Spotlight on Pensions

PRESENTS

Le Grand View

APRIL 2018

The Retirement Savings Regulatory Muddle

Pension scheme trustees are used to interacting with The Pensions Regulator (TPR) as the body that ensures that they work in the best interests of their members. Some may have come across the Financial Conduct Authority (FCA), but in most cases it will be a peripheral contact, largely in the areas of services to individual members, such as giving information and guidance that carefully falls short of regulated advice.

But take a step back and look at the regulatory landscape covering retirement provision. What emerges is a complicated picture that from a conceptual point of view is something of a muddle. The picture is even more complicated when the regulation of all savings arrangements is included, into which pensions are increasingly being integrated.

Historical context

The historical basis for this is clear. However as the area of savings options has broadened, distinctions that seemed appropriate several decades ago in the context of the initial governance structure following the liberalisation of investment and savings markets in the mid-1980s have arguably lost their relevance. For example, when money purchase personal pensions launched in 1988 were originally conceived they were a very different animal from existing final salary trust-based occupational schemes. It made sense to impose a separate regulatory system recognising their status as retail investment products. However, the subsequent widening of options, such as allowing full transferability between arrangements started to strain the logic behind the approach.

This principle of full transferability between types of arrangements is now firmly established, and is taken as an essential policy aspect each time new arrangements are introduced. As a result of such policies we have today a complex regulatory environment that at times struggles to keep abreast of challenges posed by developments around available options and the ways in which they can be effectively policed.

Time to think again?

Given the wide range of options to be covered, such struggle may be unavoidable. However, it might be time to consider whether the whole system should be reorganised on a basis which uses as its guiding principle the perspective of the member/consumer rather than the legal basis underpinning each arrangement. This is not a new idea. From time to time there are calls for the creation of a single regulator, at least incorporating the FCA and TPR. It was formally considered in a wider review conducted by Paul Thornton in 2007.

However, although recognising the need for the bodies to work together closely particularly in respect of defined contribution arrangements, merger was rejected. Since then the world has moved on. Today's more complex structure suggests that a further independent review may be appropriate, whilst recognising that there are strong arguments on both sides.

> ***It might be time to consider whether the whole system should be reorganised on a basis which uses as its guiding principle the perspective of the member/consumer rather than the legal basis underpinning each arrangement.***

Consultation

Which brings me to the recently-released FCA/TPR Joint Call for Input on a strategic approach to regulating the pensions and retirement sector.

The paper seeks views on how the two organisations can most effectively work together in future. As background it details the current system, showing the divisions for regulatory oversight and responsibility. It does an excellent job of setting this out in tabular form, which is worth a read. However, this only serves to emphasise the complexity of the current system and the muddled approach when viewed from the position of the end consumer of the service – the individual member/saver. One clear thought it provokes is the benefits that might follow from consolidating the regulatory responsibilities into a single organisation.

Any radical change to the organisation of regulators themselves and their respective responsibilities – such as a merger into a single body - would take primary legislation and so is understandably outside the remit of this paper. Nevertheless, the wider issues that the paper throws a spotlight upon are surely worth taking a new look at from a fresh perspective.

New focus, new order

A consolidation of the regulatory bodies would create a huge organisation. Although that should provide economies from reduced overlaps, the way in which it was organised to perform its work would be crucial if the intended benefits from a more logical focus were to be achieved, rather than one muddle simply being exchanged for another.

So, how might the new regulatory world overseen by the new body be structured? One intriguing possibility arises from the paper itself. It identifies five areas where at a strategic level FCA and TPR need to act jointly. If the objective were to organise regulation based on the perspective of the member/consumer, this could provide a useful high-level template:

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

Under these headings the regulator's staff would apply specific rules following consistent principles adapted to the nature and underlying legal basis of each particular arrangement.

The regulatory system should reinforce the need for members to use a sensible proportion of their accrued wealth to supplement the meagre state pension and recognise the need to ringfence necessary funds.

Although in the paper these areas are written specifically in the context of pensions, the logic would carry across to the regulation of all savings arrangements. That could blur the regulatory distinctions between retirement provision and "other" forms of saving and investments. Given recent developments both in pensions such as the 2015 pension freedoms regime, and in the broader savings world, such as new forms of ISAs, that may be an unstoppable direction of travel. However this must not be allowed to dilute the unique nature and objective of retirement provision. The regulatory system should reinforce the need for members to use a sensible proportion of their accrued wealth to supplement the meagre state pension and recognise the need to ringfence necessary funds.

Engagement required!

The consultation closes on 19 June. Whatever your thoughts on the wider points raised above, in these times of tightening regulation of trustees and managers of pension arrangements I would urge you to respond to the consultation. Its content has strong relevance to your working life.