Recent developments in pensions

28 November 2023

Autumn Statement: what does it mean for members and trustees?

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“Lifetime Provider” proposals

What did Jeremy Hunt say?

- Announced a consultation to:

  “give savers a legal right to require a new employer to pay pension contributions into their existing pension pot if they choose, meaning people can move to having one pension pot for life.”

- These reforms are aimed at:
  - Dealing with the issue of lost deferred pension pots
  - Unlocking an extra £75 billion of financing for high growth companies by 2030
  - Providing an extra £1,000 a year in retirement for an average earner saving from age 18

Why are these reforms needed?

- The success of automatic enrolment (AE) plus increased job mobility = employees averaging 10 different pots across an individual's working life

- Since AE introduced, 12 million deferred pots under £1,000 have been created

- The total value of lost pension pots has grown from £19.4 billion in 2018 to £26.6 billion 2022

- Dashboards intended to help, but more action needed to stop the creation of new multiple pots

What is the proposal?

- Heavily influenced by Australian “stapling” model
- An employee’s contributions would be sent to their pot with their “lifetime provider” instead of the employer’s default pension scheme
- On starting a new job, your new employer would do the same, so maintaining your one pension pot
- Likely to be minimum standards that lifetime providers will have to comply with

What is the proposal?

- Consultation stresses the need for the use of automation and defaults to remove/lessen requirement for engagement

- Employers need to be able to independently identify what schemes their employees are using to avoid the need for the employee to have to notify them

- Use of a central clearing house – responsible for diverting contributions to the employee's scheme, on receipt from employer

What are potential issues with the proposal?

- How will members choose their lifetime provider? Would there be scope for change?
- Loss of employer's negotiating power with providers
- Employers having to pay contributions to a myriad number of pension schemes
- What if the employer's scheme is more generous?
- Will employers be encouraged or discouraged from providing more generous pension benefits?
- Liability of central clearing house?

Trustee skills, capability and culture

Consultation on trustee skills, capability and culture

- Government response to consultation issued in July 2023

- Consultation sought to gather evidence on whether pension trustees work effectively and are supported to make decisions in the best interests of pension savers

- Focussed on three areas:
  - Trustee skills and capability
  - The role of advice
  - Barriers to trustee effectiveness

Conclusions of consultation (1)

- Responses confirm that the majority of trustees are well-supported, knowledgeable and hard-working
- However "*it is clear there is space for action to ensure that all trustees are able to work effectively.*"

- Professional trustees
  - Are "*strongly encouraged*" to seek accreditation
  - DWP will consider whether legislation should be taken forward to mandate this in future

Conclusions of consultation (2)

- DWP will support TPR to develop and take forward a register of trustees

- To help enable TPR to:
  - Regulate trustees more effectively
  - Improve the communication of information and guidance to trustees
  - Target their focus towards harder-to-reach schemes
  - Collect information to assess whether knowledge and understanding requirements are being met; and
  - Target those trustees and schemes that require additional support to fulfil their obligations

Conclusions of consultation (3)

- Most respondents did not believe that trustees lacked understanding of alternative and illiquid assets
- However, some responses did suggest that insufficient learning material is available for trustees
- Further guidance on investment decisions and alternative and illiquid assets being prepared by TPR

DC retirement options

DC retirement/decumulation options

- Another DWP consultation response: "*Helping savers understand their pension choices: supporting individuals at the point of access*"

- Considered how to support DC members making decisions at retirement

- Pension freedoms has allowed for more choice and control for savers, while also placing more responsibility on the individual saver

- DWP reports only 29% of 55-59 year-olds said they had a clear plan and 17% reported that they did not know they had to make a choice

DWP DC retirement/decumulation proposals

- Confirmed that a duty will be placed on trustees to offer decumulation services, which are suitable for their members and consistent with pension freedoms

- Trustees will be required to:
  - Offer a level of support for those who find the decisions they need to make at the point of access daunting; and
  - Provide members with default decumulation options for those who are less engaged

- Default decumulation solution, based on the general profile members, will be used for members if they retire without making an active choice on how to access their pension


TPR and FCA: Value
for Money

DC Value for Money Framework

- TPR and FCA statements –
  - Shared objective of TPR, DWP and the FCA to develop a holistic VFM framework that can be applied consistently across the entire DC market, across trust and contract-based schemes
  - No update on the timing for the primary legislation required to implement the new value for money framework
  - Confirm that the FCA will consult on VFM rules for contract-based schemes in spring 2024

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Tax update following the Autumn Statement

Amol Chalisgaonkar
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Digitisation of Relief at Source

- Relief at Source: contributions taken from post-tax pay
  - Admin reclaims basic rate tax from HMRC (paper-based process) – paid to scheme
  - Member reclaims higher / additional rate tax from HMRC (Self-Assessment) – paid to member
- New digital process for administrator to reclaim basic rate tax from HMRC from 6 April 2025
- Other amendments indicate administrator may be able to claim higher / additional rate tax in future – however, details unclear

Abolition of Lifetime Allowance (LTA): confirmed

- To be abolished from 6 April 2024
- Taxation of pension income:
  - Continues to be subject to income tax at recipient’s marginal rate
  - No LTA tax charge (no replacement)
- Taxation of lump sums:
  - No LTA tax charge
  - But replaced by income tax and new allowances regime!

Taxation of lump sums: new allowances

"Lump sum allowance"

- Standard LSA: £268,275 (25% of current LTA)
  - Members with LTA protections have higher LSA
  - For members with Enhanced Protection, LSA depends on which lump sum is being paid:
    - PCLS: max payable on 5 April **2023**
    - Other lump sums: max payable on 5 April **2024**
- "Available LSA" = member's LSA minus:
  - Any previous PCLS
  - Tax-free part of any previous UFPLS
  - (Note: no need to deduct tax-free part of trivial commutation or winding-up lump sum!)

"Lump sum and death benefit allowance"

- Standard LSDBA: £1,073,100 (current LTA)
  - Members with LTA protections have higher LSDBA
  - For Enhanced Protection: value of uncrystallised rights on 5 April **2024**
- "Available LSDBA" = member's LSDBA minus:
  - Tax-free part of most authorised lump sums
  - Tax-free part of most authorised lump sum death benefits (paid in respect of member)
  - (Note no need to deduct tax-free part of trivial commutation or winding-up lump sum)

What if no records of past lump sums?

- If member had used up 100% of LTA: no available LSA / LSDBA
- Otherwise: new transitional method to be introduced – details not available yet
- If member has full records, potential alternative to simply use those?

Taxation of lump sums: pension commencement

Pension Commencement Lump Sum (PCLS)

- Confirmation in Autumn Statement that PCLS will continue to be tax-free
- Maximum PCLS = lowest of:
  - 25% of value of benefits coming into payment
  - Available LSA
  - Available LSDBA

Pension Commencement *Excess* Lump Sum (PCELS)

- Announced in Autumn Statement – few details available
- New authorised lump sum
- Can commute benefits in excess of PCLS (subject to Scheme Rules)
- Subject to recipient's marginal rate of income tax
- *Near*-total commutation of DB pension?

Taxation of lump sums: death benefits

- From 6 April 2024, for most lump sum death benefits, two key changes:
  - Where death before age 75 and lump sum paid within 2 years, lump sum assessed against LSDBA (not LTA)
  - If such lump sum exceeds LSDBA, excess subject to income tax at recipient's marginal rate (not LTA tax charge)
- Inheritance of unused uncrystallised DC funds?
  - Currently: no income tax if death before age 75 *and* funds designated for survivor's drawdown or used to purchase survivor's annuity
  - Autumn Statement: confirmation this will continue

Overseas transfers

- From 6 April 2024: new "overseas tax allowance" = member's LSDBA
  - If transfer value exceeds OTA: excess subject to overseas tax charge (25%)
  - Details not yet available, but no reason to expect exemptions
- Reminder: currently, if member transfers to QROPS:
  - If transfer value exceeds LTA: excess subject to LTA tax charge (25%)
  - Remainder of transfer value: subject to overseas tax charge (25%) unless exemptions apply

Practical steps

- Review your scheme rules!
  - LTA-related accrual restrictions – windfall for some members?
    - Restrictions on accrual by reference to LTA? (excess under supplementary scheme?)
    - Restrictions on accrual for Enhanced Protection / Fixed Protection?
  - New "PCELS": any restrictions in rules that would, effectively, prevent payment?
- Record-keeping:
  - Enhanced Protection members: need to retain records as at 5 April 2023 (max PCLS) & 5 April 2024 (uncrystallised rights / other lump sums)
  - How far back do records go re: lump sums paid to or in respect of members? Consider pausing automated deletions…
  - New obligations to notify HMRC and members upon payment of certain lump sums

“Known unknowns”

- Statutory override? Eg to maintain status quo
- Modification powers? Eg to retain old limits in Scheme Rules
- If “available” LSA / LSDBA calculation incorrect and too little tax deducted: discharge provisions required?
- Transitional provisions? Eg member dies before 6 April 2024, but death benefits paid out after 6 April 2024

Is this achievable?!

- Lots of work required to implement by 6 April 2024!
- Looking back to Finance Act 2004…
  - Came into force 2 years after enactment (6 April 2006)
  - Industry feedback used to amend legislation before it came into force
  - Interim amending deeds? Simpler if legislative modification power…

Tax update following the Autumn Statement

Amol Chalisgaonkar
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Consolidation of Pension Schemes

Duncan Buchanan
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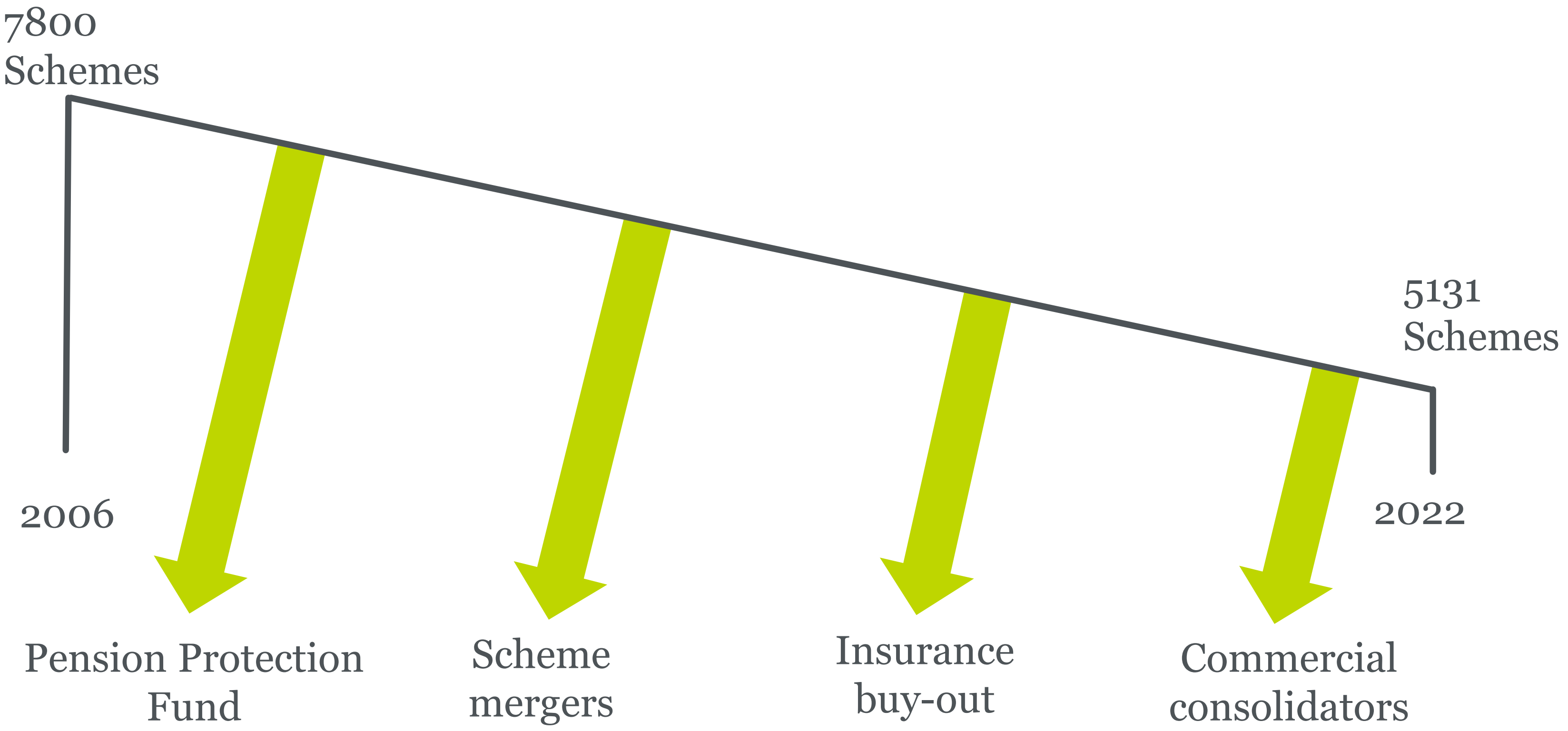
Agenda

- Consolidation in Defined Benefit Pensions
  - Movement since 2006
  - Types of consolidation
  - The future – The Pensions Regulator and political involvement
- Consolidation in Defined Contribution Savings
  - Movement since 2012
  - The rise of the DC master trust
  - The future – The Pensions Regulator and political involvement

The Defined Benefit Landscape (Private Sector)



Pension Protection Fund

- 1024 Schemes transferred @ March 2021
- 360,000 members
- Asset value (March 2023) – **£32,500,000,000**
- Liability value (March 2023) – **£20,300,000,000**
- **Surplus of £12,200,000,000 (160% funded)**

Pension Protection Fund

Source – PPF data

Remaining DB Pension Schemes (private sector)

Figure 2.1 | Distribution of schemes excluding those in assessment by size of scheme membership

The reduction in the eligible universe from 5,220 schemes at 31 March 2021 to 5,131 schemes at 31 March 2022 is mainly due to schemes with fewer than 1,000 members leaving the eligible universe.

Number of members	2–99	100–999	1,000–4,999	5,000–9,999	10,000+	Total
The Purple Book 2021 dataset (number of schemes)	1,874	2,280	720	160	186	5,220
The Purple Book 2022 dataset (number of schemes)	1,836	2,248	706	159	182	5,131
Difference in number of schemes	-2.0%	-1.4%	-1.9%	-0.1%	-2.2%	-1.7%

Source: PPF

- Asset value (March 23) – **£1,371,000,000,000**
- PPF Liability value (March 23) – **£929,600,000,000**
- Surplus (PPF basis) – **£441,000,000,000**
- 473 Schemes in PPF deficit – aggregate **£2,300,000,000**

Insurance Market (buy-ins/buy-outs)

Legal & General

£54.8 bn

£47.4 bn

Rothesay

£38.4 bn

AVIVA

£27.8 bn

Standard Life

£13.8 bn

just retirement

£8.5 bn

SCOTTISH WIDOWS

£7.7 bn

Canada Life

£4.4 bn

Total - £202.8 billion

Source Hymans Robertson Risk Transfer Report 2023

Commercial consolidators – the journey so far

DB Master Trusts – link with employer retained

DB Superfunds – link with employer removed

March 2017

November 2021 – completed Regulator assessment

November 2023 – first transaction – Sears Retail – **£590m** of assets – **£30m** of additional capital

The future commercial consolidators

"one swallow does not a summer make"

- Will we see new entrants if the PPF is to launch a consolidator
- Unfair competition/state aid questions
- Alternative "capital backed journey plans"

The future – Insurance Market

- New entrants to market
- Expectation that **£500 billion** will move to insurance in coming decade
- Regulatory (PRA) concerns regarding:
  - Over concentration of liabilities
  - Funded reinsurance
  - Structural change
- Politicians eye assets that can be invested in “productive capital”
- Could the Financial Services Compensation Scheme (FSCS) cope if called upon

The future – Pension Protection Fund

- Major shift in funding levels – current maximum exposure £2.3 bn
- Very significant surplus attracting attention – but who "owns it"
- Mansion House reforms
- PPF consultation response – September 2023

The PPF is well placed to take on an additional and separate function as a public sector consolidator should this be the government's preferred solution. Our existing investment strategy, which has an allocation of around 30% in productive finance assets (Equity, Alternative Credit, Infrastructure, Real Estate and Timberland/Agriculture), is an example of what could be achieved with a well-diversified portfolio. The maturity of our operating model means we can take on an additional role without affecting the successful delivery of our existing functions.

47. We feel the PPF would be well placed to run a public consolidator addressing a specific market failure. We will establish a public sector consolidator by 2026, aimed at schemes that are unattractive to commercial providers.

Paul Maynard – November 2023

The future – Remaining DB Schemes

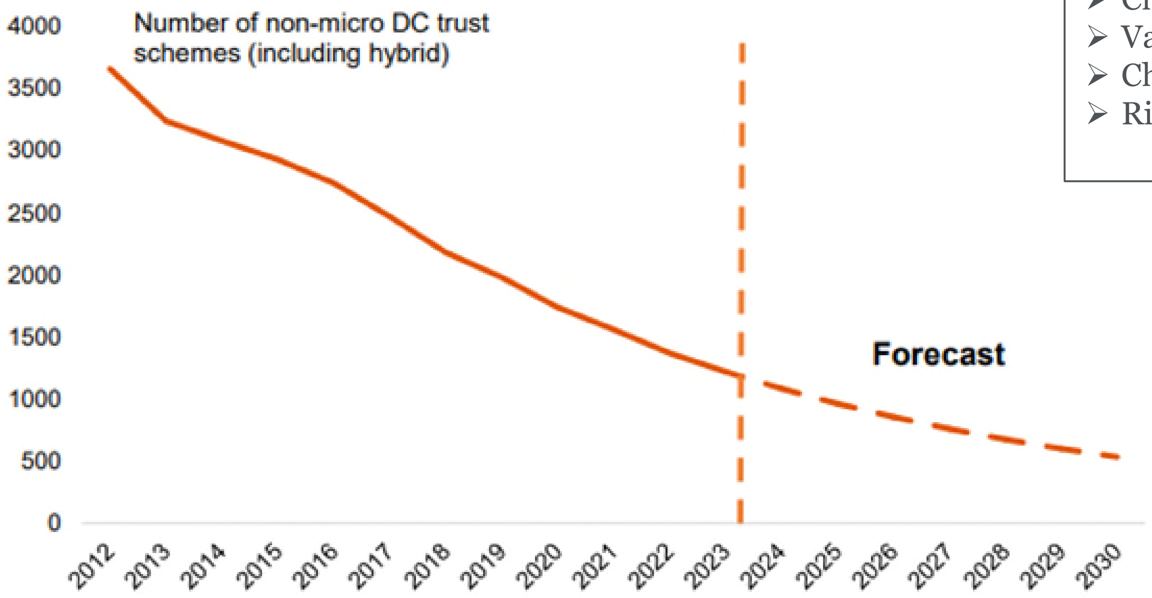
- Delayed funding code – change of emphasis at the Pensions Regulator
- Funding levels significantly improved
- Why would trustees move to a consolidator?
- Will employers still want to transfer to insurance companies?

To enable pension funds to invest in a diverse portfolio government is:

- consulting this winter on whether changes to rules around when DB scheme surpluses can be repaid, including new mechanisms to protect members, could incentivise investment by well-funded schemes in assets with higher returns
- reducing the authorised surplus payments charge from 35% to 25% from 6 April 2024

DC trust based schemes

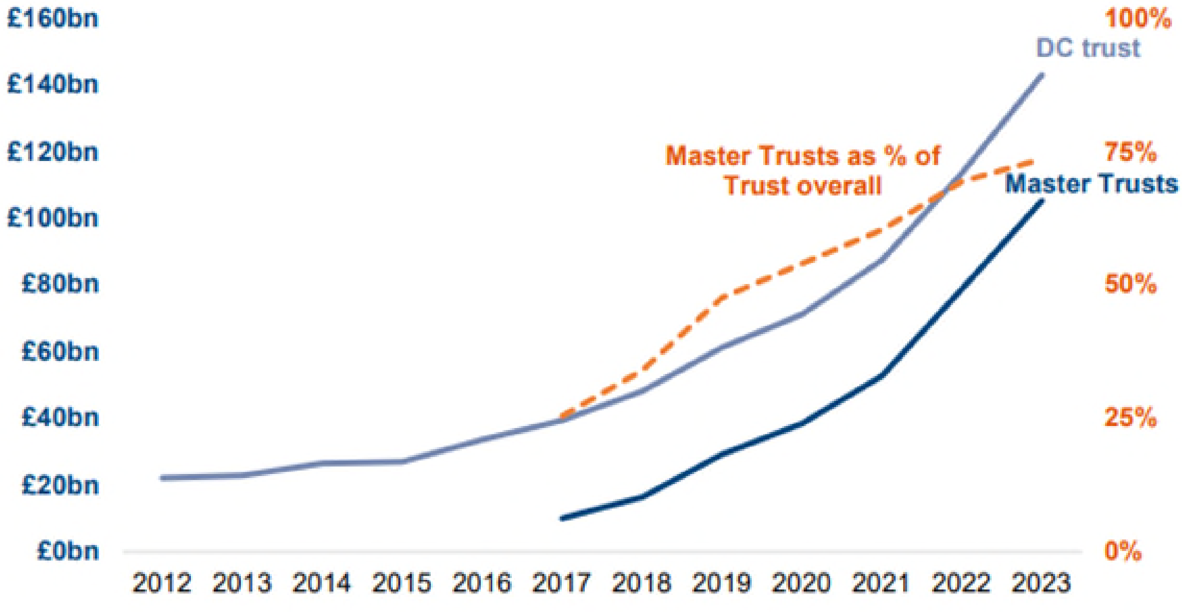
Figure 2: Consolidation of the DC trust market at the current rate[14]



Regulatory push to consolidation:
- Chair's statement
- Value for Money
- Charge caps
- Rise of the DC Master Trusts

Consolidation in Defined Contribution plans (trust based)

Figure 1: DC trust assets, Master Trust assets, and Master Trust assets as a proportion of DC trust assets (right-hand axis)[9].



"The Famous Five"

nest £30bn

Legal & General £22bn

the people's pension £20bn

LifeSight by WTW £17bn

AVIVA £9bn

80% of active members (20 million actives)

£98 bn assets

70% of all DC savings

Way ahead of the following pack

What about Collective Defined Contribution (CDC)?

- Unlikely to be attractive to majority of employers
- DC Master trusts may launch CDC “decumulation” vehicles

Consolidation of Pension Schemes

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Validity of amendments to contracted-out schemes post Virgin Media

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Pensions

Background

- Final salary contracting-out regime 1997-2016
- Section 9(2B) Pension Schemes Act 1993 – scheme must comply with statutory standard
- Statutory standard requires 90% of members receive:
  - Pension for life from 65
  - 1/80th x qualifying average earnings
  - 50% spouse's pension
- No alteration in relation to s9(2B) rights unless:
  - Trustee informs actuary in writing about alteration
  - Actuary confirms in writing scheme will continue to satisfy statutory standard
  - Alteration does not breach s9(2B)
- Section 9(2B) rights – right to payment of pensions and accrued rights to pensions attributable to contracted-out employment post-1997

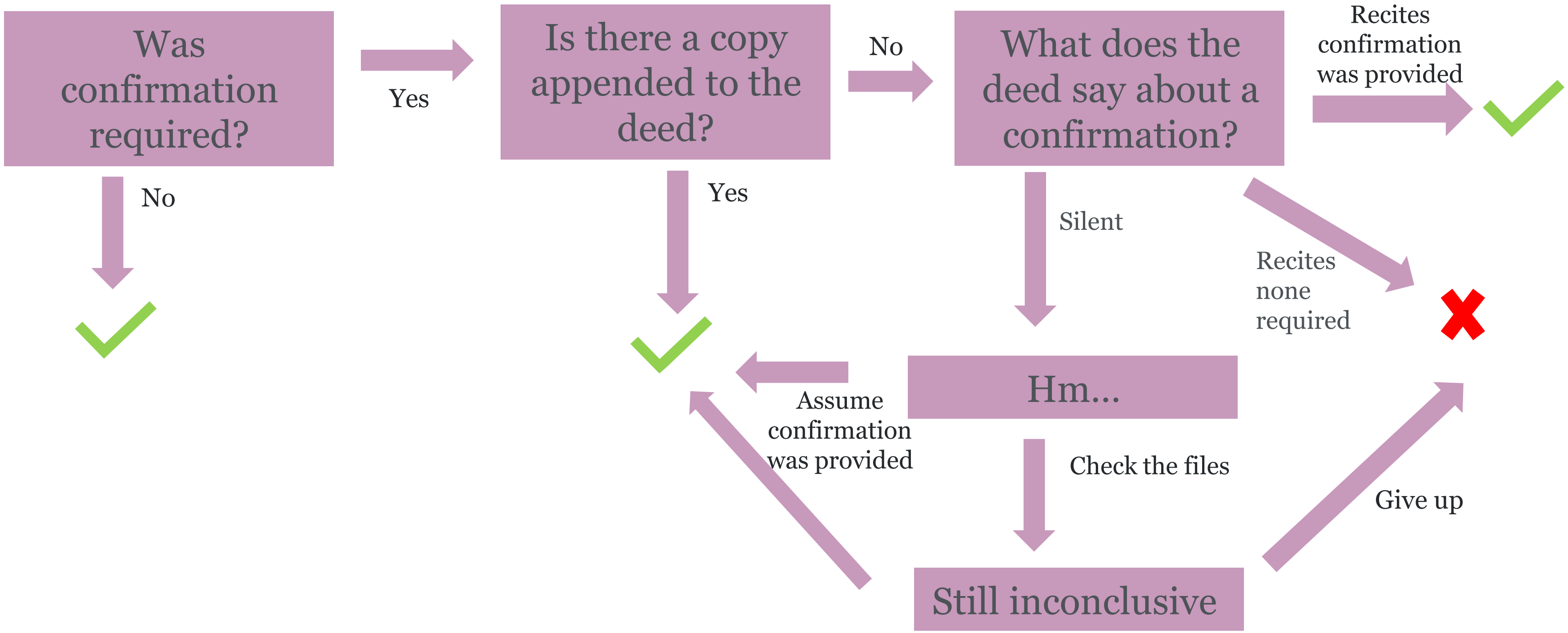
Virgin Media

- No confirmation found for deed dated 8 March 1999 reducing deferred revaluation
- Potential impact of failure to obtain reg 42 confirmation
  - 430-450 members with pensionable service 8 March 1999 – 21 June 2010
  - If 1999 D&R amendments ineffective: c£10m increase in liabilities
  - 10 October 2022: Virgin Media (principal employer) issued proceedings
    - Asking Court to determine correct interpretation of historic contracting out provisions

Virgin Media – the decision

- Issue 1: effect of failure to obtain actuarial confirmation
  - Non-compliant alteration simply cannot be made
- Issue 2: did section 9(2B) rights include future service rights?
  - Nothing in statutory definition to restrict to past service rights
  - Judge referred to provisions elsewhere in the legislation which dealt with the future
- Issue 3: did s37 voidness apply only to adverse alterations?
  - Nothing in legislation to restrict to adverse alterations

What does the deed say?



Macro solutions?

- Case has been appealed…
- Possible DWP solution:
  - S37(2) "*Regulations made by virtue of subsection (1) may operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.*"
  - DWP could pass regulations to assist – eg actuarial confirmation now, or where actuary continued to provide regular confirmation
  - There is an old precedent!
  - But would DWP decide it was the industry's fault…?

Types of amendment (1)

- Amendments which improve benefits:
  - Re-make
  - Assuming Principal Employer agrees!
- Closure to accrual
  - Closure to accrual only affects future rights
  - But if no future rights then no s9(2B) future rights?
  - So no need for confirmation?

Types of amendment (2)

- Increasing member contributions?
  - Doesn't affect (past or future) rights – just the cost of accruing those rights?
- Benefits not directly part of RST (eg dependants' benefits)
- Life assurance (not an accrued right?)
- Amendments which reduced benefits (eg rates of accrual)
  - Contractual agreement?
  - Estoppel?

Claims against advisers?

- Against whom?
  - Lawyers – who drafted deeds/provided advice (implicitly/explicitly) on validity
  - Actuaries – GN28 provided: "*Before a proposed change in the rules of the scheme can be made, Regulation 42 of the Contracting-out Regulations requires the actuary to notify the trustees in writing that the scheme will continue to satisfy the statutory standard after the alteration is made.*"
- Problems:
  - Each blame the other
  - Limitation (15 years unless continuing breach)
  - Liability cap?
  - What was custom and practice?
  - Requires acceptance deed amendments are invalid

Reg 42 2013-2016

- Reg 42 amended 6 April 2013
- Actuarial confirmation for future changes only
- Past changes effectively linked-back to s67
- Probably makes little difference in practice to this issue

Validity of amendments to contracted-out schemes post Virgin Media

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Collective/class actions: what pension trustees need to know

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Topics covered

- An overview of collective actions in England:
  - Single claim form, multiple claimants
  - Consolidated claims
  - Opt-out claims (competition law only)
  - Representative claims
  - Group Litigation Orders (an "opt-in" regime)
- Relevance to pension scheme trustees:
  - Trustees as claimants
  - Trustees as defendants

Collective actions relevant to trustees

Representative claims

- Some combination of trustee, employer and a representative beneficiary (“rep ben”) are appointed by the Court as a representative
- Normally used in “internal” scheme litigation, eg:
  - What does this rule really mean?
  - How does this piece of legislation apply to my scheme?
  - Rectification claims
- The consequences are:
  - You need the Court’s approval to settle the claim; and
  - Any judgment/order is binding on all represented people (crucially, relevant scheme members), but the judgment/order may only be enforced against them with the Court’s permission

Group Litigation Orders ("GLOs") (opt-in claims)

- Designed to provide:
  - Access to justice where large numbers of people have a claim but their individual loss is so small that it makes individual action economically unviable
  - Effective and proportionate methods of managing and resolving claims with a large number of claimants
- Used where each claim raises common/related issues of fact or law
- Judgments/orders/directions are binding on all claims within the GLO
- 112 GLOs have been made by the Courts since the regime was introduced (in 2000)

Relevance to pension scheme trustees

Trustees as group litigation claimants?

- As shareholders?
  - US vs UK “Securities litigation”
  - Examples in the UK: RBS rights issue; Lloyds/HBOS
- Other examples:
  - VAT litigation against HMRC (United Biscuits, Wheels)
  - RPI/CPI judicial review (BTPS, 3 Ford Pension Schemes, M&S Pension Scheme)
- Future possibilities:
  - ESG claims? (e.g. *McGaughey v USS Ltd* [2023] EWCA Civ 873)
  - LDI litigation?
  - Data breach claims?
- Need for funding/indemnity, or Court approval (i.e. Beddoe relief)

Trustees as defendants?

- Members' obvious recourse is a complaint to the Pensions Ombudsman, rather than litigation
- Alternatively, the representative claims procedure would be available

Collective/class actions: what pension trustees need to know

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