

Review of Pensions Institutions

As you know, I wear several hats - life office reporting actuary, recently retired MNT, trade union rep and member of DWP's Trustee Panel. The views that follow are my own, however. I'll comment on just a few paragraphs in your paper rather than try to provide a joined up response to the paper as a whole.

Merging FSA and TPR

1. In paragraph 26, third bullet, you report (I'll assume throughout that you are reporting views of others that you may or may not share) that pensions and financial services in the UK require a different style of regulation. Why?

If you have saved for a pension that, when you retire, fails materially to meet your expectations does it feel any different if your funds were invested with an insurance company as opposed to a pension fund sponsored by your employer? I suspect not, and conclude that there is a need for identical, not different, customer/member protection from the regulator. In either case, the individual has entrusted their retirement savings to an institution over which in practice they have very little control.

2. In the fifth bullet of the same paragraph, I think you are saying that a merger of FSA and TPR would mean pensions like insurance would have to comply with an implicitly unwelcome or unduly onerous EU Solvency II. My comment on this is the same as above - if risk-based capital requirements are appropriate to regulate insurance then they are equally appropriate to regulate pensions. And if you argue that hard-pressed employers simply cannot stand any more, I'd say that they have made a pretty firm pension promise to their employees. If the promise gets harder to honour they can either bite the bullet and pay up or come clean and negotiate an acceptable way out. Maintaining employee expectations while failing to fund prudently ought not to be an acceptable option.

3. In the sixth bullet, you say that TPR unlike FSA has close links with employers. I've been involved in statutory reporting long enough to remember when the DTI regulated insurers. The perception then, certainly among consumer bodies, was that a department of *industry* inevitably had more sympathy with industrialists - employers - than with their customers. It made for unsatisfactory consumer protection and FSA rightly maintains a healthy scepticism toward the firms it regulates. TPR should adopt the same philosophy.

4. In the final bullet you say that neither FSA nor TPR favours change. I agree that this is a key argument in favour of the *status quo* but that should not deflect TPR from considering my views on the need for better member protection.

Bringing PO and FOS closer

As with the case of FSA and TPR, I believe that PO could adopt some FOS practices without them necessarily merging. My case, however, rests on just one PO case whose details I hope I've remembered correctly - the scheme was Theolia I think.

The case hinged on a members' booklet that differed from the scheme rules. The booklet said people could retire up to 5 years before NRA with no actuarial reduction in their pension. The scheme rules said a deduction was applied. The booklet and the rules had been in force a long time and as is customary the booklet had a *caveat* that the rules took precedence over the booklet.

The PO upheld a member's claim to an undiscounted pension. The employer took the case to the High Court, which sided with the ombudsman. The employer appealed and won.

In my world of insurance, it is accepted that the onus is on the insurer to make sure any customer-friendly summary of policy conditions is accurate. In a case like this, the FOS would take only a few minutes to side with the customer. The insurer would never think of appealing - indeed, would have resolved the case without it ever reaching the ombudsman knowing it had no leg to stand on. As well as redress for the actual complainant, it would probably try to identify others who were in the same position and give them redress too.

The PO in my view got this case absolutely right. The fact that the Appeal Court could overturn natural justice suggests something is seriously wrong (even if the case hinged on one QC having an off day). I'm not enough of a lawyer to know where the problem lies but I thought ombudsman rulings were usually binding on the organisation - the scheme or sponsor in this case - but not necessarily on the complainant. The court in this case presumably disagreed.

Yours sincerely

Pete Davis