



Benefits Errors and Trustees

Recent media coverage of overpaid pensions reminds trustees of an ever-present risk. Mistakes can occur in any type or size of scheme. In a DC scheme the need to keep on top of data theoretically makes errors less likely than for DB benefits, but the risk still exists.

The scope for DB errors, particularly in legacy schemes, is driven by factors such as complex scheme design, past benefit structure changes, contracting-out, poor past scheme and/or company record-keeping, administrator changes and corporate M&A activity. The majority of members do receive their correct benefits. However more than 6,000 schemes and over 11 million members with DB promises, means that errors will occur.

Corrective actions

Correcting benefit payment errors can be problematic and costly. Should an overpayment be reclaimed, or should the scheme/sponsor bear it? Can the error be corrected for future payments, or has the member changed their financial position in reliance upon a too-generous pension? If other members may also be affected, multiple cases may have to be considered individually. The administration cost should not be underestimated.

It might be thought that an underpayment presents less of a problem. However, depending upon the type and extent of the underpayment (including whether the error applies to a number of members), there may be a large unexpected hit on the scheme's assets. Even if this can be absorbed, for the growing number of schemes now in a net disinvestment situation, cash flow may be compromised. If the scheme needs additional funding from the sponsoring employer to cover the shortfall, there may be a problem where the sponsor is cash-strapped – or even no longer around.

Ironically, the use of computerised administration systems may increase the risk of benefit errors arising. Although efficient for processing multiple transactions, they are vulnerable to the curse of "rubbish in rubbish out". Where there is no human element present, a valuable opportunity for a "sense check" is lost. To be effective, the human involvement needs to be from a person with widespread experience of the technicalities of pensions arrangements, together with intimate knowledge of the scheme itself.

Bad news

Errors raise reputational issues. Although most members do receive their correct benefits, the negative publicity constantly afflicting pensions means that any error, however it has arisen, feeds that negative perception. The effects then ripple out to undermine the whole sector, including well-run schemes. Every scheme arguably therefore has a wider moral duty to get things right, in addition to their fiduciary duty to their own members.

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Good records

The Pensions Regulator rightly recognises the importance of correct benefits payments, and the link with data accuracy. Its "[Regulatory Guidance – Record Keeping](#)" accompanied a regime for achieving data accuracy. Nevertheless errors can still arise, requiring continued trustee vigilance.

With GDPR fresh in everyone's minds, trustees will no doubt be focused on the accuracy of their data and how it is used. In practical terms, this should be a standing item on trustee meeting agendas supported by detailed administration reports. Where an error comes to light, trustees should require detailed explanations of the corrective actions being taken, and to any wider implications, following up until the matter has been successfully dealt with.

Scheme uncertainties

Benefits errors that are indisputable in the light of clear scheme provisions are difficult enough to address. However, there is another aspect of the benefits error issue that is less often publicly acknowledged. Cases exist where it is difficult – or even impossible – to establish with certainty the correct benefits payable to individuals or groups of members. Possible causes include:

- Pension schemes are long-term entities, with benefits accruing over decades. Records are corrupted or lost, from such things as changes in scheme managers, and sponsor M&A activity.
- Record-keeping has not always been to today's standards. Exact DB benefit calculations cannot be done until crystallisation. Some schemes have deferred addressing difficult questions of missing or inaccurate data until then.
- Documentation has not always been accurate. Inconsistencies between the trust deed and rules, member explanatory literature, the benefits specification for actuarial valuations and the administration basis are not unknown. Recent focus on cleaning up records has reduced, but not eliminated such incidences.
- Benefit structure changes were commonplace in the heyday of final salary schemes and rarely documented contemporaneously, with consequent implications for accuracy; successive governments added numerous complex amendments, some of which overrode schemes' rules.

Effectively forcing all schemes to conduct an audit now (through limiting the amnesty period) would bring greater future certainty, and relief for concerned trustees.

The number of schemes facing such problems is unknown, but anecdotal evidence suggests that it is more than an isolated few. If so, the potential for future problems is worrying. Whilst trustees do have potential remedies to apply, these can be expensive and time-consuming, and ultimately played out in the public arena, feeding the wider negative pensions news agenda. Whilst no one would support a course of action that deliberately deprives members of legitimately earned benefits, where those are not clear and the cost of producing a less-than-definitive answer arguably does not justify the outlay in time and money, there is an incentive to develop a more pragmatic option.

Pragmatic solution?

One option for consideration could be the introduction of a one-off "amnesty" for a specified period in which schemes can settle all their unclear benefits issues definitively. A body such as The Pensions Regulator or The Pensions Ombudsman (with its new wider remit) could oversee and formally "approve" trustees' proposals to settle their issues, to avoid any attempts to game the system. The courts would continue to have final jurisdiction on appeal in difficult or contested cases.

Effectively forcing all schemes to conduct an audit now (through limiting the amnesty period) would bring greater future certainty, and relief for concerned trustees. Any resulting negative publicity would come in one "hit", reducing the damaging future drip-feed of stories.

Such a system would require careful and widespread consideration and debate before being introduced, and understandably would not attract universal support. Nevertheless, it might offer a practical way to help trustees who are facing a difficult issue. Benefits errors will never be eradicated completely, but any practical solution that reduces their incidence must surely be worthy of consideration.

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