

Consultation response

Winding up: avoiding delays

This paper describes our approach to reviewing responses to the recent consultation on changes to our guidance on winding up of pension schemes entitled 'Winding up: avoiding delays'

The Pensions
Regulator

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Introduction

This paper describes our approach to reviewing responses to the recent consultation on changes to our guidance on winding up of pension schemes entitled 'Winding up: avoiding delays'.

In February 2010 we published a consultation paper which outlined changes to our existing guidelines on scheme wind-up. Some of the key changes included:

- Acknowledging that schemes which are being actively managed through transition and/or assessment are to be passed to the Pension Protection Fund (PPF) and Financial Assistance Scheme (FAS) for stewardship
- Removal of references to GMP equalisation as part of the wind-up process in acknowledgement of the recent statement from the (then) Pensions Minister
- Addition of references to revised guidance on record-keeping and increased regulatory expectations on accurate record-keeping for schemes
- Reinforcing the two-year deadline for winding up of all schemes
- Some amendments to the exceptions to the two-year deadline

The consultation closed on 5 May and we received 12 responses from key product providers, industry associations and consultancy houses. We are very grateful for the feedback we have received, particularly considering the minor nature of the majority of changes to the existing guidance. A list of respondents is attached for reference as Appendix 1 of this document. We would like to express our gratitude for all responses and feedback received.

We are pleased to report that there were very few major objections to the changes contained in the revised guidance. However, there were two specific issues which prompted particular reaction. These, along with other minor problems identified, will be expanded upon later in this document.

Having reviewed and considered carefully all responses, we have made few changes to the final guidance document. However, our rationale will be explained on pages 4 and 5 of this report.

Final guidance can be found on our website to be considered alongside our guidance on record-keeping and internal controls.

Our approach on key issues raised by the consultation

Listed below are some of the key issues highlighted by respondents to the consultation, along with our thoughts on these issues and any resulting actions:

Formatting:

There was an evident issue with the formatting of the document where Annex 1 was inaccurate. This issue has now been resolved and inconsistencies are no longer present in the final guidance.

Links:

The consultation paper on page 12 referenced a chart which lists all main tasks in winding up a scheme. This reference appeared without the following url:

<http://www.thepensionsregulator.gov.uk/docs/winding-up-guidance-key-tasks.pdf>

This too is rectified in the final guidance.

Key activities for defined contribution (DC) schemes:

A suggestion was made to include 'providing options to members' as one of the key activities for DC schemes (page 5 of the final guidance). This has been included.

Trust Law in Scotland

The consultation paper refers (on page 8) to Section 61 of the Trustee Act 1925. It has been highlighted by more than one respondent that this Act does not apply to Scotland. To account for differences between English and Welsh and Scottish trust laws, we have made the following additions to the guidance:

Page 7 of the guidance, referring to trustee liability:

'Trustees are offered some protection by s61 of the Trustee Act 1925 (for trustees in England and Wales) and s32 of the Trusts (Scotland) Act 1921 (for trustees in Scotland). These provisions state that where trustees have made a decision which is subsequently challenged on the basis of trust, the court has the power to relieve trustees of liability for the breach where it is satisfied it is proper to do so and that they consider trustees have acted honestly and reasonably. It should be noted that whilst the court does have this power the trustees would still be responsible for persuading the court to exercise that power.'

Page 18 of the guidance, in relation to s27 notices:

'Please note this section does not apply to schemes governed by Scots Law. Scottish trustees should still take all reasonable steps to trace members.'

GMP equalisation

We received a great deal of reaction to our decision to remove references to GMP equalisation from our revised guidance. This decision was taken to avoid potential inconsistency between the guidance and the most recent position of the Department for Work and Pensions (DWP), PPF and FAS in this area.

Department for Work and Pensions (DWP):

The statement on GMP equalisation from the (then) Pensions Minister Angela Eagle, can be found on the DWP website at <http://www.dwp.gov.uk/>

Our approach on key issues raised by the consultation

FAS:

In respect of FAS cases, the DWP published guidance on 9 April 2010 setting out requirements to provide data which is equalised in respect of GMPs and a possible method for achieving this. The PPF expect to publish additional examples accompanying the guidance at a later date. The DWP's guidance on method and assumptions to use for FAS valuations sets out a possible method for ensuring asset shares are equal in respect of GMPs. This guidance can be found on the DWP website at <http://www.dwp.gov.uk/>

PPF:

For cases within a PPF assessment period or those which have already transferred, the PPF will develop and publish a process setting out how the Board will achieve equalisation of compensation for GMP in the near future.

Two-year target

Further feedback on GMP calculations referenced our two-year target for winding up of schemes. This matter will be addressed below.

Other issues raised

Practicality of the two-year target for winding up

A number of respondents to the consultations cited various reasons why the two-year target for winding up schemes may not be workable. These included:

- Delays in GMP calculations
- Locating scheme members
- Amending scheme rules to facilitate wind-up

Furthermore, concerns were raised that certain trustees may 'cut corners' in scheme wind-up to ensure they meet this deadline. It has been suggested this could have a detrimental effect on quality and therefore outcomes for members.

This consultation sought the views of the industry on amendments to specific components of the existing guidance. This deliberately did not include the two-year deadline. Our view remains that this is a reasonable deadline, subject to the exceptions specified (and which have been added to in this consultation).

Summary

The feedback received in this consultation has been very valuable and has allowed us to assess the state of progress in winding up schemes within our two-year deadline. It has also allowed us the opportunity to ensure our guidance on this issue is clear and fit-for-purpose.

In our endeavours to protect the interests of members in schemes which have triggered wind-up, further regulatory work continues in the following areas:

- DC schemes where there is no trustee in place
- Shell schemes where there are no remaining members, nor any funds under management

We will continue to monitor progress in the industry and update this guidance periodically, as new information and market data becomes available.

We are broadly encouraged by activities to date in meeting the two-year target, but still feel there is a great deal of work to be done in the coming months.

Appendix 1: List of respondents

Below is a list of the organisations and individuals who submitted responses to our consultation.

Respondents

AON Consulting
Association of Consulting Actuaries
Association of Pension Lawyers
AXA
Hewitt Associates
Institute of Chartered Accountants of Scotland
Law Society of Scotland
Mercer
Prudential
Society of Pension Consultants
The Phoenix Group
Towers Watson

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