TISA RESPONSE TO THE PENSION SCHEMES BILL 2025 – PART 2

Default Pension Benefit Solutions (DPBS)

DWP proposed amendment

The Bill currently states **'Regulations may require trustees or managers of a relevant scheme to— (a) monitor the rate of decumulation under pension benefit solutions used by members, and (b) inform the member concerned if the trustees or managers consider that the rate of decumulation should be reviewed.'**

DWP have stated an intention for an amendment to be made, which would result in schemes having to actively change the decumulation rate for individual members of **default** pension benefit solutions, to ensure it continues to meet its longevity objective. It has since been clarified that this can be done at group level so groups of individuals in a DPBS can be changed en masse rather than apply an individual review. However, members of a DPBS will have different characteristics e.g. age so may need to create sub-groups and apply appropriate rate changes and investment strategies based on the grouping. DWP need to provide more detail on this.

This is not a workable solution and the number of variables and unknowns involved (including market volatility and personal circumstances), means it is fraught with risk for members and schemes. The amendment would likely result in flexible DPBS being disregarded by many schemes (even where appropriate), as the responsibilities placed on schemes would be almost impossible to achieve. Should this requirement be brought in, it would need to e clear that income levels could only be manged taking into account market volatility only – it would not be possible to factor in other considerations.

Engaged individuals considering Drawdown who also fall into the member category who are offered a Drawdown DPBS may well consider the DPBS being the better option, as it provides a 'free managed service' with liability placed on the scheme if it does not perform as intended.

Other comments

Most of the detail around the process and consumer journey will be included in secondary legislation. The choice architecture and requirements for DPBS have yet to be confirmed, however it appears that DWP are backtracking on the requirement to allow a member to select an alternative decumulation option after being placed in a solution. This is a significant shift as many unengaged members will not understand the full implications of being placed into a solution which they cannot get out of, or only understand the high level detail (e.g they know a lifetime annuity will pay out a guaranteed income for life but not understand the details around partner/inflation/capital protection, death benefits or irreversible nature of the decision made on their behalf).

Targeted Support could play a role here but many firms may not offer this, so the journey has to ensure the member understands the full implications before being defaulted into a DPBS. We also need to understand how TS and DPBS are allowed to interact to result in an engaging and fluid customer journey.

We need clarity for general requirements placed on schemes for income withdrawal monitoring and communication in respect of members who proactively select Drawdown. This is another significant requirement which requires considerable consultation with industry, to understand the policy drivers and expectations.

Aligning with policy intent is the need for successful monitoring to ensure the initiative meets its intentions. TISA can design and propose metrics that will be required to ensure this becomes a success. Firms will need to build reporting requirements into their propositions, so this needs to be agreed in conjunction with the mapping of the end to end process/journey.

Targeted Support proposals restrict recommendations about annuities due to the irrevocable nature of the decision. However, it would appear to be possible to default a member into an irrevocable DPBS which creates an inconsistency which needs to be addressed.

Where a scheme uses a partnering arrangement, the transfer to the DPBS cannot take place without member consent. This is at odds with the principles of a Default Solution – if the member won't engage, how do they get consent?

What needs to occur to remove a member from the DPBS where this is possible? If the solution was Drawdown, would an active change of investments or level of income withdrawal achieve this?

For partnering arrangements, the first condition is that **it is not practicable** for the trustees or managers of the scheme to design and make available to that member default pension benefit solutions. We need clarity on what does 'not practicable' mean? How would a scheme demonstrate this?

The second condition is that the trustees or managers of the principal scheme 35 have identified a pension benefit solution of a relevant scheme (other than the principal scheme) which they consider will provide a better outcome for the member. The QPBS needs to provide a better outcome for the member than what? Consider terminology aligning to other initiatives such as Targeted Support, to reduce isolated terms being used. It needs to be made clear that communications to members in respect of their DPBS should include not only who it is suitable for but why it is suitable for them.

Scale and Asset Allocation

The scale requirements as proposed are likely to create a significantly contracted MES market, consisting of potentially a handful of large schemes, along with SETs. There will be little to differentiate MES and the governance framework including VfM will need to adapt, as these schemes will be too big to fail. A benefit of the existing market is that diversity provides choice and creates competition. Smaller MES are chosen by employers for specific reasons. If we lose this diversity and create essentially a handful of the same scheme propositions, employers and members will lose out on this benefit. Realistically, it will be extremely challenging for new entrants to come to market with the chance of building the required scale. It is therefore, important that we find a way to enable consolidation to occur, whilst preserving, at least to an extent the diversity we have in the MES market today.

Proposed amendments and questions

The schemes which can be used to achieve the scale threshold should be expanded on. It should include other schemes which fall under the same ownership and share a common investment strategy (MSDA). Recommended additions are:

- Group stakeholder schemes.
- Allow more than one Master Trust (this can occur when consolidation occurs but the schemes are still run as separate entities. Given the scale agenda, this is likely to be a frequent event).
- Allow smaller schemes to achieve the required scale by using and investing into larger scheme's MSDA. There may need to be additional requirements placed on these schemes to receive approval such as the need to demonstrate how their existence can drive up levels of competition and innovation.
- The proposed definition of a GPP does not include 'any pension scheme that gives a member the power to direct how some or all of the member's contributions are invested.' This effectively disqualifies any GPP used for Auto Enrolment and as such, the definition needs to be amended.
- Also need to clarify what a 'service provider' is. This is not a commonly used term.

We recommend that asset allocation requirements align to the Mansion House Accord. Currently, approval will be achieved by qualifying assets meeting a prescribed percentage of total scheme assets. For a GPP, total scheme assets could currently include Individual Personal Pensions which are not in scope for these requirements. Qualifying assets are related to default funds but this should be the MSDA.

The Pension Investment Review proposes introducing new restrictions on schemes looking to create and operate new default arrangements: they will need to apply for regulatory approval to do so. This does not appear to be included within the Bill – is it expected to be added as an amendment?

The Pension Investment Review also confirmed Gov will establish a Ministerial-led review to examine the available evidence and explore the reasons why any default arrangements remain outside the expected main scale default arrangements. Is this to be added as an amendment?

With regards to Master Trust capability, it should be made clear that this can, in part, come from the use of 3rd party professional services.

It appears the sunset clause can be enacted without having to clearly demonstrate why it has been deemed appropriate to invoke. There needs to be a more robust and transparent process than stated in the Bill.

Other comments

To provide clear detail on the approval process for MSDA.

Contractual Override

Bulk transfer activity which will take place as a result of the contractual override is not likely to be significant in the first year as it will take time for the process to become embedded and appropriate arrangements identified. The scale requirements will result in CO activity ramping up in the run up to 2030 and beyond. Schemes will be able to identify arrangements which are earmarked for winding up but will not have the opportunity to start the process before VfM commences as they are both expected to commence in the same year. This means schemes will be forced to undertake VfM assessments on arrangements that they are intending or maybe future earmark for wind up. Furthermore, a ministerial led review of default consolidation and fragmentation is due to commence just one year later in 2029. This does not provide an appropriate window of opportunity for the impacts of this initiative to be realised. We recommend that the Contractual Override implementation is moved forward to 2027, to allow a greater period to undertake some bulk transfers prior to the start of VfM and the ministerial review.

Proposed amendments and questions

117B (3)(b) states '**any other provision of legislation (including any rule) which restricts or otherwise affects the provider's power to do anything within subsection (1)**.' We read this as existing legislation overriding the contractual override, which is confusing in itself. We would request more clarity is provided to clearly explain what the intention of this clause is.

We are concerned with the approach taken to future potential Primary legislation change contained within clause 117H (2). This provides Government with the ability to change or repeal this part of Primary legislation without the need to go through the standardised and formal parliamentary and legal process. Primary legislation is set through a robust and long-standing process, the legislation itself being Primary due to its significance and importance. Bypassing this to make potential future Primary changes much easier detracts from the accepted and long-standing parliamentary process. Furthermore, this sets a dangerous precedent for future pensions regulation and risks creating a legislative pensions landscape which becomes much easier to change, despite it desperately requiring more stability. We strongly recommend this clause is removed.

Other comments

Currently, deferred members who no longer have a link to the sponsoring employer can be technically removed from the employer scheme, whilst potentially remaining in the same default arrangement and continue to actively contribute should they choose. Clarity is needed to confirm whether these 'orphaned' members will form part of non-consent bulk transfers – we believe they should.

Best Interest Test (BIT)

- As the BIT involves employing an Independent Expert to undertake this analysis and make a recommendation for the scheme provider to consider, there will be a not insignificant cost attached. Currently, Master Trusts can be approached by employers to request non-consent transfers out. Where this is a small employer, the costs of the BIT may be disproportionately high. To mitigate this to some extent, it would be helpful if more guidance can be provided to schemes as to what this test should comprise, potentially with a proposed template of factors that need to be met.
- Clarity is needed on what constitutes 'independent.' It would be helpful if this could be aligned with the definition for other regulation where independence is needed e.g. IGC requirements.
- We assume that ultimate responsibility and liability for any unforeseen consequences attributable to non-consent bulk transfers will sit with the scheme provider but it would be helpful for this to be clarified.
- When the BIT is operating in parallel with the new VfM framework, details of how this has been factored into the test should be included within the resulting report.

There is no mention of cancellation rights for members impacted by non-consent bulk transfers. Whilst not required for trust based schemes, the creation of a new contract means these would be required for FCA regulated schemes. However, this is not a practical approach and we believe equivalent member outcomes can be achieved by permitting members to opt out and choose their own scheme, prior to the bulk transfer taking place. Given the existing scheme may be closing, there is a strong likelihood they will not be able to remain in their existing arrangement, however the change notice should alert members to the ability to opt out and select a different scheme of their own choosing. As such, we believe an appropriate notice period is 3 months.

There are various considerations which need to be taken into account when active members who are making pension contributions are involved in these transfers – particularly if they no longer have a link with the sponsoring employer. New direct debits may need to be set up, older legacy arrangements may not have included requirements around more modern regulation such as GDPR and new tax relief declarations may be required. This should not, of course, preclude such members for the bulk transfer but further work is needed to identify the potential full implications.

Value for Money

Much of the pensions regulatory agenda is focused on consumer centric outcomes, ensuring members are equipped with the information to make informed choices, are engaging with their pensions and financial resilience more generally and are in schemes which promote good member outcomes – Consumer Duty and Targeted Support being two such initiatives. VfM has an important role to play in measuring the success of these interventions and ensuring that scheme propositions are not only about cost and investment performance but focused on delivering a proposition which effectively engages members and seeks to improve member outcomes. The final metrics which fall under Quality of Services should be reflective of this direction of travel.

Proposed amendments and questions

16 (5) (a) states '**decide that subsection (1)(c)(ii) is not to apply in relation to that "not delivering" rating, and**' however (1)(c)(ii) does not exist. We believe it refers to (1)(c) which means that TPR has the power to allow schemes achieving a 'not delivering rating' the ability to take on new employers. Can this be confirmed.

Reference is made to benchmarks, however these will not from part of the initial framework. Can it be confirmed how far into the future it is envisaged these will form part of the framework and will industry be consulted on the creation of these?

The ratings system for VfM is currently going through some changes. Will these be reflected in updates to Primary legislation?

Other comments

A great deal of importance is being placed on VfM to deliver on the scale and consolidation agenda. However, in the interim period it will be interesting to understand what the expected interim measures will be, which are required if we are to collectively meet a 2030 deadline.

The terms scheme and arrangement seem to be used interchangeably, however there are distinct differences between them. This has created an element of confusion and we would ask if there could be more consistency given and the definitions of both within the VfM context provided.

We understand that DPBS will form part of the VfM framework. Can more detail be provided about how this will be approached and implemented – will it be through industry consultation?

Small Pots

Proposed amendments and questions

Clause 32 gives power to the Secretary of State to change the size of deferred pots which become eligible for the consolidation process. It appears they could simply consult themselves to agree on the appropriateness of such change. What constitutes a 'small pot' has been debated for many years with sizes ranging from £10,000 - £200 put forward. The £1,000 limit has been agreed following through consultation and analysis of the impact on several factors including the market, consumer behaviour and potential detriment. Any future change to this threshold should not be undertaken without equally rigorous and robust analysis in full consultation with industry. As such, we recommend the clause is strengthened to include this requirement.

Clause 23 (1) (b) states a small dormant pot is exempt if '**the trustees or managers of the scheme that holds it determine that it 15 is in the best interests of the individual for whom the pot is held that it should not be transferred in accordance with small pots regulations.**' This could potentially derail the whole process. Firstly, it places an inferred liability on the scheme to ensure each transfer is in the best interests of the member. Without undertaking a Best Interests Test, this will not be known for certain, so schemes may decide to exempt pots on this basis. If the small pot threshold increases in future, this could also encourage schemes who do not want to lose these larger pots to exempt the pots and cite the same reason for doing so. We would recommend this clause is removed. However, to ensure pots with certain protected features such as Guaranteed Annuity Rates are not disadvantaged, these should be removed from the definition of a 'small deferred pot.' Furthermore, protected pension ages such as the new protected age 55 from 2028 may or may not be honoured by a pension scheme – HMRC have said it is up to schemes to decide whether they administer it. Consolidators should be forced to administer protections of this nature to avoid member detriment.

The whole process of consolidator allocation needs to be carefully worked through. Currently, the draft legislation in 22 (3) shows the notice the member receives will set out the default proposal and alternative proposal(s), But it doesn't provide any details about the member making a selection. The Government proposal in the Small Pots Deliver Report was:

1. Has the saver made an active choice over which consolidator they wish to be consolidated into? If no, go to step 2. If yes, go to step 3.
2. Does the saver have one or more pots with an authorised consolidator? If no, go to step 4. If yes, go to step 5.
3. Saver consolidated into chosen scheme.
4. Member is allocated through carousel approach.
5. Saver is consolidated into largest pot with authorised consolidator.

We need to work through how the legislation supports this approach and/or vice versa.

Other comments

Further consideration needs to be given to the interaction of same scheme consolidation and the consolidator authorisation process. The proposed rules means that a consolidator could consist of an authorised consolidator arrangement and other arrangements. Same scheme consolidation would mean that all member arrangements held within that scheme should be moved into the authorised consolidator arrangement, however a large active pot could be held in a different arrangement within the same scheme. Even if not active, it wouldn't be consolidated as it would not meet the small pot definition, so you would end up with a member with more than one arrangement within the consolidator scheme. This could be resolved through the contractual override process and is another reason why this should be introduced at the earliest opportunity.