Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Submitted online: pensions.consultations@dwp.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to DWP Public Consultation: Options for Defined Benefit Schemes

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of financial services policy and regulation in the UK.

Our focus is predominantly on the work of the FCA; however, we also look at the impact on consumers of other bodies' activities and policy where relevant to the FCA's remit.

The Panel welcomes the opportunity to respond to the DWP's public consultation on the Options for Defined Benefit Schemes.

On 5 September 2023 we previously responded[1] to the DWP's call for evidence on the same topic. The Panel would request this is read in conjunction with this response. The Panel commented that the proposals contained in the call for evidence were ultimately intended to stimulate the UK's capital markets by relaxing the rules governing Defined Benefit (DB) schemes. Whilst this could improve outcomes for DB savers, which

[1] 20230905_final_fscp_response_to_dwp_options_for_defined_benefit_schemes_a_call_for_evidence1.pdf (fca.org.uk)

the Panel viewed positively, the Panel believed strongly that the proposal contained potential risks to DB savers that required a full assessment. Furthermore, the Panel did not agree with the proposals regarding surplus extraction.

The Panel's position has not changed. Scheme surplus extractions carry risk to pension savers, as it is always possible that during their lifetime a downturn could occur that impairs the scheme's ability to provide the expected benefits. The current consultation has not provided evidence that these risks have been fully addressed.

A public sector consolidator is a viable solution for schemes that do not otherwise have options. However, it is essential that those on the Board and Management of the consolidator are subject to the same principles and rules – the FCA principles and Code of Conduct – and penalties, as are others who are responsible for pension schemes.

The Panel's responses to the questions can be found in Annex A – Response to consultation questions. Many of the questions in the consultation are best answered by other parties; therefore, the Panel has responded to the questions we are able to provide insights on.

Yours sincerely,

Helen Charlton

Chair of the Financial Services Consumer Panel

Annex A – Response to consultation questions

Q2. What is the appropriate balance of powers between trustees and employers? Should a statutory override allow trustees to amend scheme rules around surplus at their sole discretion, or should such amendments be contingent on an agreement between trustees and the sponsoring employer?

Given that the sponsoring employer will be called on to contribute to the restoration of the scheme in the event of a deficit and is likely to be held to account by its employees, any amendments relating to scheme surplus should be agreed by both trustees and the sponsoring employer.

Q8. Under what combination of these criteria should surplus extraction be permitted? If you feel alternative criteria should apply, what are they?

Any criteria applied when allowing surplus extraction must protect the scheme members to the greatest extent possible. This should factor in the time to retirement, life expectancy, the types of scheme investments, the financial condition of the sponsoring employer, and market conditions (including shocks). The current economic environment is not a basis for predicting the future; it should consider a period reflecting a full economic cycle. Further security could be provided by granting the scheme a charge to any tangible assets in the amount of the surplus extraction.

Q9. What form of guidance for trustees around surplus extraction would be most appropriate and provide the greatest confidence?

Guidance must make it clear that the priority of trustees is to ensure that scheme members will receive the benefits to which they are entitled and expect. Surplus extraction should only take place if the trustees have formally assessed and documented all risks and have absolute confidence that member benefits will not be negatively impacted, either currently or in the future.

Q10. What might remain to prevent trustees from sharing surplus?

Trustees recognise the importance of the trust that has been placed on them to ensure that scheme members receive the benefits they are entitled to and expect. Whilst a desire to improve the UK economy is admirable, it is not the responsibility of pension schemes to do so.

Furthermore, there is no assurance that paying out scheme surplus would accomplish this. Furthermore, if trustees believe that investing in productive assets supports their objectives, they can do so within the scheme.

Q28. Will this proposed governance structure achieve effective administration and public confidence in the public sector consolidator?

The Panel agrees that the Pension Protection Funds (PPF) existing funds and the consolidator funds should be kept legally separate. However, the Panel does not agree that the consolidator fund should not be subject to further external regulation. As noted in paragraph 41 and the tables in the annex, this fund could be sizeable, and governance failures could lead to systemic risk across the UK financial system, as well as negatively impacting a significantly large number of pension savers. Furthermore, the intention to increase investment in UK productive finance assets could be subject to conflicts of interest. Therefore, the Panel is of the view that the consolidator should be supervised by the Prudential Regulation Authority and / or the Financial Conduct Authority, both of which are independent and have the requisite expertise to ensure that the consolidator is appropriately governed.

Q34. Is the proposed investment approach appropriate to achieve the consolidator's aims as set out above?

The consolidator must prioritise achieving the anticipated benefits of its scheme members, and the Board should be held accountable for achieving this objective. The Panel does not object to investment in productive assets, however, this must be done within the objective of achieving the right outcomes for scheme members. Furthermore, as mentioned in the response to Q28, conflicts of interest must be managed appropriately.