



**Regulating the pensions and retirement income sector: Our
strategic approach. Joint call for input**

**RESPONSE FROM ICAS TO THE FINANCIAL CONDUCT AUTHORITY
AND THE PENSIONS REGULATOR**

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Background

ICAS is a professional body for more than 21,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854.

General comments

The ICAS Pensions Panel welcomes the opportunity to comment on 'Regulating the pensions and retirement income sector: Our strategic approach' published jointly by the Financial Conduct Authority (FCA) and The Pensions Regulator (TPR).

We are supportive of the FCA and TPR taking a joint strategic approach and we appreciate the consultation events hosted across the UK as part of this initiative.

The joint call for input illustrates clearly the pensions and retirement income sector's complex regulatory landscape. In recent years, complexity has increased with TPR acquiring responsibility for the implementation of pensions auto-enrolment, including enforcement powers over employers. TPR will also be responsible for the authorisation of defined contribution (DC) mastertrusts when the new regulatory regime commences in 2018.

While welcoming a joint approach, we believe that the best way for TPR and the FCA to be effective is to retain their distinctive roles which require different regulatory approaches. Occupational trust-based pension schemes should remain TPR's focus and, given TPR's experience of engaging with employers, we understand why auto-enrolment implementation and compliance was added to TPR's statutory duties. The FCA's role is to regulate financial products, product providers and advisers, meaning that there are aspects of master trust regulation which would perhaps have sat better with the FCA.

Further powers are expected to come to TPR as the UK Government takes steps to implement the proposals it set out in its White Paper 'Protecting defined benefit (DB) schemes'. New powers are expected to include, for example, the power to fine those who deliberately put their pension scheme at risk. We broadly support the extension of TPR's powers and await publication of further details.

We have taken the opportunity to make some further comments on the implications of the White Paper for TPR and we set these out below.

Protecting defined benefit (DB) schemes

TPR's long-standing objectives to protect people's workplace savings and to reduce the risk of pension schemes ending up in the Pension Protection Fund (PPF) are at odds with its more recent objective, acquired in 2014, to make sure employers balance the needs of their DB pension scheme with growing their business. ICAS did not support the addition of this objective on the basis that existing regulatory arrangements were working and the obvious tension with TPR's existing statutory objectives at the time.

Taking into consideration the differing nature of TPR's various responsibilities and its conflicting statutory objectives we believe TPR faces considerable challenges.

Looking towards the UK Government's plans to introduce a criminal offence for those who have behaved recklessly in relation to a pension scheme, bringing charges is likely to be difficult: DB liabilities are corporate debt, but this is not their legal status.

Defining what constitutes 'behaving recklessly' will be difficult in itself as will determining the period over which the reckless behaviour took place. We believe it will be necessary to determine such a period in order to match the duration of the reckless behaviour to any deficit built up during that time and, ultimately, assigning responsibility for an element of the deficit to individuals. The volatility of scheme deficits is an additional factor making that measurement of the financial impact of reckless behaviour on a scheme highly judgmental.

Businesses do need to take managed risks to sustain and grow and scheme funding levels can vary due to circumstances, such as the longevity of scheme members or general economic conditions, which have nothing to do with sponsoring employers' directors.

The accounting deficit in the accounts of an employer is designed to achieve comparability across the statutory accounts of entities which sponsor DB schemes. However, an accounting deficit would not be a suitable point to start assessing the financial impact of reckless behaviour as the measurement does not address the competing obligations of the employer.

Looking at a 'live' comparison, the successful prosecution of individuals involved in pension liberation schemes is very difficult and costly as proving the illegality of such schemes is very difficult. Case law has little bearing on such cases, with each case being a test case in itself.

Our responses to the specific questions in the call for input are set out in the Appendix.

Any enquiries should be addressed to Christine Scott, Head of Charities and Pensions, at cscott@icas.com.

Responses to call for input questions

Question 1

FCA and TPR's remits intersect in some areas. Do you see this working effectively, or are there areas where this could be improved?

Response

FCA and TPR has set out areas for joint working and we comment on those under question 2.

However, we would like to emphasise:

- The importance of building public confidence in the pensions and retirement income sector, and in savings products more generally; and
- The on-going challenge of ensuring consumer and member protection measures remain fit for purpose.

There has been unparalleled growth in the demand for regulated financial advice over the last 18 months, so consumer protection should be of the highest priority.

With this in mind, we would like to highlight specific concerns we have on the following matters. The remits of the FCA and TPR intersect around the challenge of dealing with pension liberation schemes. From TPR's perspective, it would be helpful if the power of pension trustees to block DB to DC transfers was strengthened through legislation. From an FCA perspective, more attention needs to be given to the regulation of the investment vehicles receiving 'liberated' funds.

Question 2

Do you agree that the areas we have identified are the right ones? If not, which themes would you add or remove from our list? In which areas could the FCA and TPR singly or jointly have the most impact?

Response

The FCA and TPR have identified the following areas for joint action:

- Getting saving off to a good start: access to pensions.
- Making sure pensions are well run and funded; effective governance and securing funding.
- Making sure pensions offer good value for money.
- Supporting good choices and outcomes for consumers and members.

We agree with the vision set out above on areas for joint action but there is no explicit mention of financial education. There is also a need to upskill the public to recognise pension scams.

We are not suggesting that it is necessary or appropriate for everyone to have a detailed knowledge of the pensions and retirement income sector, or savings products and financial services more generally. Nevertheless, we believe it is important for everyone to acquire a basic level of financial awareness and that, ideally, this should begin at school and should be reinforced throughout primary and secondary education.

The compounding effect of interest on savings over the long-term is very powerful. An awareness of this combined with a basic level of awareness and knowledge about savings vehicles could support a culture of long-term saving. Pensions auto-enrolment is a key contributor to creating long-term savings, as well as being a catalyst for a debate on this issue.

We appreciate that financial education in schools does not fall within the remit of the FCA and TPR, but improvements here would support the proposed joint strategy. Therefore, engaging with government at all levels may be necessary to drive this point home.

No one can assume that their health will enable them to work past normal retirement age if they have not saved enough and this is brought into sharper focus with recent and planned increases in the State Pensions Age. Future increases in longevity would raise the expectation of even longer working lives and time in retirement, meaning that creating an environment where people do save adequately for retirement must be at the centre of government policy and at the heart of the work of the regulators.

Question 3

Given our regulatory remits, what more, if anything, should the FCA and TPR do to support people as they start to save for a pension?

Response

We are very supportive of early workplace saving. Early workplace saving, longer working lives due to increases in longevity and in the state pension age, and changes to the job market will likely mean multiple employments. With this comes the likelihood that the number of small pots providers are managing on behalf of savers will significantly increase.

Government plans to introduce a policy of 'pot follows member' have not been followed through and we understand that the automatic transfer of pots from one provider to another comes with its own challenges and risks.

There is a commercial aspect to the proliferation of small pots in that it is less cost effective for providers to manage these. It is therefore in the interests of both savers and providers, that where there is no detriment, savers transfer their pot when they move employer. Even in circumstances where the financial detriment of transferring is small there may still be a good reason to move a pot, therefore, making access to financial advice in these circumstances quite important.

Technology has a part to play in making it easier to transfer pots, for example, through the development of modern IT platforms, with built-in dashboards, designed to support the pensions freedoms. Developments in technology can be supported by both regulators through nurturing a guidance and advisory culture. A robust guidance and advisory culture, in time, could build on any improvements in financial awareness which were encouraged earlier on in life.

The opportunity to build a long-term relationship with a trusted financial adviser could be incredibly valuable for savers. However, from an individual perspective, it will be those with larger pots who seek independent financial advice directly from IFAs. For those with smaller pots, employer funded advice is likely to be the way forward. Anything the regulators could do to develop this market would be welcome: TPR has experience of engaging with employers and the FCA has experience of engagement with providers and advisers but a fresh approach may now be needed to those relationships.

Building public confidence more broadly in the pensions and retirement income sector, is a role for both regulators and is important if savers are going to be encouraged to seek advice.

There have been specific high-profile instances of poor financial advice being given on DB to DC transfers and this will have caused alarm more generally around the quality of financial advice. The IFA network is driven by the professional indemnity insurance market and 'one-man bands' cannot operate in this market. However, this creates a risk that unscrupulous advisers can move from one IFA network to another and remain under the radar. This is clearly an issue of concern for both regulators but within the FCA's remit for action and we would welcome the prohibition of contingent fees for DB to DC transfers as a means of destroying the business model of the unscrupulous.

There would also be the question of how deferred members in DC arrangements access advice should employer funded advice become the norm. Any steps which could be taken to make it easier for employees to transfer pots would help with this too.

Question 4

Is there more scope for TPR/FCA working, either singly or jointly, in this area? To what extent should the emphasis be on collaboration with a wider group of bodies to improve the advice and services supplied to schemes (e.g. administrators, investment consultants)?

Question four is about making sure pensions are well run and funded.

Response

We believe there is more scope for TPR and the FCA to work closely together but their roles should not become blurred either in practice or in perception.

We believe it will be necessary for the regulators to work closely together in relation to the supervision of DC master trusts. TPR is to be responsible for the authorisation and supervision of master trusts, while the FCA regulates the entities which provide master trusts. DC master trusts will therefore need clarity from both regulators as to how master trust regulation will work in practice. We believe that there is more scope for intelligence sharing between TPR and the FCA, with master trust regulation being an area where this will be essential.

We have concerns about the intended regulatory approach to master trusts which seems to focus on the role of the scheme trustees. While this approach is appropriate for more traditional trust-based schemes, DC master trusts operate a different business model with commercial objectives and we believe that the focus of their regulation should be on the funders and strategists, who are supervised by the FCA, rather than the trustees.

Question 5

How can pension providers and schemes, employers and other firms in the sector improve the security of the money and data they hold? What role is there for the FCA and TPR in further driving up standards?

Response

The pensions and retirement income sector is a highly intermediated sector so the risks associated with keeping money and data secure is always high on the agenda. Of course, data security is very firmly front of mind now that the General Data Protection Regulation is in force.

We have the following observations on this theme:

- There are assurance engagements which apply to service organisations, for example, AAF 01/06 "Assurance reports on internal controls of service organisations made available to third parties". In this instance, the 'third parties' are pension schemes. The ICAEW developed this guidance with the National Association of Pensions Funds (now the Pensions and Lifetime Savings Association) and service providers.
- In contrast, there is currently no assurance framework or accreditation arrangement for GDPR compliance for pensions schemes. Responsibility for compliance sits with trustees but expectations about data security are driven through contracts with service providers. There may be scope to develop an assurance framework or accreditation arrangement in this area.
- There are differences in the way TPR and the FCA approach these issues. For example, the FCA has very strict rules around the audit of client money but places less emphasis on the quality of member data than TPR does in relation to occupational pension schemes. Also, funds held by trust-based DC schemes are more tightly regulated than those held in contract-based arrangements. There may be lessons which could be shared where there are different approaches towards similar matters.
- Employers select the pensions savings vehicle for their employees and, where a contract-based arrangement is selected, some employers establish internal governance committees to provide a degree of oversight. There is no requirement to establish internal governance arrangements and no formal guidance. There is therefore a question about whether good practice guidance should be developed and, if so, who should provide it. Should the FCA provide it as the regulator of the provider or should TPR in its role as the enforcer of auto-enrolment compliance?

Question 6

Are there any further opportunities for FCA and TPR to support the delivery of the value for money, either singly or together?

Response

In addition to the aspects of value for money set out by the FCA and TPR, we would highlight the importance of empowering and supporting savers through education, advice, guidance and clear communications. Government, employers, trustees and providers all have a role here too.

Question 7

How can FCA and TPR work singly or together, to ensure that information and advice helps people to make appropriate decisions? When are people most vulnerable to taking poor decisions?

Response

See our comments under question 3 on the provision and access to financial advice. We would also add that financial guidance and advice are most vital when savers are at risk of being targeted by unscrupulous advisers, for example, the situation that members of the British Steel Pension Scheme found themselves in, or when making an 'at retirement' decision which cannot be reversed.

Question 8

Do you believe that the macro-trends that we have identified are those most likely to drive change across the pensions and retirement sector? If not, what are the trends that matter? Which trends should be the highest priority for TPR and FCA? How will those trends (and any other drivers of future risks and opportunities) affect the areas we have identified?

Response

The joint call for input identifies the following macro-trends likely to drive changes across the sector:

- Feedback from the macro-economy.
- Changing demographics.
- Increasingly stretched household finances.
- Opportunities and threats from increased use of technology.
- Labour market changes.

We did not discuss this question in any detail but broadly support the macro-trends identified as being those which are likely to influence the future of the pensions and retirement income sector. We refer to some of these trends in our responses to other questions.