

Sealing the cracks

➤ Gill Wadsworth considers the efforts being taken to reduce discrepancies between the regulation of contract-based and trust-based schemes

When pension funds' liability-driven investment (LDI) strategies were hit following the Conservative government's since-reversed September 'mini-Budget', it was not long before fingers were pointed, and questions asked, over who was to blame.

The Bank of England (BoE) was quick to take the credit for saving defined benefit (DB) pension funds, arguing that its temporary repurchasing of government bonds this October prevented those schemes dependent on LDI from falling into another funding hole.

As well as highlighting its prevention of a "vicious spiral of collateral calls and forced gilt sales", the BoE also took the opportunity to demand greater harmonisation and cooperation between The Pensions Regulator (TPR) and Financial Conduct Authority (FCA).

In its Q3 2022 update published this October, the Financial Policy Committee made clear the failings of a system overseen by multiple regulators.

"It is important that lessons are learned from this episode and appropriate levels of resilience ensured. Although the Prudential Regulatory Authority regulates bank counterparties



➤ Summary

- September's mini-Budget highlighted inconsistencies in oversight of UK pension funds.
- The government is attempting to align regulatory approaches through a series of consultations.
- Trustees, employers and providers demand greater clarity if they are to communicate with members without falling foul of current regulation.

of LDI funds, the bank does not directly regulate pension schemes, LDI managers, or LDI funds. Pension schemes and LDI managers are regulated by TPR and the FCA. LDI funds themselves are typically based outside the UK. The bank will work with TPR and the FCA domestically to ensure strengthened standards are put in place."

Regulatory disparity

This is just the latest in a long line of challenges for those on the frontline of pension management who are overseen not just by TPR and FCA, but the Department for Work and Pensions, as well as adhering to regimes that govern communications, including the Privacy and Electronic Communications Regulations (PECR).

Importantly, trust and contract-based schemes are not subject to the same rules and oversight. Contract is the responsibility of the FCA, trust falls under TPR. These differences were made particularly apparent after pension freedoms were introduced.

According to Aegon UK head of public affairs, Kate Smith, the disparity in treatment between schemes creates

complications, particularly for a provider that offers contract plans and runs a master trust.

"The differences in regime are more noticeable because we have got feet in both camps. What we find is when they make rules, they are slightly different, and they are introduced at different times."

Smith points to discrepancies in members' communications and support experiences. In the run up to retirement, under FCA rules, defined contribution (DC) members should receive frequent 'wake-up packs' from age 50, with a clear recommendation to use pensions guidance, limited to a single-page summary.

Under TPR rules, trust-based schemes, meanwhile, are required to provide members with wake-up packs four months before their scheduled retirement date, on request, or when a member wishes to access their pot.

Smith says: "Members may not know if they are in a contract- or trust-based scheme, so it makes no sense to have different regulations about providing this important information. All that matters is they understand what they need to do and can engage with their pension."

Communication complexity

Complexity and inconsistency with pensions communications also includes adherence with PECR.

A letter from Work and Pensions Select Committee, chair, Stephen Timms, to Minister of State for Media, Data and Digital Infrastructure, Julia Lopez, sent this May, highlighted concerns





from trustees, including those at the Universities Superannuation Scheme (USS), that TPR rules on communicating with auto-enrolled members is at odds with the electronic communication regulations.

Timms wrote: “We have heard that the policy of auto-enrolment on the one hand makes getting marketing consent from members at the point of joining more difficult and on the other makes communication particularly important.”

USS told the select committee that “this has materially impacted on their ability to communicate helpful information to scheme members and to maximise the benefits of investment in the scheme website, member portal and online functionality”.

Providers too face the same challenges.

Aviva workplace policy manager, Dave Critchley, says: “While the law allows providers to enrol people into a pension scheme by default, they are unable to send communications that might help customers make better

decisions about that pension by default. These are the customers who tend to need the most support in managing their pension effectively. Right now, these pension savers are missing out on communications about services and products that could make a real difference to their retirement pot.”

Critchley says Aviva would like to see changes made to PECR via the Data Protection and Digital Information Bill to allow a ‘soft opt-in’ to apply for auto-enrolled customers.

“The idea of ‘soft opt-in’ is that when a person is automatically enrolled they provide their details and are assumed to be happy to receive marketing about those products or services, unless they opt out of receiving them,” Critchley says.

The regulators appear to recognise these concerns. In a joint statement issued this June as part of a call for evidence on the DC consumer journey feedback, they say: “[Providers] see a current misalignment between our regulatory expectations on

communications and other legislation. Many perceive a conflict between our regulatory expectations that schemes and providers should support savers with regular communications to help deliver good outcomes, and the PECR and Information Commissioners Office (ICO) draft direct marketing code of practice marketing guidelines.”

TPR says it is working with the ICO to clarify what constitutes direct marketing and also hopes the pensions dashboard will ease conflicts in rules and regulations.

Providing clarity

The DWP is attempting to combat inconsistencies between regulators via a range of consultations.

This June, the department opened a month-long call for evidence via the helping savers understand their pension choices consultation, which followed last September’s discussion on driving value for money in DC pensions.

There are also efforts to align the reporting requirements under the



Taskforce on Climate-related Disclosures (TCFD) which again differ between trust- and contract-based arrangements.

PLSA deputy director of policy, Joe Dabrowski, calls these efforts “a positive development”.

He adds: “For some schemes and funds that straddle both regulatory regimes there can be some difficulties working through different demands. For example, there were some differences between the FCA and TPR requirements for TCFD. Some of these differences are most prevalent for Local Government Pension Scheme (LGPS) funds, which have a more complex environment. For the LGPS, we have called for a more centralised approach, which could involve creating a new regulatory body, or giving an existing body greater power, to be examined.”

Sackers partner, Helen Ball, says the consultations show willingness from regulators to work together and provide clarity for pension professionals, particularly when it comes to the grey area between guidance and advice.

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“Employers have for a long time worried about where the line is between engaging with members and offering advice. The fashion looking forwards will be to be more helpful, but the issue is trying to express that help in a way that is not straying the advice territory. Anything that makes it easier for providers, employer and trustees will be useful.”

Dalriada Trustees head of technical, research and policy, John Wilson, agrees employers and trustees need help to support their members without being accused of giving advice.

“Members are looking for more and more support from their employers

and trustees, but there is still a lot of confusion about what can and can't be said. Trustees and employers don't want to become regulated advisers, but they want to help because getting advice is so expensive for members. We just want to have as much possible clarity as possible and reduce the grey areas.”

Wilson would like to see the regulators hearing real-life examples on which they base future rules and guidance.

“We need to relay some of the questions members have asked and demonstrate where it has been unclear as to whether we are offering guidance or advice. If the regulators could incorporate those into the guidelines, that would be practical.”

Wilson concludes: “There are lots of opportunities to certainly make the regulatory regime better and It is encouraging that the regulators are listening.”

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