

Summary

- Pensions Minister Ros Altmann's October announcement to call to a halt defined ambition, collective defined contribution and pot-follows-member was an acknowledgment that scheme trustees and retirement savers are in the throes of a challenging period of reform.
- Trustees are facing a hectic period with the scrapping of contracting out, pension flexibility and the continuing adjustment of the lifetime allowance.
- The timescales to implement change are sometimes a problem. Funds are finding themselves with legal deadlines approaching but with none of the detailed legislation available, thus resulting in uncertainty.
- The sheer scale and frequency of recent changes has left some lagging behind when it comes to providing members with an adequate level of understanding.
- The House of Commons issued a report on 11 January highlighting member confusion and criticising communications that have been produced in relation to the flat-rate state pension and the end of contracting out.

A juggling act

▶ **The pace of change in pensions legislation has reached a level not seen since A-day. As trustees try to keep the government and regulator happy, Marek Handzel argues members are now in danger of being left out of the picture for too long**

On the face of it, last year's decision to stop any further work on former pension minister Steve Webb's big-ticket pension reforms looked like a betrayal.

In reality however, current Pensions Minister Ros Altmann's October announcement was an acknowledgment that scheme trustees and retirement savers are in the throes of a challenging period of reform, which began with the release of The Pensions Regulator's defined benefit (DB) code of practice in

July 2014. The scale of change has been so far-reaching that it is only surpassed in complexity and volume by the period between 2005 and 2007, when the pensions sector grappled with A-day and the implementation of the 2004 Pensions Act.

Now, said Altmann, was not the right time to be throwing defined ambition and collective defined contribution schemes, as well as automatic transfers of small pension pots, into the mix.

This application of the brakes has certainly come as a relief, particularly as this hectic period is probably about to end on a crescendo with the end of contracting out in DB schemes and a major cutback in tax relief on contributions in April.

Gordon Dadds consulting actuary Robert Young says the scrapping of contracting out has implications for the design and costs of some schemes.

“Reduction in NI will cease, so this needs to be communicated to members,” he says. “Allied to this are the issues of guaranteed minimum pension (GMP) reconciliation of scheme data and government data, and the ongoing issue of GMP equalisation.

“Another key issue [introduced in the last 18 months] is the introduction of pension flexibility and how DB schemes deal with this issue. It mainly generates requests for transfers to be able to access these flexibilities but there is debate around the extent to which trustees should go beyond simply ensuring the member receives advice on this issue.”

The changes are not just generating discussion over how they should be executed though. They are having a profound impact on the shape of pensions provision and its recipients.

DC schemes have a new code of practice to adhere to in regards governance and administration. Young says that this has led to concerns that smaller occupational DC plans will simply close due to the weight of regulation and morph into larger schemes. This could lead to possible disengagement, as members lose their ability to have personal contact with trustees.

“The continuing adjustment to the lifetime allowance is another issue, and one that adds administration to schemes,” Young comments. “They need to be drawing this to the attention of members. The tapering of annual allowance adds further complexity to provision to higher earners.

“It is likely that most high earners in a DB plan will end up with contributions in excess of their reduced annual allowance [*in April*] so the issue of how the resulting tax charges are dealt with arises.”

At a macro level, the Society of Pension Professionals president and Hogan Lovells partner Duncan Buchanan, says that with fewer DB schemes catering for active members, the end of contracting out could result in a further surge of plans closing to future accrual.

“Most employers are looking again at whether their DB scheme is fit for purpose given the contracting-out changes,” he says.

Conundrum

The main challenge for trustees and their advisers when implementing the changes into scheme rules has been the timescales involved CMS partner Maria Rodia states.

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the detailed legislation available to allow schemes to make legal or administrative changes with any certainty,” she says.

“This has been the case with the abolition of contracting out and was certainly the case with last year’s changes to DC scheme governance, where final regulations weren’t available until February [*for delivery in April*].”

DLA Piper partner Matthew Swynnerton shares Rodia’s frustration. One of the complicating factors around the pension freedom rules was that they were announced without warning.

“The legislation that followed was necessarily piecemeal form. We’ve had two bills since then and draft regulations under both those bills, and we’ve had regulated guidance. There’s been a lot to deal with.”

Nevertheless, Buchanan says that, in general, schemes have done well in the circumstances.

“I was particularly pleased with how the industry has dealt with the freedom and choice changes and the tax changes that came in last April. Schemes adapted to them well and there was a good transition to the new regime,” he says.

Other new alterations to scheme

rules, such as dealing with same-sex partners and shared parental leave, he says, were adopted without much trouble. “Most schemes just take it in their stride. They’re well-oiled machines used to constant change.”

However, says Swynnerton, two particular amendments have caused complications for many trustee boards. The first has been the establishment of short-service refunds. They have proved to be a headache due to some unclear legal document drafting.

The second is the ability to return surplus to the company behind a scheme. Section 251 of the 2004 Pensions Act means that schemes have had to take some positive action to retain powers to distribute surplus payments to their sponsoring employer, before they lapse in April of this year. In order to keep this power, notice had to be given to members by 4 January this year. Hard deadlines such as this one have then led to communication dilemmas, as Swynnerton explains.

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“Trustees trying to explain to members why they think it’s consistent with their duties to act in members’ best interests to retain the power to distribute surplus to an employer – at a time when most schemes are underfunded – is quite a difficult message to get across.

“But there is a rationale to it. If the employer thinks that the surplus is going to end up being trapped in the scheme, it’s less likely to pay money in the first place to remove under-funding. So it’s helpful for trustees to be able to say, ‘don’t worry about overpaying; we have this power to return it to you.’ But getting that across to members is difficult. So we have quite a lot of queries made by members once these announcements have gone out.”

Consistent messaging

But this is not the only issue that trustees have had to face when it comes to informing members of alterations to their schemes.

As Rodia points out, although trustees are spending far more time and resources on communicating effectively with their members, the sheer scale and frequency of recent changes has left some lagging

behind when it comes to providing members with an adequate level of understanding.

The situation has been serious enough to warrant the attention of politicians. The House of Commons issued a report on 11 January highlighting member confusion and criticising communications that have been produced in relation to the flat-rate state pension and the end of contracting out.

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And the problem may be an even deeper one than simply keeping members properly informed, SecondSight partner Darren Laverty underlines.

“When it comes to retirement planning, pensions freedoms, lifetime allowance and contribution restrictions, what we are seeing is a lot of companies communicating the issues to staff, but failing to provide solutions,” argues Laverty.

He believes that the sea change in pension rules over the last 18 months has led to the need for financial education in the workplace.

“Providing financial education arms employees with information they perhaps weren’t already aware of,” he says.

“Its provision will leave them feeling confident that they are being provided with the best information possible, and that this is supported or backed by their employer, who - effectively- did all they could to support their staff.”

✉ Written by Marek Handzel, a freelance journalist