? In particular, are the additional minimum standards (that the superfund scheme itself is funded to 87.5% on the authorisation basis) required for every scheme entering a superfund?

Question 29: Should superfunds be required to publish an annual balance sheet using market valuations and including liabilities valued on a buyout basis together with a buffer fund based on the Solvency II approach?

Question 30: Should superfunds be required to secure benefits with an insurance company as soon as practicable, once the scheme assets reach the buyout level of liabilities?

We do not see why this should be a requirement provided that the superfund is able to demonstrate that it has sustainable resilience to future investment or liability shocks such that not buying out would create a potential material "regret risk"

Question 31: Should superfunds be required to maintain a minimum level of scheme funding regardless of approach to financial adequacy? This could include a separate long term objective for the superfund scheme itself to reach a buyout level of funding but to a lower level of probability than the superfund as a whole?

Question 32: Is the failure test in relation to the PPF funding level proportionate and what probability of failure is acceptable?

Such a test might form one factor in the overall authorisation.

Question 33: What powers should tPR have to intervene should a funding level trigger be breached?

We consider that tPR should have the power to replace corporate and trustee boards or wind up the scheme and the sponsor in circumstances where members' interests are in danger of being compromised and that there should be provision for the costs of such and their advisors to be paid out of the fund pending PPF entry, without the need for a Berkeley Applegate type application.

Question 34: At what level above fully funded on the S179 basis should the winding up trigger be set?

Question 35: Is three months an appropriate period of grace to allow for any volatility in investments to recover before triggering a wind up?

We have no particular view on the time frame but presumably there would be scope for the shareholders to top up the fund and capital buffer.

Question 36: Is this minimum funding level trigger sufficient to provide adequate protection for the PPF while mitigating the risk that short term volatility might force a superfund into the PPF when it still might have a very good chance of meeting the long term objective?

At para 123-129/Qs 34-36 it is important to assess the impact that winding up the scheme (presumably triggering the s75 debt) might have on the sponsor, whose board might need to consider insolvency proceedings but inappropriately decide to 'hold out'. To control the process, it might be helpful for tPR to be able to trigger a sponsor insolvency event to initiate and/or control PPF entry if required.

At para 140 it is noted that '*member benefits could be put at risk if profits are taken inappropriately, or if excessive profits are taken. This risk is not present in traditional DB, and it could be argued that additional specific protections against this risk are needed*'. We would note that while pension schemes, unlike Superfunds, are not run for profit, the affordability of corporate funding of pension schemes does involve a balance of priorities around corporate profitability, dividends and use of resources, which in extreme cases can weaken the covenant and leave the pension scheme underfunded.

This emphasises the importance in our view of ongoing covenant assessment and monitoring the balance of funding, investment and covenant risks being taken. In the insurance sector the Solvency II regime (Pillars I, II and III) provide for 'hands-on' regulatory supervision and market discipline to provide challenge and review of a firm's approach to risk and capital from time to time. Unless this is to be replicated by tPR there will still be the need for covenant practitioners operating with other professional advisers to provide a truly independent assessment of whether the superfund is operating in a financially sustainable way.

Question 37: Do you agree that there should be a Tier 1 funding level trigger to protect members' benefits at this level?

Question 38: What would be the best way of expressing this trigger?

Question 39: Is three months an appropriate period of grace to allow for any volatility in investments to recover before allowing trustees access to the capital buffer?

Question 40: should tPR have the power to intervene and require wind up or transfer if they believe the trigger has not been acted on in the best interests of members?

Question 41: is this a reasonable basis on which to prevent new business being written, or should this be left to the discretion of the superfund trustees on the basis they should not be accepting new business if it would have a detrimental effect on existing superfund members?

Question 42: Is it reasonable to only allow investors to take a profit after they exceed the requirements for authorisation and if so on what basis?

Question 43: Is it reasonable to retain investor profits for a period to mitigate against profits being taken from market volatility rather than genuine outperformance?

It would seem reasonable that there should be some kind of smoothing mechanism to protect against imprudent profit taking. Perhaps this could be achieved through a 'corridor' approach, whereby, quid pro quo, if profits are taken above a given level of funding, then funding and/or buffer top-ups are required below a certain level of funding. In our view there should be a requirement that, for a given level of confidence, the capital buffer is adequate to cope with any call consequent on downside experience.

Question 44: Should superfunds be restricted from taking profit until the funding level is above that required to secure a buyout?

Depending on other requirements this could limit incentive to put capital into a superfund and undermine the business model. For example, if no profit can be taken until buyout is possible, and then on achieving the conditions for buyout it is mandatory, there would seem to be very limited scope for reward. However, any profit taking mechanism should clearly be regulated to mitigate any moral hazards.

Question 45: Is it reasonable to allow a sectionalised superfund to take profit or write new business if one or more sections are inadequately funded?

Even in a sectionalised superfund there would seem to be scope for 'cross contamination' of adequately funded sections by underfunded sections through dilution of the capital buffer, unless each section also has its own, ring-fenced capital buffer.

Question 46: In relation to the criteria for financial adequacy and funding level triggers discussed above, should each segregated section within a sectionalised scheme:

a) be considered separately for financial adequacy purposes and also considered separately for the funding level triggers;
b) be aggregated together (along with the capital buffer) for assessing financial adequacy but each section is considered separately in relation to funding level triggers;
c) be considered separately for assessing financial adequacy but be considered together as a whole when assessing whether the collective scheme funding position meets any of the funding level triggers; or d) be aggregated together (along with the capital buffer) for assessing financial adequacy and considered together as a whole when assessing whether the collective scheme funding position meets any of the funding level triggers?

Absent a means of drawing down on capital outside of the section, we consider that 'a' would be appropriate - see the answer to question 45 above

Question 47: Does this approach provide adequate protection for members, while effectively balancing the interests of the investors?

We believe our answers at 45 and 46 provide a balanced solution.

Question 48: What are the minimum requirements on a buffer fund in order for the scheme to be able to rely upon the assets being available in the event they are needed?

Question 49: Should there be minimum standards on the capital buffer to ensure it can be relied upon in stressed situations?

The capital buffer and any collateral mechanisms to support it would seem to raise similar considerations to contingent assets and PPF guidance may be relevant here. See https://www.ppf.co.uk/sites/default/files/file-2018-10/1819_contingent_asset_appendix_0.pdf

Question 50: Is it reasonable and proportionate to require superfunds to provide detailed fund guidelines, and does this provide the regulator with sufficient information?

Question 51: Should superfunds be required to submit their modelling for tPR to review, or should tPR develop a model against which they can assess all superfund proposals?

Question 52: Should tPR have a 'fall back' model for cases when the modelling provided by superfunds is not adequate?

Question 53: Should there be any other reporting requirements of either the corporate entity or pension scheme to ensure effective supervision?

Question 54: Should the corporate entity and pension scheme have to disclose their strategic asset allocation and investment risk limits so that tPR can effectively supervise the investment strategy?

Yes, they should because as with employer covenant, any correlated risks should be understood by tPR. For example, if the asset allocation strategies were similar and a market shock resulted in scheme fund depletion, the capital buffer would be depleted at the same time.

Question 55: Should superfunds be required to regularly publish publicly available material on their financial position and operations?

Question 56: Would the proposed events outlined in Table 1 meet the aims of the significant events framework?

We would only add that any proposed change to established profit taking parameters should be disclosed.

Question 57: How could we define 'significant deterioration' in relation to investment performance and funding level?

Question 58: Should tPR's executive arm have the power to unilaterally commission a skilled persons report in relation to superfunds with tPR acting as the end user?

There are likely to be instances of resource constraint or areas outside the competence of tPR and we recommend that tPR should have the power to commission skilled persons reports in relation to superfunds, the costs payable by the superfund.

Question 59: Would an enforceable Code of Practice be sufficient to allow tPR to respond quickly and proactively to emerging market risks and supervise effectively?

A superfunds code of practice should be appropriate and sufficient.

Question 60: In your view, what areas of a future code should be enforceable?

We suggest that enforceability should be considered as part of tPR' s consultation on a superfund Code.

Question 61: Would the proposals outlined in Chapter 4 allow for the effective regulation of superfunds? Are there any other powers needed for tPR to intervene where necessary to effectively regulate superfunds?

We make no comment on this.

Question 62: Should superfunds be subject to a bespoke levy to fund their ongoing regulation?

We agree that superfunds should be subject to a bespoke levy to fund their ongoing regulation.

Question 63: Do these principles achieve the policy aim?

We strongly support the principles-based gateway approach to support the policy aim but have some concerns about the gateway 'tests' proposed. Given the importance of the current and prospective corporate covenant (or removal thereof) we support a mandatory reference to this. See further our comments on Q68. It is important that the specific circumstances of each case are considered by the ceding trustee board based on independent professional covenant assessments and advice.

The first two principles in para 205 are essentially exclusionary ones which would rule out a move to a superfund; while the third sets up as a test: 'evidence it enhances the likelihood of members receiving full benefits'. There is no formally sanctioned test in current cases of scheme merger but in practice the threshold is often couched in terms of 'the security of members benefits being at least no worse'. This reflects the role of trustees and one of tPR' s statutory objectives in terms of the security of member benefits.

The third principle might therefore operate as a threshold test for the gateway, but we propose that the threshold should be set higher, to help reduce the moral hazard risk of a sponsor contriving the conditions for entry, and so it should require that the economic interests of members are at least no worse (to allow say a PPF plus solution). We also propose that the formulation should be wider in order to encompass the change in the type of risk profile, rather than merely the reference to 'likelihood of members receiving full benefits', which could be read as simply a modelled funding test. We therefore propose a gateway principle as follows: '…a move to a superfund would need to be based on the Trustee Board reasonably considering, based on independent advice as to covenant, funding and investment risks and all other relevant circumstances (including potential use of tPR's moral hazard powers), that it would enhance the security of members' benefits'.

Question 64: Is five years a reasonable timeframe to assess a scheme's potential to reach buyout in the foreseeable future?

For similar reasons expressed in 63 above, we consider that each sponsor covenant and each scheme's risk profile is so case specific that a pre-set period of 5 years is not necessarily what might be 'reasonably foreseeable'. Again, this exclusionary test can be applied simply by reference to '…in the foreseeable future given the circumstances of the scheme and its sponsor.' (By way of illustration, the foreseeable future of a covenant provided by a regulated utility would be longer than that of a company operating in a market with short-term technological or structural change such as retail or publishing).

Question 65: Are there any other important factors that trustees should take into consideration as part of the transfer to a superfund?

The ceding trustee board would be considering the change in risk profile from a scheme supported by its investment portfolio and a company covenant to one supported just by investment portfolio and a capital buffer with no company covenant; in order to make a reasoned assessment of the impact on the security of member benefits, the trustees would need to rely on actuarial, investment and covenant advice, which should be sufficiently integrated to evidence the 'pre and post' transaction position from a risk perspective. Modelling the projected liabilities, investments and the level and likelihood of sponsor funding contributions would be key to this. We therefore consider that financial analysis of the short, medium and longer-term business and financial risk profile of the ceding sponsor and of its ability to fund the scheme in the foreseeable future would be integral to an informed decision as to whether to move to a superfund. We would not therefore support a prescriptive approach set in regulation as to the analytical methodology to be used in each case. It would also be necessary to consider potential moral hazard i.e. whether the conditions for consolidation have been contrived, for example through impairing the covenant by moving business elsewhere within a group.

We would also suggest that the provisions for Superfunds remain open to concepts of contingent support from employers for periods following the transfer in circumstances where this approach would be both prudent and available. We appreciate that these mechanisms may not offer employers a "clean break" – but they could be a useful way of closing a deal which enhances the security of members' benefits in circumstances where the Trustees may be reluctant to agree to the transfer absent such support. Any contingent support mechanisms might abate over time depending on the superfund meeting certain pre-agreed metrics.

Question 66: Should a scheme looking to join a superfund be required to meet a specific minimum funding level at the point of transfer, for example 87.5% funded on the authorisation basis?

Given our comments on the scheme specific nature of the decision, we would suggest that setting up a pre-set minimum funding level may not be appropriate and indeed could have adverse behavioural effects on trustee board decisions given that funding levels can be volatile.

Question 67: If you think there should be a minimum scheme funding level for entry to a superfund, should it be based on the authorisation basis or a buyout basis? What percentage minimum funding threshold do you think would be appropriate?

See comments on Q66

Question 68: Should external covenant advice be a mandatory requirement of the superfund transaction process? In what circumstances would covenant advice not be required?

Given the importance to members of the decision to move to a superfund we are strongly of the view that external covenant advice should be a mandatory requirement of the process. While this may be perceived as expensive, particularly for some smaller schemes with fewer resources, the risks to members (and to the reputation of pensions regulation) could be very serious from an ill-considered move to a commercial superfund scheme, with the sponsor untying the link forever. The covenant costs should be capable of being borne by the sponsor and/or the superfund. (We note also our comments at 65 above re moral hazard).

The consultation states (at para 2015) that "In some cases covenant advice may not be necessary for example where trustees have undertaken a covenant assessment following a recent valuation….". We consider that there should be Pension Regulatory support and expectation of covenant advice being taken by the superfund trustees from time to time and would suggest that such a carve out is not appropriate.

Question 69: Should it be a requirement for those providing covenant advice to be regulated by either the Financial Conduct Authority or the Financial Reporting Council?

There is currently no single regulatory body for covenant practitioners as individuals or as firms, though most practitioners are members of the accounting, insolvency or corporate finance professions and therefore regulated under the auspices of their respective firms' regulators (eg FCA, FRC / ICAEW, ICAS). We suggest that those providing independent covenant advice should be appropriately qualified and operating under appropriate regulation, but that a single regulator is unnecessary.

Question 70: Do you agree that the current legislation regarding bulk transfers should apply to transfers to a superfund? Please give an explanation for any changes you recommend to the legislation.

We propose a different test, which is that bulk transfer without member consent should be permissible, where the 'economic interests' (rather than 'rights' as now) are no less favourable This test is proposed in any event for a superfund transfer and could permit PPF plus solutions without having to go via an intermediate scheme and RAA. See: https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/regulatory-intervention-section-89-halcrow.ashx

Question 71: Should tPR decide whether each scheme transfer to a superfund can proceed or only have the power to prevent a scheme entering a superfund if they judge that the principles set out in the gateways are not being met.

We suggest that the principles having been established for the gateway, the decision to move is one for the trustee board of the ceding scheme and the powers of tPR here should be only to prevent a scheme form entering a superfund if they judge that the principles are not being met, rather than the decision being for tPR itself. However, Trustees are likely to value a clearance process and we believe that one should be available which is Trustee-led.

Question 72: What checks should tPR do on a proportionate and objective basis to satisfy itself a transfer to a superfund is likely to be in the best interests of members?

The proposed 'triage' checks in paras 220-221 look to be appropriate.

Question 73: What further powers should tPR be given to allow it to regulate effectively both superfunds and transfers to superfunds? Please provide reasons for any additional powers suggested.

We do not suggest at this stage any tPR powers additional to those proposed are needed to regulate superfund transfers, as a power to block is sufficient. Trustees are likely to value a clearance process and we believe that one should be available which is Trustee-led. We note also the points made above as to the powers of tPR to replace of boards and in sponsor insolvency.

Question 74: Should these schemes continue to be known as "defined benefit master trusts" or is there a more suitable name that can be used to distinguish them from DC master trusts?

The terminology of DB Master trusts is clear, especially if aligned with the DC Master trust authorisation regime (subject to amendment to the definition in Pensions Act 2017 s1(1)a).

Disclaimer

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