

Work and Pensions Committee

Oral evidence: Discretionary payments and member representation in defined benefit schemes, HC 1403

Wednesday 22 October 2025

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[Watch the meeting](#)

Members present: Johanna Baxter (Chair); Mr Peter Bedford; Steve Darling; Damien Egan; Amanda Hack; John Milne.

Questions 1 - 63

Witnesses

[I](#): Jack Jones, Pensions Officer, TUC; Jonathan Popper, Founder Member, BP Pensioner Group (Campaign Group); Patricia Kennedy, Co-Chair, Hewlett Packard Pensions Association; and Caroline Emery, Member, American Express UK Pensioners Justice (Campaign Group).

[II](#): Harus Rai, Managing Director, Capital Cranfield; Maggie Rodger, Co-Chair, Association of Member-Nominated Trustees; Jon Forsyth, Chair, Defined Benefit Committee, Society of Pension Professionals; and Hywel Robinson, Partner, Temple Bright.

[III](#): Fiona Frobisher, Head of Policy, The Pensions Regulator; and Julian Lyne, Interim ED Market Oversight, The Pensions Regulator.

Written evidence from witnesses:

[BP Pensioner Group \(Campaign Group\)](#)

[American Express UK Pensioners Justice \(Campaign Group\)](#)

Examination of witnesses

Witnesses: Jack Jones, Jonathan Popper, Patricia Kennedy and Caroline Emery.

Q1 Chair: Good morning and welcome to this session of the Work and Pensions Committee. We very much appreciate you joining us today. My name is Johanna Baxter. I am the temporary Chair for this session. We have with us today Jack Jones, pensions officer for the TUC; Jonathan Popper, founder member of BP Pensioner Group, a campaign group; Patricia Kennedy, the co-chair of Hewlett Packard Pensions Association; and Caroline Emery, member of the American Express UK Pensioners Justice Campaign. Thank you all for joining this morning. We will try to make it as painless as possible.

I am going to kick off with the first question. Could you start by outlining the experience of discretionary payments in the schemes you work with and how this has impacted on scheme members and perhaps why this should be a concern for policymakers?

Caroline Emery: Thank you for inviting us. I would like to begin by saying that I am really sad to be in this position. As a pensioner from American Express, I have always enjoyed working for the company. I believed it to be a professional company, as do most of the retirees.

However, the experience of discretionary increases at the American Express scheme is in many ways a textbook example of how they have used the 1995 Pensions Act to produce a deeply unfair and unintended outcome for pensioners. Historically, American Express pensioners, particularly before the Act, received discretionary increases reasonably regularly. They were modest, but at least they reflected the fact that American Express believed it had an obligation to maintain the real value of its pensions over time. However, from 2003, that pattern with discretionary increases changed. I believe that Patricia is going to talk to that in a bit more detail. However, for American Express, there were only three discretionary increases in 22 years, in 2004, 2008, and they completely ceased after 2014. This is not just a random pattern of behaviour. It is a calculated pattern of behaviour on behalf of the company.

Once American Express understood how the Act operated and what the provisions allowed companies, where they did not have discretionary increases written into their scheme rules, they began to restructure their pension governance, their review processes and their trustee powers to ensure that they could quite legally—and they use legally themselves to justify the fact that they do not pay discretionary increases to us. The legislation designed to protect weaker schemes has actually been used by highly profitable multinationals to avoid discretionary increases completely and indefinitely.

The result has been a slow erosion of spending power for pensioners. Our pensions in the pre-1997 scheme have eroded by virtually 40% since the



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discretionary increases ceased, and that is not just a statistic. We have case studies that people are not eating properly, they cannot heat their homes properly and they are having to move. They cannot find places to rent. As a result, it is a real-life story. It is impacting people badly.

Chair: Could we hear from other panel members as well?

Caroline Emery: Yes, okay. I believe that in the current framework the Pension Schemes Bill is going to turbocharge this because unless legally the pension trustees are given back the power to distribute surplus to pensioners, the company will keep the entire lot. We have no confidence that they will distribute it to our members.

Patricia Kennedy: I absolutely endorse what Caroline has said. I will just read a quick excerpt from a letter that I got from one of our pensioners just the other day. It was unsolicited. He is a pensioner of Hewlett Packard Enterprise. He was formerly with Digital Equipment. His first pension was drawn in 2008, and it was £954. His pension in October of 2025 is £997. He said his purchasing power has dwindled. His pension should be £1,615. Over the years of steadily decreasing value he has given up his car. He and his wife no longer have mobile phones. They can rarely afford a meal out. They have nearly used up all their savings. They are about to have their 50th wedding anniversary and they do not think they can afford to do anything with that. Meanwhile, the costs of utilities are skyrocketing and they are desperately trying to keep up their home of 46 years.

That is not unusual in our experience. I am fortunate, or unfortunate, to live in the community where I was once the personnel manager. We hired probably 10,000 people in south Ayrshire during the time that I was there. The impact of the pension lack of discretionary increases is visible. You can see it all around you. Unfortunately for us, the rest of the impact is diluted. We have lobbied MPs and probably have contacted 40% of the population of MPs. Our population is really dispersed.

I would agree with Caroline that without a change in the law, Hewlett Packard is not going to change. It does not recognise this as a problem. It does nothing to collect the data to find out how the lack of discretionary increases affects people, which I think is quite shocking. It does ask the Pension Association for hardship stories, and I will admit that last year I said to them, "I am not giving you any more hardship stories. Nothing happened with the last lot". So they are still pressing us, but they make no efforts to study the effect of their decisions.

Q2 **Chair:** Okay. I will bring in Jonathan and then Jack. Can you perhaps comment on why there appears to be a shift from paying discretionary increases to not paying them?

Jonathan Popper: Good morning and thank you for inviting me. For four years running BP has rejected affordable discretionary increases, despite a record £4 billion pension fund surplus. The chief financial officer is on



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record as being unable to envisage circumstances when surplus could be shared with pensioners. So, for us, for the BP Pensioner Group, the track record suggests that the company is determined to resist sharing surplus with pensioners directly by rejecting requests and indirectly through its majority on the trustee board. We believe that the surplus provisions of the Pension Schemes Bill must be strengthened so that employers cannot hang on to the surplus and pensioners can get a fair share.

Jack Jones: I am afraid I am not sure why there has been a change, but I think the experience of our members suggests there has been quite a stark change. Where there are no pre-1997 increases in scheme rules, it certainly had become a reasonable expectation that there would be discretionary increases. I think that was very often communicated by employers and by trustees as, "We will make best endeavours to pay increases when it is affordable". That was often quite clearly communicated. Obviously, you had the experience of years of putting that into practice.

Often schemes also were funded on that basis, that they would be trying to make discretionary increases. I do not know whether it is partly a practice thing that when so many schemes were for so long underfunded, something changed and that expectation dwindled and now we are in a position where schemes are much more healthily funded in general. Something has changed. I do not know if it is to do with levels of member representation, whether it is schemes moving to sole trustee models where you do not have that member voice on the committee. I am afraid that is not a very helpful answer, apart from confirming that it certainly has been a stark change that we have seen.

Q3 **Chair:** You say that the reference to discretionary payments was clearly communicated to members. Was that in writing?

Jack Jones: I'm afraid I am not sure. This is reporting members' experience from maybe 20 or 30 years ago. I can certainly do some digging and see if I can find good examples for you. I am sure colleagues or panellists will have similar examples.

Chair: I think that would be very helpful if you could.

Patricia Kennedy: Ours were definitely in writing. I have a box full of literature, particularly the literature when the company changed hands, that says specifically your benefits will not change, and they did. I think we have already distributed that and it shows the effect in practice of the 1995 Act. It took a bit of time to bed into the system, but I can also prove that the funding was there, and once the Act took effect the funding was removed.

Q4 **Chair:** The DWP and the Pensions Regulator plan further work to understand why schemes were not making discretionary pre-1997 payments. What questions do you think they should be asking?



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Patricia Kennedy: Well, I will try to control my temper because when David Carson, my colleague, was here two years ago, there were very specific questions that we gave to the Select Committee about what we wanted to ask. We were very disappointed with the quality of the survey that was done last year, which asked, "Within the last three years how many of your companies have given increases?" That little booklet has gone around. We are not talking about three years; we are talking about almost 30 years that people have not had increases. Those are the questions. I do not think Bill 255 reflects an in-depth understanding of what happens on the ground.

Jonathan Popper: In our case, and I think this is right across the vast number of pension schemes, the composition of the boards of the trustees has changed. These schemes have been closed. People have moved on. New people have come in, and they are now seen as a burden to the companies, whereas 20 years ago they were a critical part of the employment offer. Indeed, in the case of BP we were promised that our pensions would go up with inflation and that has not happened.

They are also seen as an opportunity to extract surplus. This is, I think, one of the weaknesses in the Bill. The surplus extraction provisions are not strong enough to ensure that this does not continue. We cannot say for sure, but many of these schemes, many of the companies, must be thinking, "Oh, these surpluses have gone up. They have doubled in the last few years. Can we get hold of them?" Of course, Mr Bell would like them to get hold of them. We think that is a good idea, too, provided that the pensioners also get a share. I think the question to be asked is: what are these trustees going to do to make sure that pensioners get a fair share of the surplus as it is distributed?

Caroline Emery: Can I briefly answer that? I think they should be, to Patricia's point, looking back much further and looking at the patterns of discretionary payments and when they ceased. Because we have highlighted it here, but I think they need to understand that. They also need to look at changes in scheme governance, because that is what happened to us. Basically, the powers of the trustees were completely removed. This has been a deliberate strategy that they have employed. Pensioners have no voice in this. Ultimately, unless the Pension Schemes Bill is amended to give the trustees legal power, the companies are just going to ride roughshod over this, very much to your point, Jonathan. They are just going to take the surplus and that is going to be the end of it. Pensioners will never see a penny.

Jack Jones: I would agree. I think it would be really important to look at whether there have been specific rule changes that have changed how the process worked for agreeing discretionary increases, what board structures look like, again whether you have a sole trustee model, whether you have 50:50 member representatives, how you are appointing those member representatives, and what the process is that you go through there.



Maybe this is for a future question, but it would be useful to look and compare how this works in other countries where you have conditional indexation rather than discretion indexation. Quite often you have a voting structure on this that ensures that you have a proper balance of power between member and employee representatives. I think that is probably particularly important when you are looking at surplus release and ensuring that both sides have a veto, effectively. That seems to work really well in other jurisdictions as a way of forcing agreement and compromise on this.

Chair: Thank you. I am afraid we do need to move on. We have a lot of questions to get through.

Q5 Damien Egan: We have touched on some of these already. I was going to ask how you would describe the respective roles of employers and trustees in the decision making, just to make that clear for the panel, and how that has changed over time. I was also going to ask about the impact, but that is clear from the chart that you have provided. The follow-up question would be: successive Governments have ruled out making indexation requirements retrospective, so what do you think would be the most effective outcome now, given that, for scheme members?

Patricia Kennedy: To address the power balance between the company and trustees, it is 100 to nothing. This is about as far from a democratic process that has the voice of the pensioner being heard and being spoken as you could possibly get. I would file this relationship somewhere between abusive and incestuous.

We just recently had four spots come up on the member-nominated trustees. Supposedly, 18 people went forward. We still do not know the result, but I know two people who went forward who had qualified on all the training modules with distinction and they did not even get an interview. I also conducted my own survey. I have a survey of 500 members that says that 90% have none or a little bit of confidence in the relationship between the trustee and the company. The rest of the pattern is the same. For the people in the alliance, it goes even higher: 90% are not at all confident that there is an appropriate balance of power between the company and the trustee.

It is a rigged game. The voice of the pensioner does not get there at all. I would say there is no confidence. Members say, "I paid into that scheme for years. In fact, I believed the mantra and I put in even more with ABCs. What am I getting for that investment now?" The company is going to get surplus. The powers represented in Bill 255 are not at all different from the powers that our company and trustees have now. There is not a single bit of change.

Now, our scheme is still recovering from the days of Liz Truss. Our trustees told us last month that maybe in four years there might be a



surplus, but 50% of my own peer group have already passed on. In four years, it will be a lot more.

Jonathan Popper: There is something that can be done and it does not require legislation. The Secretary of State already has the power to increase the percentage of independents and member-nominated trustees from a third, which it is today, to half. That would begin to make a difference. That is one of the proposals we put in the paper that we have submitted to you as evidence. We also think it is important that the chair of the trustees is seen to be independent of the company, to be sure. That would make a difference as well.

The trustee is under tremendous pressure. This whole question of what happens to the surplus of discretionary increases is fundamental, but it is new because most of the schemes did not have surpluses to distribute. The regulator, who will be speaking to you later, is aware of the potential for conflicts of interest. It is serious. These are fundamental issues. They affect pensions and they affect the future of the companies. Just relying on some trade-off between the two sides does not seem to me the right way to proceed.

Caroline Emery: I thoroughly endorse what has been said. American Express has tightened its controls totally, changing the rules on the trustees. Our trustees have no power. They have written a letter, which I submitted as part of the written evidence, that shows they will not argue on our behalf. I also agree with you. We would like to see that at least 50% of the trustees are member nominated and they are actually voted for by the members, not just chosen by the company, because the company is choosing people who are not going to challenge them.

Q6 **Steve Darling:** I have a couple of questions but, strangely enough, I think we know the answer to this one. How effective would you say the mechanisms are for making complaints about not making additional payments?

Patricia Kennedy: There has been no effect. We have tried almost everything that is humanly possible. We have written to the board. We have written to the chief executive. I am not talking about once; we have written to them multiple times. We have written to the chief executive, the chairman of the board, all the board members. We have even lobbied some members of the US Government. We have had physical demonstrations. We have lobbied MPs. We have tried everything to get them to engage on this issue. They keep saying the same thing, which is, "We are doing what is required by law," and this is where I would disagree with my colleagues on the panel. There is only one way out of this and that is a change in the statutory legislation. That is the only thing that will cause a change with Hewlett Packard and all the companies there. There are 11 major multinational companies that are only going to yield, and they have said it to us in writing, "When the law changes, we will."



Q7 Steve Darling: Are any members of the panel aware of any successful complaints in these systems one way or another or is it fairly barren?

Caroline Emery: I am not aware of any successful complaints. We again have tried several communication channels. We have written to the trustees, we have written to the American Express board, we have contacted the CEO, we have contacted the UK country manager, and really had no meaningful responses. In fact, we get responses from a "UK DB communications". We do not even know if they have the right or the authority to be replying on behalf of these people. We have made formal complaints. We have had no meaningful response.

On top of that, I want to highlight that we have had inaccurate information. Because the power changed from the trustees making decisions on discretionary increases to the company, and still 12 or 13 years later they were telling pensioners when they crystallised their pension that it was the trustees making those decisions. Therefore, people have made decisions about their financial future based on inaccurate information.

Q8 Steve Darling: You are effectively flogging a dead horse with any form of complaints?

Patricia Kennedy: Yes, absolutely.

Jonathan Popper: In our case, we have had responses to our complaints. Actually, lawyers have written those responses and they are very detailed. We understand where the company is coming from—we do not agree—and we are about to take our case to the pensions ombudsman, so we will see the extent to which promises made as part of employment offers need to be honoured.

Q9 Steve Darling: To unearth that a little more, what has your collective experience of the power of the pensions ombudsman in this situation been?

Patricia Kennedy: One of our members went. I think there might have been two; I only know of one. It was totally unsuccessful and when we considered doing it again he said it was the worst three years of his life and he would not recommend that anybody try it.

In addition to what my colleague has just said about letters from lawyers, we have received letters from lawyers basically telling us not to bother the company with this at all and threatening—between the lines—legal action.

Steve Darling: That is abhorrent. Thank you.

Q10 Chair: Successive Governments have ruled out making indexation requirements retrospective. I will ask Jack this one. What change do you think would be most effective in improving outcomes for scheme members?



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Jack Jones: I think I would support Jonathan's answer to that, which is increased levels of member representation. I think that is something that could easily be tied to surplus release as well as almost a carrot/stick approach for employers, or a quid pro quo to allow that to be discussed. It is something that we have suggested as a starting point. We have put in proposals that you should not be allowed to release any surplus if you have a sole trustee. I think it is worth looking at whether it would be helpful to make that stronger and say you should have 50% member representation there.

As I said earlier, we also have good examples from other countries where it is not just about the level of representation; it is about having a dual voting structure. The example I had in mind was Canada when I said that, and the scheme I was thinking of there has been very successful in paying out conditional indexation. Over the last couple of years, they have paid 100% of inflationary increases, even when it was up at 10%. They have a structure where I think they have five and five, member and employer trustees, and any decision has to be supported by a majority, but also at least two of the employer or employee trustees. That seems to give a balance of power that allows those decisions to be reached in a way that gets good outcomes for both sides.

Jonathan Popper: We would also like to see an obligation on trustees to consider the erosion of pensions in the previous period when surplus is allocated. This is not just being nice. They are required to consider the loss of value. In the case of BP, our pensioners on average have lost £2,000 of income and most of our pensioners were industrial workers, in refineries, on the rigs, in the chemical plants and so on, so a substantial loss of income, not just for one year but for the rest of their lives. It compounds for the rest of their lives. It is important not just for BP pensioners but probably for the 9 million other pensioners out there that the loss of value that has happened, particularly over the last three years and is awful for the pre-1997 pensioners, is addressed.

Patricia Kennedy: I would really push back on the Government and say, "Why not?" I do not buy the story that we are not going to do this retrospectively, and the funding was not there in the first place. The funding was there. These companies paid discretionary increases for years until the law kicked in and then they stopped. The law gave them the legal opportunity to stop the payment. The law is what changed. It has nothing to do with the retrospective funding. The money was there, so I do not accept it.

- Q11 **Mr Peter Bedford:** I think you have just touched on my first question. You argue for changes in legislation to strengthen the rights of members to share the surplus, which I totally understand. A number of us on this Committee also served on the Pension Schemes Bill Committee, so we have seen lots of arguments around this. However, the Government are reluctant to prescribe how those surpluses are used. What alternative measures, if it is not in legislation, could be effective to achieve that?



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Caroline Emery: I do not think there are any. We have demonstrated quite clearly that these companies—these rich and profitable companies—are using the law already. Unless you give legislation within the Pension Schemes Bill to ensure that pensioners get a fair share of the surplus distribution, it will not happen. Our trustees have been quite clear about this: it is not their role and they are not going to challenge the company.

Q12 **Mr Peter Bedford:** Why do you suspect that the Government are not doing that, then? Why are the Government not doing that in the legislation? What would be the argument for not doing that, in your view?

Caroline Emery: I am at a loss, frankly.

Patricia Kennedy: I am not going to second-guess the Government on this one. First of all, I have to backtrack to what surplus? Our scheme is extremely conservatively funded and set up. It is very conservatively managed. It is not set up to do more than wash its face. It is not set up to make a huge surplus. We have not had one since the days of Liz Truss. We are not going to have a surplus for the next four years. So, surplus? What surplus?

Caroline Emery: We do believe we will have a small surplus. How the company chooses to use that will be down to it, I guess, unless the trustees can have a say in this.

Jonathan Popper: It is an important point that in the past many of these companies benefited by not contributing for years and years. In the 1990s and in the last 20 years there have been long periods of pension holidays, so in a way, there has been an extraction of surplus. It was mentioned earlier that many of these schemes are contributory, or in BP's case, people have invested their personal money in additional contributions. They expected to have pensions rising with inflation. That is what the promise was. It has not happened.

Q13 **Mr Peter Bedford:** We touched on the trustees and the need, I guess, for education and cultural adjustment in the trustees to understand their role in this in terms of the members' interests but also the sustainability of the funds. What changes should happen on a trustee board to ensure that members are better heard or their interests are better represented?

Patricia Kennedy: I think the problem is with pre-1997 pensioners versus other pensioners. The role of the trustee, as I understand it—I believe backed up by a legal opinion from a major multinational—is to look out for all pensioners, not just the pre-1997 ones. They cannot actively lobby on doing anything special to help the pre-1997 pensioners. They are basically locked into colluding with the law, as it stands, which is no discretionary indexation for pre-1997.

Q14 **Mr Peter Bedford:** What ideas do you have on improving the governance in terms of what changes should happen? What is not in the Bill and perhaps should be to strengthen the governance in this space? Jack, maybe you have an opinion on this.



Jack Jones: A few things come to mind. One is in response to Pat's scheme being incredibly conservatively funded and invested. That is what is behind the surplus release measure in the Bill, isn't it? It depends very much on the maturity of the scheme as to what investment strategy would be appropriate. If you can encourage employers to get in with the surplus if they invest in a slightly less conservative way or they allow an investment strategy that does that and share some of that benefit with the members, in theory you can see that is a very good target to be aiming for.

In terms of your question about how you can make sure that the members' voice is heard on the trustee board, one thing from my experience as a trustee of the TUC scheme is we do an AGM every year. That tends to be very well attended by retired members. It gives us a very good opportunity to hear from them directly. This particular issue is a non-issue for our scheme because we have indexation of pre-1997 benefits, but I am often quite surprised by the questions that are asked by the pensioner members. This is our once-a-year chance to hear directly from them and I think it is valuable. I don't know whether the schemes that people here take part in—

Patricia Kennedy: We have had them in the past. They have become so acrimonious we cannot have them any more. We cannot even have them remotely. I have to go back to the intent of the Bill, which is surplus extraction. To me, it is trying to use pension schemes as an economic development stimulus. It is not the same thing at all. The intent of a pension scheme is to provide for the financial security of pensioners. It is not there as a vehicle to stimulate the economy. I think those two purposes are at odds with one another. One is oriented towards conservative investments and conservative management; the other one is trying to be more aggressive and take more risk. As a pensioner, I am much more in favour of the conservative approach.

Caroline Emery: There is a danger here that you are incentivising companies not to give discretionary increases because the less increases they give, the better their chance of getting to extraction. It will turbocharge some of these multinationals on a strategy that they originally set on and will make the situation even worse and put people into greater penury.

Jonathan Popper: To answer your question, I think it comes down to giving the trustees power to deal with the companies and to be genuinely independent. That is the problem. When defined, "fiduciary duty" essentially means making sure that the fund can pay the pensions that it is legally obligated to pay, but that is not the same as acting in the best interests of members.

Q15 **Mr Peter Bedford:** This is going a little off-topic, but it is connected to increasing the power of the trustees in this space. In the Bill—and this is not part of this session—we have the mandation point, about mandating



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investments, which is essentially the powers of the Secretary of State that could be used. That arguably dilutes the influence of trustees and the fiduciary duty that they have. This is another example here in terms of, as I think your colleagues mentioned, the tension between surplus extraction for investment reasons versus, "This is just here to sustain our members' benefits." What I am asking is this: do you believe the Bill is damaging the power of trustees and the ability to stand up for their members?

Jonathan Popper: I don't think so, because you have to differentiate between defined contribution and defined benefit. I think this is largely about defined contribution. Defined benefit schemes are largely on the point of de-risking, cutting the investment in equities, investing in gilts, index-linked bonds and so on. That is very different. They are closed to members; they do not need the growth any more. Defined contribution is a different story. The mandate is pretty marginal for defined benefit schemes.

Q16 **Mr Peter Bedford:** For a number of years, a lot of these schemes obviously were in huge deficit and then they swung into surpluses when interest rates fluctuated. In my understanding, there is quite a significant backlog in buy-outs at the minute in terms of the insurance industry's ability to basically take those forward.

The next set of questions I have relates to buy-outs and whether you believe there is an opportunity to enhance members' benefits by going down that route. How likely do you see that happening?

Patricia Kennedy: Enhanced members' benefits through buy-outs?

Mr Peter Bedford: Yes.

Patricia Kennedy: I doubt it. In fact, it would work in the opposite way. It would wind up that the pre-1997 issue would never get picked up or resolved. It would be over.

Jonathan Popper: I think that any powers that are there for surplus extraction should also be applied in wind-up. If you have something in the Bill that says a fixed percentage must be given to pensioners on extraction, you should have the same, otherwise you will bias the companies to hang on for wind-up. In fact, this is one of the weaknesses of the Bill, if you ask me. It may encourage a lot of companies to hold on for wind-up and do the very reverse of what the Government would like.

Jack Jones: The main way in which buy-out limits how much you could potentially give additional discretionary benefits of any kind is that it is very expensive. Most of any surplus on a technical provisions basis or any other basis goes to the cost of insuring that scheme, so that is very limiting. Even if you had all the strongest powers in the world to decide how that surplus got spent, a lot of it just goes as soon as you enter into that transaction with the insurer. It would be very useful to have something to give the trustees stronger powers to make sure that any



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surplus that does remain after that is used for the benefit of members. It probably couldn't be too prescriptive.

I am just thinking about how trustees would decide what the best way of augmenting benefits is. It may well be that you look at the insurer and how it is pricing and just think it is not very good value to say, "We will give as much indexation as we can," where there is no monetary indexation. If you are a trustee you might think, "Oh, it is better just to give a one-off increase now," so a flat benefit or giving it in some other way, just because of the way that insurance pricing works. I think you should have a requirement to make sure that that surplus is used in the best interest of members, but probably some discretion of the trustees to decide what is the best way within the insurance world to do that.

Caroline Emery: I agree with you, but without the binding authority to do that, and in our case, the trustees simply do not have that authority.

Patricia Kennedy: No, nor do ours.

Jonathan Popper: To add to the point Jack was making, it seems to me that the employer has a choice, which is he can share some surplus with pensioners or he can share surplus with insurance companies. They will look at that fundamental choice: you wind up the fund and the insurance companies get a big chunk of the surplus or you extract surplus, and if you have good trustees you have to give some of it away to the pensioners.

Q17 **Mr Peter Bedford:** I am trying to bring all this together. What would you like to see Government doing or not doing in the Bill to enhance the benefits to your members?

Jonathan Popper: Ultimately, I would like the Government to put in a fixed percentage that should go to pensioners, but I don't think that that is realistic. That is instead why we are saying, "Address the issues of lost value over the years when the decisions are made."

Q18 **Mr Peter Bedford:** But what is your solution to that—introduce that fixed percentage?

Jonathan Popper: Whichever decision, whether it is wind-up or extraction. If you have a different regime for wind-up as opposed to extraction, you are going to get undesirable outcomes. You will bias your decision making.

Caroline Emery: We would like to see the trustees definitely having binding authority because we are just powerless in this situation without that. They need to have the authority to distribute part of the surplus to pensioners. If you want to specify how much, that would be brilliant, but to your point, that may not be—



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Jonathan Popper: One idea that I have come across is that where discretionary increases have been rejected in the past, they should now be approved as a priority during extraction.

Patricia Kennedy: I would like to see the Government clearly say something on the matter, and especially it could come down to ethical procurement. In the last five years, HPE had £750 million in direct government contracts. That is not including the contracts with defence, which are not public information. The Welsh Government have already taken a stand on this issue. I would like to see the Government say, "This isn't on. It is not okay to treat your former workers like that—the people who built your companies and created the value of the companies that you bought." The Government have remained silent on this issue. I am very disappointed that it is the pensioners who have to drag it—like the postmasters and postmistresses had to drag it—in front of the country.

We are not talking about £1,000. Some of the people in this scheme have lost £100,000 and face the end of their life with significantly reduced resources. I would like to see the Government say something, not have a Bill that opens the door to pensioners having even less by allowing these companies to extract surplus. It is appalling.

Q19 **Chair:** We have just a couple of minutes before the next panel. Are there any final comments that you would like to make before we conclude?

Jonathan Popper: We heard this morning that in September inflation reached 3.8%, which is lower than expected, but that 3.8% is quite a lot higher than the statutory maximum of 2.5%, which used to be 5% and got reduced 20 years ago to 2.5%. I think that should be addressed. It is four years now that inflation has exceeded the statutory maximum of 2.5%. We do not know what will happen to inflation in future. I think this fundamental problem will remain unless the statutory maximum is also addressed.

Caroline Emery: I would like to see TPR, as I say, go back much further in its research to understand what is happening, understanding that there is a clear strategy of wealthy multinationals, which are highly profitable, using the Pensions Act 1995 to avoid paying discretionary increases forever. It should ensure that the Pension Schemes Bill does have legal, binding power for trustees to be able to distribute any surplus to pensioners.

Patricia Kennedy: If the Government were to say that this is not appropriate, I would not be surprised if HPE changed its practice because it would cost less than 1% of its net operating profit and less than one year's compensation for its chief executive. It might just get its attention, in what is still one of its bigger markets, that the Government does not look kindly on the abuse of pensioners.

Jack Jones: I am very glad Jonathan brought up capped indexation, because that is a very important thing that trustees should be discussing



now when they are talking about increases every year, even where there is some indexation. Last, it is all about trust. I think even though most people today will be saving into pension schemes that are very different to the DB schemes that people on this panel are on, it clearly undermines trust in the system when people see what looked a lot like a promise, which has now been broken. Even though we have a very different system, we still rely a lot on people having trust in the system and quite a paternal approach to it. Anything like this that undermines that trust is damaging for the system as a whole, not just for people who are in this position.

Chair: Thank you all very much for joining us this morning. We will allow a couple of minutes for the panels to change over.

Examination of witnesses

Witnesses: Harus Rai, Maggie Rodger, Jon Forsyth and Hywel Robinson.

Chair: Thank you very much for joining us for this second panel of the Work and Pensions Committee. We have with us Harus Rai, managing director, Capital Cranfield; Maggie Rodger, co-chair of the Association of Member Nominated Trustees; Jon Forsyth, chair of the Defined Benefit Committee, Society of Pension Professionals; and Hywel Robinson, partner at Temple Bright. Thank you all very much for joining us.

Q20 Damien Egan: We have heard some evidence from the first panel. I would like to get your views on how you would describe the trends in decision making on discretionary payments and what has been driving them. We have seen, despite higher inflation in recent years, improved scheme funding levels. We have heard that against the evidence that we have seen. How would you describe and explain those trends?

Harus Rai: I am happy to start. First, thank you for inviting me to give evidence today. I should say that we have a huge amount of sympathy for the session that we heard this morning.

Trends vary from one scheme to another. When we talk about surpluses, we need to remember that surpluses mean different things for different schemes and that there are some schemes out there that are not in surplus. There are still deficits and there is still deficit reduction contributions that are being paid by sponsors. It is only this year we are starting to see the first set of schemes going through the new funding code. We will see what that resolves, but that brings a whole load of additional burdens, such as low dependency and a need to get to low dependency.

In some schemes where there are surpluses, they have always had a trajectory of buy-out, so the surplus is part of that conversation, but a surplus could just be on a technical provisions basis. There are many different ways that we value a pension scheme. If it is on a technical



provisions basis, which is your ongoing basis, then adding additional benefits could put that scheme back into deficit. If its trajectory is to buy out, we will need to bridge the gap between where we currently are and where buy-out is, which could be a significant amount of money, which could mean a cheque being written by a sponsor to get a scheme to buy out.

There are other schemes that are at a low dependency, which is more of a self-sufficiency basis and not so reliant on a sponsor. You could have a surplus on that basis. When we look at the pensions Bill, it talks about a surplus extraction around a low dependency target, there or thereabouts. Then you get other schemes that are on a surplus at a buy-out basis. That is where you are essentially saying, "We are securing all the benefits with the insurer and there are no additional funds needed from a sponsor to secure the benefits under the trust deed and rules."

In terms of the trends, they vary from one scheme to another. Those schemes that are looking at buy-out may not look at a conversation around, "Is there a surplus? Is there ability to provide discretionary increases until we have what is regarded as a true surplus?" which is what is left once you have secured the benefits under the trust deed and rules. It does vary from one scheme to another.

Jon Forsyth: I would like to build on some of what Harus said. In terms of trends, as he said, it varies by scheme. I am aware that Aon, which is an SPP member, publishes a survey each year. I think something like 15% of schemes that can have awarded discretionary increases for the past couple of years. To build on some of what is driving that, it is worth saying that over the period that has been spoken about there has been an increasing legislative direction of travel, which I think is a good thing, to make defined benefit pensions more secure.

Pension schemes are treated as a debt on the employer. There are requirements for sponsors to fund those schemes on an ever more prudent basis, and with good reason, to make those pensions more secure. That is obviously built on with the new funding code, which Harus has alluded to, which requires schemes to fund to a more prudent low-dependency basis by the time they hit a certain level of maturity. As I said, I think that is a good thing. That means guaranteed benefits are very secure, but it does mean that the cost of providing those benefits to sponsors has increased. I think that will have some impact on why discretionary benefits have been paid less regularly.

The other thing worth saying, which I know from conversations with sponsors—I advise both trustees and sponsors—is that lots of sponsors are very mindful that they have responsibilities to not just pension scheme members but other stakeholders too; for example, current employees and members of DC schemes that they sponsor. A lot of them are very mindful that there is a DC adequacy problem. Members of DB schemes will, on average, for the most part, be getting higher pensions in



retirement than a lot of the DC members, so they are very mindful of not granting additional benefits to DB members because of the views and the need to take into account those responsibilities towards the other stakeholders, the current employees and those DC members. I think those are two key drivers. I don't know if others want to build on that.

Maggie Rodger: We heard the word "powers" come up a great deal earlier. Where you have multi-employer schemes, there is not a problem with this because the power does not lie uniquely with an employer to veto things that the trustees want to do. Once you get a single employer scheme, that tends to be the way the powers are written, and that reduces what trustees can do, whatever they would like to do.

The other thing that I was just hearing was about surpluses. I am a member; I am a member trustee. I would come from a slightly different angle. The comment is about the fact that sponsors have put in a lot of deficit contributions. In most cases, members have paid higher contributions and received lower accrual rates, so any surpluses that are around are the product of both parties putting in additional funds. It is important that when we talk about surpluses we see both sides of that. That therefore gives the possibility for returning discretionary increases to members before buy-out or in the process of wind-up, or whatever it is.

The problem we have when we talk about the pensions Bill is that, quite clearly, money cannot be returned to sponsors without the trustees' agreement but there is nothing that backs the return of money to members. When we had deficit contributions, if the trustees and the sponsor could not agree how much or how long a deficit contribution plan should run for, there was an arbiter in the Pensions Regulator. There is no arbiter when we come to talk about it the other way around and the distribution of surpluses.

If a sponsor has the sole power to veto discretion, in all probability they will also veto sharing surpluses with members. There is not a way to break that deadlock, as I can see it, written into the Bill. If you come to buy-out, it would be extremely difficult, as trustees, not to agree because that is in the likely best interest of members, even if they will have to forgo discretions, so there is a built-in unfairness in the process.

Hywel Robinson: Probably the only point I would re-emphasise is that circumstances will be hugely different from scheme to scheme: how much employers have paid; the impact on member security; and the impact on younger people who are not in defined benefit schemes and will never be in defined benefit schemes. That will be very different from case to case and what seems fair will vary hugely, depending on the circumstances. It would be extremely difficult to come up with a law that balanced all those interests fairly, because they will just be so different from case to case.

Q21 **Damien Egan:** Interesting. Do you feel that, as policymakers, we have all the information that we need to understand these trends?



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Maggie Rodger: I have been doing this for 13 years and I would not say I had all the information I needed.

Hywel Robinson: Almost certainly not. It would be almost impossible to get all the information necessary to intervene on this because, as I say, circumstances are so different. You might look at a particular situation and think, "That employer has had huge profits. Maybe they have a surplus; maybe that should be used in a certain way." How would you ever judge that against a case where a scheme is in deficit, and the employer has been paying huge contributions in a way that has impacted its business? It is all just too specific.

Jon Forsyth: Agreed. I think members with no guaranteed pre-1997 increases, like we heard from this morning, absolutely should be part of the conversation. I empathise with them. There is a lot of hardship there, and erosion in value through inflation, but as Hywel said, it will vary from scheme to scheme and I cannot see a hard and fast rule working. That is why you have to have, in my opinion, this flexibility for trustees and sponsors to negotiate, based on the circumstances for that scheme, its history, its members, etc.

Harus Rai: It will vary from scheme to scheme, I agree—I agree with all the comments that have been made—but it will also vary from employer to employer. Defined benefit schemes are not just privy to very large employers. There are some very small employers who have defined benefit schemes and these are, for all intents and purposes, legacy arrangements for them. These are arrangements where they are predominantly ex-employees who are connected to this and their DC provisions are what they are using going forward. The inadequacy in DC you will know; you have been told that many times. The impact it has on certain types of employers will be huge.

Hywel Robinson: That is a very important point. A lot of the UK's charitable employers have defined benefit schemes that may be in deficit. They may be in surplus, but they would be affected by any change in the law as well.

Q22 **Mr Peter Bedford:** Business confidence is shaky at the moment. I think there was a report last week that said that it has declined for five consecutive quarters. I want to get your view on how that is potentially impacting the making of discretionary payments by employers.

Jon Forsyth: You have heard from the groups this morning that there has been a reluctance on the part of most sponsors to pay discretionary benefits for many years, not just recently. I am sure it will be one of a number of considerations that sponsors are thinking about. To me, the key point that I hear from conversations is not wanting that additional liability sitting on the balance sheet in terms of extra guaranteed benefits that have to be paid and the angle of considering other stakeholders fairly—but yes, I would imagine it will be part of considerations.



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Maggie Rodger: In considering whether you make a discretionary increase, the trustees have to get actuarial advice and effectively prove that it is affordable within the scheme funding that you already have. You are not necessarily going to the employer for additional funding, you are simply saying, "This funding will cover what we want to do." What has changed is that employers now have sight of surplus coming back, which means that they are reluctant to spend what surplus is there rather than it will cost them more money. It is a slight change of emphasis.

Q23 **Mr Peter Bedford:** Yes, but in that situation, if the scheme is going to go into a deficit, there would still be pressure on the employer to then plug that gap, wouldn't there? In a roundabout way, it would still—

Maggie Rodger: That is the job of the actuary, to say, "The increase you are going to make is not likely to result in that," otherwise you would be imprudent to make that decision and make that discretionary increase.

Hywel Robinson: Harus's earlier point is very important. What a surplus means is very different from scheme to scheme. It may be a real surplus, where you know you have enough to fully secure the member benefits. It may be a technical provision surplus, which is just an actuarial calculation.

Harus Rai: Yes, and that is not just a sponsor consideration; it is a trustee consideration. Maggie is correct: we take actuarial advice. I am a trustee, and we take actuarial advice as to the funding position of the pension scheme. We take advice on whether the sponsor can afford it. We use covenant advisers to assess the strength of the sponsor's balance sheet, and we look at it both now and in the future. Adding additional liability through discretionary increases adds extra to the fund and we have to make sure that they can afford that. We do not want to provide, as a trustee, a benefit to an individual that they cannot receive going forward.

We also need to remember on the employer side, employers have long memories. We had a situation where we had surpluses until around 1997, then we went into huge deficits—not just deficits, but absolutely huge deficits. We saw the introduction of the PPF and we saw lots of employers going insolvent and schemes going into the PPF. There is a nervousness, I think even across trustees, not to provide something where a member ends up having to go into the PPF, which is less than the benefit they would receive under the scheme.

Q24 **Steve Darling:** I would be grateful if the panel could reflect on the relationship between employees, employers and trustees regarding releasing additional payments and how that may have changed over time.

Hywel Robinson: The answer is it will depend hugely on each pension scheme's rules. Every occupational pension scheme has binding rules that will set out what members are entitled to, whether there is a discretion to



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pay more and, if so, who controls that discretion. Sometimes trustees have relatively wide powers; usually they are quite limited. For example, it might be they can choose the index that is used for measuring inflation, RPI versus CPI. Most of the time decisions beyond that—fundamentally, discretionary increases—need employer consent. It is not always the case, but most of the time it is the case and the trustees cannot overwrite that.

That is quite an important point. If a decision were made to change the way trustees are appointed, it would not fundamentally change what powers trustees have. If something needs employer consent in a given pension scheme, it will still need employer consent unless that is something that is changed as well.

Q25 Steve Darling: In your view, is the idea—I don't know if you were here earlier—of enhancing the number of beneficiary employees a false panacea, or would it be helpful anyway?

Maggie Rodger: Schemes are usually made up of representatives from employers, members and independents, but when we talk about employer consent, that is the employer beyond the trustees, not the employees within the trustee board. Much as I would love to have more member trustees, I do not think that would make the difference.

Jon Forsyth: I completely agree. My sense from being in these conversations is that trustees, whether they are member nominated or professional, are making representations on behalf of members. That is in line with their fiduciary duty. Whether a trustee is nominated by the employer, a member or as an independent professional, they will receive the same legal and actuarial advice; their fiduciary duty is the same. They are making representations, just as Hywel has alluded to. In a lot of cases, sponsors have that ultimate decision-making power.

If I can touch quickly again on the new Bill, which has been mentioned a couple of times, I think that will help a little, in the sense of for those schemes that are going to run on, it is within the trustees' power to decide whether to change the rules and within the trustees' power whether and how much surplus to release to sponsors. In my view, at least in some cases that will give them an extra piece of leverage that they could use to argue for something for members. Of course, there is no legal obligation, as we have heard, that members have to get something, but I think there will be regulator guidance, which will be very helpful in that.

To be clear, we have already alluded to the risks of legislating that something has to be in it for members and where to draw the line. Because schemes are so different there are challenges there, but I thought that was worth mentioning. I think it will help a little.

Hywel Robinson: Perhaps I might add one point to that. Where trustees do have powers, that does not necessarily mean that they will use them



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to pay additional increases. They are probably more likely to, but trustees have a lot of things to think about. They have to think about the impact on funding and member security. There is no overriding rule, "As long as the trustees control the power, they will use it in a certain way."

Harus Rai: To add a holistic point on that, as a trustee what we also have to think about is all types of members, and you heard that earlier today. You have other members—for example, potentially a member who has retired from active service could have a higher pension than the same individual who has retired from a deferred position. We have to think about inadequacies there. We have to think about unmarried spouses, who are not entitled to certain types of benefits, and then what you said before, DC members. I have sponsors that we are trustees of within my business that are looking to take the surplus to top up defined contribution. It is not just about taking a surplus for their own purposes; it is to top up the defined contribution because they are concerned about the younger population.

I have had cases in the past—I will give you an example—where you have a paternalistic sponsor that has pushed for additional benefits. There was one in particular where we did a buy-out and there was a surplus, where we were able to give pensioners a 33% uplift on their pension. Not just that, we gave it at November and backdated it until April. That was driven by the sponsor. How that relationship works varies from one sponsor to another. I am sure my colleagues will also say that there will be some relationships where it is quite fractious between a sponsor and a trustee. That is sometimes where we come in as an independent and try to build relationships as well as trying to drive the agenda forward, but it varies from one sponsor to another.

Q26 **Steve Darling:** What is the general atmosphere? Is there an adversarial relationship between trustees and employers because there is this refusal, or does it rarely happen because trustees are not pushing at that door?

Maggie Rodger: In a sense, with the pre-1997 issues, we can see it is a small number of schemes. It is very difficult; it is very sad. I thoroughly support what they are trying to do, but it is not the majority of schemes. The relationships work in lots and lots of cases and there will be cases where they do not. I think it is particularly so with schemes that have been closed for a long time—employers that have been taken over or whatever and do not see any link with those members. That is a very difficult situation to manage.

Q27 **Steve Darling:** Mr Robinson, do you see that members have effective mechanisms to challenge where discretionary payments are not being made? Where would you see opportunities to improve if you do not believe that they are effective, if I could put a slight word in your mouth?

Hywel Robinson: There are effective mechanisms. The pensions ombudsman has existed for a number of years and provides easy access



to remedies for members, but from a legal perspective there are very few remedies for members. If a pension scheme's rules are unclear or have been misinterpreted, then the courts or the ombudsman can remedy that. They can provide clarity as to what the rules mean and make sure they are followed, but what they will not do is decide whether the rules were reasonable in the first place or should have awarded greater rights to members. There is no legal principle on which the courts or the ombudsman can do that.

If there is a discretion, as there is in a lot of schemes, then the court and again the ombudsman will make sure that discretion is properly exercised, but "properly exercised" is not the same as "reasonably exercised". It is about making sure the rules are followed, making sure due process is followed and that whoever has the decision takes account of all relevant factors. It is not about deciding whether the result is fair or not; it is about making sure due process was followed.

One thing that came up in the earlier session is that if members have been promised a particular level of increase, and they have relied on that promise, then that might give rise to a legal remedy, but in law there is a big difference between a promise and an expectation. The fact there has been a long-standing practice of paying increases might well give rise to an expectation, but the courts are very slow to turn that into a promise. It is not, I would say, that there are avenues lacking. There are mechanisms available for members to get "justice" in a relatively easy way. Fundamentally, there is ultimately not that much that the law can do about it. The law does not change pension scheme rules.

Harus Rai: There are also safeguards, in that a sponsor cannot just take money from a pension scheme. A trustee has to sign this off. We have to sign a form to say, "Yes, you can have this money." In order for us to do that, we also have to write to members and give them an opportunity to object. We have to say, "There is a surplus payment that may be going back to the company. Do you object to this?" and then we have to give them time. It is a process that has to be undertaken in most cases to get a surplus payment back to the sponsors. They do have an opportunity to object, as well as going through the scheme's internal dispute resolution procedure, as well as also having the ability to go through to the ombudsman and potentially to the Pensions Regulator.

Q28 **Steve Darling:** Thank you. I would welcome from across the panel some reflections in respect of the ombudsman and the courts, and where you are aware that people may have felt let down by them. Do you have any reflections on how that could be tackled? There has already been comments about expectations and outcomes. Are there any ways that could be drawn forward at all?

Maggie Rodger: Sorry—I have been lucky and not been in a situation where it has been needed.



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Harus Rai: I have had cases that have gone to the ombudsman. I would not necessarily say that people have been let down. I think the ombudsman has a very difficult job to do, which is regulating a complaint. There is an IDR process in place, the internal disputes resolution procedure, which is either a one-stage or a two-stage process that schemes have to have.

Q29 **Steve Darling:** Looking at the ombudsman process, are there any particular wicked issues within that that you feel we need to be alive to and it would be useful to cast some light on?

Harus Rai: That is more a question for the ombudsman. In terms of the process we have been involved in, there have been situations where the ombudsman has ruled that certain conversations should be played to an individual and that has been done. There have been other cases where it has ruled in favour of an employer or a pension scheme. I have not seen the latest reports, but I think a few years back the vast majority of cases the ombudsman was dealing with were the trustees exercising a discretion, so they do look at those, but that is probably more a question for the ombudsman than for us.

Q30 **Chair:** Harus, you said that you write to members of the schemes regarding surplus payments and they have the opportunity to respond. Do you get many responses to that? Talking as somebody who is a member of a pension scheme and representing lots of constituents, much of the correspondence that members receive is quite technical, so how much engagement do you get and what efforts do you make to drive up engagement on these issues?

Harus Rai: It is a good question. It depends on the scheme. There have been two cases that I have been personally involved in where a surplus has been paid back to a sponsor, but there was no engagement from the members. We wrote to the members and we put out publications in local press to let people know that this was going to happen. We write to members, and I think in that case we gave them three months to respond with any issues. We then have to write back to them and say, "We have had no responses, but you can now go to the regulator with any objections". We gave them another three months to respond to that and then we wrote to the regulator and said, "Were there any objections?" and the answer was, "No, we have had nothing."

There is another case that one of my trustees is involved in where there have been significant objections to it and those are going through and being dealt with by the ombudsman at the moment. It does vary from one scheme to another. You are right about the communication in defined benefit. It is very complicated, and this is something that the industry has been looking at for a number of years. Defined contribution is very different—it is more tailored—but the defined benefit side is one area where we do need to improve comms to members.

Q31 **Chair:** What do you think could be done to ensure that members



understand the consequences of some of those decisions in terms of the correspondence that you are sending to them? It might just be me, but zero engagement would suggest to me that people are not understanding the technicality of some of what they are being sent.

Harus Rai: I would potentially challenge that. I have had a scenario where just trying to get an individual to take their retirement benefits has been very difficult, to the point where the chief executive had to genuinely knock on people's doors and say, "You received this and we are trying to pay you a pension." I cannot talk about every communication that has gone out for every single pension scheme, but the industry is doing a lot to improve DB communication. For example, we have to provide a summary funding statement. These are huge documents in some cases, but we have seen a lot of simplification in communications in DB and it is an ongoing piece of work that the industry is trying to tackle.

Q32 **Mr Peter Bedford:** The pensions Bill, the changes that are coming in around the trustees and release of surpluses have been mentioned. How confident are you that the changes will meet the members' expectations? We have touched on the 50:50 assumption.

Jon Forsyth: First, not every scheme will choose to use these new provisions. Not every scheme will choose to run on and to pay out ongoing surpluses or pay more to members on an ongoing basis. Some schemes will but not all.

As for where expectations have been set, the results of negotiations between trustees and sponsors will vary hugely from scheme to scheme. I do not like to reiterate what keeps being said, but schemes will vary so much depending on the circumstances and what is fair and justified will depend on those circumstances. I would imagine that in some cases you know that members will be pleased with the outcome; in other cases, possibly they will not.

Hywel Robinson: I think that is right. I suspect that if trustees use the powers, a lot of the time members will be happy with the results. There are probably a fair number of schemes that will not use the powers because fundamentally they are about trustees making a decision to release surpluses to the employer. Trustees very commonly regard their key job as making sure that the promised benefits are provided and that is more important to them than securing extra increases for members. There is legal backing for that. That is a legitimate approach for trustees to take. It does not mean that trustees cannot use the new powers and I am sure that in some cases they will. If they do, I think trustees will consider very carefully the impact on members and the balance between members and the employer. A fair number of trustees will approach the set of powers with caution.

Harus Rai: Just bear in mind here that many schemes are looking at buy-out and continue to look at buy-out. The powers in the Bill are looking at extracting surplus there or above low dependency. For many pension schemes, it is not even a relevant conversation because we are



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looking to fund a pension scheme, not looking to extract surplus. They will be looking at where there is a true surplus once they have bought benefits out, which is actually securing the benefits under the trustee rules. So we are not seeing a slowdown in the number of schemes looking to buy out.

Q33 Mr Peter Bedford: In the first evidence session there was a bit of frustration about ensuring that members' interests are properly heard. What are your views about ensuring that there is better engagement with members on things like surplus extraction, discretionary payments, etc.?

Maggie Rodger: It is the responsibility of all the trustees, whichever source they come from, to put members' interests as the first priority. They should hear what the members are saying, but as we hear, if you communicate with members, quite often they do not understand where their best interests lie and it is very difficult to suggest to them that they could have security from buy-out or that they may get a little more money if you run on but they do not have their pensions guaranteed at that point. When it comes to decisions between the risk of running on, and the potential benefits, and the risk-free process of buying out—assuming that the insurance industry is risk free—it is difficult enough for trustees to balance those things and very difficult to expect members to balance them.

Hywel Robinson: There has been something of a reversal in the trend in recent years. For years the goal for a lot of schemes has been ultimately to buy out with an insurance company and make sure that the benefits are secure. In recent years, it has become a much more live issue because schemes are in a position to buy out and therefore there is more debate about whether it is the right thing—should schemes buy out or carry on running the scheme in a way that might ultimately be better for members—but that slight change in trend is cutting across quite a long period where everything has been going in the other direction.

Maggie Rodger: Another thing, of course, is that if you end up with lots of schemes wanting to buy out, invariably you will end up with a queue. A lot of schemes find themselves running on for longer while they wait to get to this process. I do not think it is going to be a hard and fast decision. I see it coming to be a very complicated question of what to do for the next couple of years, the couple of years after that and the couple of years after that.

Q34 Mr Peter Bedford: Specifically, what governance arrangements should the Pensions Regulator prioritise to ensure that members feel that they are better represented?

Maggie Rodger: It is about employers who have vetoing powers. We need to find a way to get a more balanced conversation. We were talking about deficits. I doubt that they were called on very often to be the arbiter but knowing that there was an arbiter meant that somebody could not walk away.

Q35 Mr Peter Bedford: Do you want to add anything on the questions I



asked at the end of the first session? I asked what you would do with the pensions Bill; what you would do to improve things in this space. What are the one or two things that you would pull out that the Government need to either build on or not do?

Jon Forsyth: At the moment, if trustees want to make discretionary payments to members, they pretty much always have to be in the form of additional pension increases—increases to pensions that are paid for a long period over the members' lifetimes. If trustees want to pay out discretionary lump sums to members, they are unauthorised payments and there are lots of tax consequences. I think it would be worth having another look at that because there are lots of potential advantages to giving trustees the ability to do that.

First, I think a lot of members would value a lump sum more. A lump sum in the run-up to Christmas or to an 80-year-old is more valuable than a small increase to a pension that might not be paid for many years. I think sponsors would probably be more comfortable with that, or at least some sponsors would be, because it is not an additional benefit paid for a long time; it is off the books.

I know that HMRC looked at that before and has some concerns. There are potential challenges but I think it is worth looking at it again and it would be great if the Committee would use its influence to look at it.

Hywel Robinson: There is a related point and we touched on it earlier. It could be made easier to use surpluses from defined benefit schemes to pay defined contributions for other employees. It is something that can happen under the current system in the right circumstances, but sometimes it causes difficulties and there is a tax difficulty in using surplus in that way.

Harus Rai: I agree with those comments, especially Jon Forsyth's. For many schemes, a one-off Christmas payment used to be paid to pensioners. That was in the world where they were much larger surpluses. It stopped when we got to the early 2000s, when we started to see huge deficits. Schemes could not afford those one-off payments.

Maggie Rodger: I would support that too, because if you end up with a small surplus, it is very difficult to find something that you can create as an ongoing increase and that would enable something to happen for members.

Q36 **Chair:** Schemes buying out benefits with an insurer have the opportunity to enhance member benefits at that point. To what extent are they doing that?

Hywel Robinson: Again, whether the scheme has the ability to do it will depend on its rules. In most schemes, the trustees do not have the ability to do that. They can buy out the benefits to which members are entitled but anything else over and above that would need employer consent.

Q37 **Chair:** To what extent are those that have the ability to do it doing so?



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Hywel Robinson: I do see those with the ability doing it.

Maggie Rodger: It is a complicated process. If they wanted to do that, they would probably do it just before they quoted their buy-out so that in a sense it is not part of that legal bit but is taken as part of the process of getting there.

Harus Rai: Bear in mind that for the vast majority of schemes out there looking at a buy-out, there is no surplus on a buy-out basis. There might be a surplus on technical reasons or on low dependency, but it may mean actually a funding gap. So you are seeing situations where employers are having to write a cheque. In that scenario, you are not looking at increasing benefits because you are having to provide additional funding to get that scheme to buy out. However, using the example I gave before, there are situations where there is a surplus and we have been able to enhance members' benefits.

Q38 **Chair:** Are there any alternatives that you would support—for example, requiring trustees and employers to show that they have considered whether scheme members' reasonable expectations of benefit enhancements are met?

Hywel Robinson: That requirement already exists. If there is discretion and an employer or the trustees, whoever controls that discretion, has not duly considered member expectations, that is a flaw in the process. Most of the time it is not the case. Most of the time consideration has been given and it is just that the employer or perhaps the trustees have decided not to apply the discretionary increase.

Q39 **Chair:** We have a couple of minutes before the next panel. Would you like to make any final comments before we move on?

Harus Rai: Nothing apart from that we have absolute sympathy for what the group said earlier. There is a huge inadequacy there. You can have an individual who is entirely pre-1997, has been retired for 20 years, and have no increases. As trustees, our fiduciary duty is to add to the best interest of all members and scheme beneficiaries, and where we can support those individuals we absolutely do so.

Q40 **Chair:** Given that you have expressed sympathy for those individuals throughout the session, what do you think should be done to address their point?

Hywel Robinson: Although there is sympathy for it, I think it is almost impossible to address their point in a fair way because if you look at it only from their perspective, anyone would have sympathy. However, the effect on other stakeholders and other people who are affected by the decision makes it very difficult to do anything.

Maggie Rodger: If I saw a scheme wanting to extract a large surplus, in that situation I would like to see them being required to address this issue beforehand in some way. However, if they do not have that surplus, it is very difficult to see what they can do.



Hywel Robinson: There is one thing, of course, that can be said to reassure them. The new powers in the Pension Schemes Bill do not create any new rights for employers to take surpluses out of schemes. That was a concern expressed in the first session. At most, the Bill creates trustee powers. No employer will have a right to extract a surplus from their scheme without trustee consent that they did not have in the past.

Maggie Rodger: They can keep rolling on and they can take it at buy-out. I would like to see slightly more comment about the fact that surpluses do not belong to sponsors. That is taken for granted and it needs to be seen that surpluses have arisen from both parties, and conversations need to be had about the right sharing.

Jon Forsyth: I agree in some circumstances. It very much depends on the scheme's rules and the scheme's circumstances because some schemes are non-contributory for members. Things vary.

As for what could be done, we have already touched on this: because of the extra leverage trustees could have, the Pension Schemes Bill might move the dial in some cases. Looking at the ability to pay lump sums may also be beneficial, but while I agree with what Hywel said about having sympathy for that group, there are other groups too, DC members etc., and we need to consider their points of view. It is an extremely difficult problem to solve.

Harus Rai: I wholeheartedly agree with everything, especially the comment on the other classes of members that we have to think about as well. This is one cohort of members, but there are also others out there who are not getting the same level of benefits and we have to think about them. The DC group is one of them. There are unmarried spouses and members who retired from deferred rather than from active. There are inadequacies throughout the whole that we have to consider.

Q41 **John Milne:** I have a supplementary question. Do you not think that there is in the Pension Schemes Bill an incentive to make things a bit worse for pre-1997 pensioners because it does encourage surplus extraction or, as you say, delaying it until buy-out or reducing contributions, any of those things, all of which are incentives not to solve this long-standing problem?

Hywel Robinson: I certainly do think a lot of trustees will not want to use the new powers. Fundamentally, they will not want to release surplus. Some will, and where that happens I think in practice trustees will take their responsibilities very seriously and members may well be happy with the result. However, I do think that there is a more fundamental point that a lot of trustees still see their main job as being to make sure that the promised benefits are secured.

Jon Forsyth: Just one of the potential challenges with mandating that in all cases members have to get a certain proportion of any surplus if using the new powers is that not all schemes—in fact, many schemes—are yet in surplus. If sponsors understand that once they get to surplus they will have to share a lot of that money with members anyway, there is



potential for it to discourage them from funding to that low-dependency level as quickly as possible. It needs looking at in that holistic sense, being very wary of unintended consequences.

Harus Rai: To the point that Hywel made, I wholeheartedly agree that trustees are going to be very nervous about exercising powers to extract surplus, because on a low-dependency basis that is not buy-out. That is not securing all the members' benefits today. There is still a potential risk that if there was a huge economic downturn the scheme could go back into deficit. We have seen a scenario where surpluses went to deficit. From a trustee point of view, we would need to know exactly how we would tackle that scenario.

If we were to give a surplus back to a sponsor, what happens if the funding position worsens? How are we going to get that money back, especially if the sponsor's covenant weakens and they could not afford to? You could not put yourself in a scenario where you have paid money back to a sponsor, the covenant has weakened and then you cannot get that money back. There is a huge amount of considerations for trustees before they would sign off on a surplus going back to a sponsor.

Chair: Thank you all very much for joining us this morning. We appreciate your time.

Examination of witnesses

Witnesses: Fiona Frobisher and Julian Lyne.

Chair: Thank you for joining us this morning for this third panel session of the Work and Pensions Committee. Joining us for this panel we have Fiona Frobisher, head of policy at the Pensions Regulator, and Julian Lyne, interim executive director of market oversight at the Pensions Regulator.

Q42 **Amanda Hack:** Thank you, panel, for joining us this morning. The Government have taken seriously the concerns about non-payment and discretionary increases and the erosion on living standards. How would you describe the trends in recent years?

Julian Lyne: First, we all need to acknowledge the impact on pensioners. The role of the regulator is to secure the benefits that the pension members have been promised when they joined the pension scheme. We are seeing the discussion and debate about the options that pension schemes have and the governance surrounding how those decisions are made coming into force, certainly over the last few years. We are seeing the options that pension schemes have and we have heard about buy-out and run-on and we have also heard talk about super funds. We have seen the discussion and debate about the decision-making process of trustees and the decisions they need to make escalating over the last few years. Part of the reason for that has been due to the conversation about surplus that we have heard already. The conversation we are having is



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about how to help those trustees make the right decisions. Fiona, I don't know if you have anything to add.

Fiona Frobisher: If you are asking about figures and trends in that way, we can say, I think—and you will have seen both these figures—that most DB pension schemes do give an increase. Most of it is written into the rules, so we are talking about a subsection of schemes where it is not and where it has to be a discretionary decision. People are not automatically getting it. Looking into schemes where there is discretion, we have found that most people do not get it. In only about 15% of schemes relying on a discretionary increase for pre-1997 pensioners are they getting it.

Q43 **Amanda Hack:** So obviously the impact on those pensioners is felt so much more keenly. The combination of high inflation and improved scheme funding in recent years might have led to an increase in discretionary payments but appears not to have done so. How would you explain those decisions not to give discretionary payments even if those pension schemes were doing well?

Fiona Frobisher: It goes back to this being a complex decision, which I think people have talked about. We set out some of the things we expect trustees to think about when deciding whether to use the discretion to pay an increase. Some of that will be thinking about what the long-term objective for the scheme is, where they are trying to get to, is this buy-out, is this run-on, or do they have something different. All these conversations are conversations that we expect trustees to be having with the employer, so the better relationship they have with the employer and the more fixed these conversations are, the easier it is going to be to take all these decisions. Being clear about where the scheme is going, being clear about the levels of funding in the scheme, being clear about what they think the future funding looks like and how secure it is—all those issues will form part of the backdrop.

We ask them to think about the possibility of discretionary increases and the impact that inflation and decreasing purchasing power is having on that subsection of members. We ask them to look at that. We will also consider any other subsets or cohorts of members who might be suffering some other disadvantage and trustees will have to weigh all those things up and then come to a decision, which they make with the employer.

Julian Lyne: The reality is that there are something like 4,800 DB schemes in the UK and each of those schemes, as we heard earlier, has different scenarios in terms of employer covenants, promise and valuations. One of the things that we try to do in our role is to help trustees. We issued some guidance in the summer that encouraged trustees to look at all the points that Fiona mentioned, how they should think about the options and the decisions that they need to make. TPR sees its role very much as helping as best we can the trustees to navigate very complex issues.

Q44 **Amanda Hack:** Thank you. That moves me smoothly on to the next



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question about your role from a regulation point of view. The Government have said you would do further work to understand what was driving these trends. What can you tell us about that work?

Fiona Frobisher: As I think you know from the questions that you asked earlier, we have done some initial work to try to understand the picture of how widespread the discretion is, how many schemes there are where trustees can make that decision on their own and how many where trustees have to make the decision in consultation with the employer to reach an overall view of the position. When we go out with our DB survey this year, we want to ask why. We want to ask trustees, if they had a discretion decision and decided to pay, why they did that; what were their reasons for why they thought that was a good thing to do; and when they made a decision not to pay, what were their reasons. That is the information we are looking to collect. Julian and his teams are talking to schemes more regularly and some of the schemes will have made these decisions and they will be asked about that.

Julian Lyne: We are seeing trustees, particularly as the pensions Bill goes through Parliament, using that as a catalyst for conversations about their options, working with the employer. As I think was mentioned in the earlier session, we see that decision-making process as being a partnership between employer, employees and trustees. Clearly, the 4,800 schemes vary depending on their individual arrangements, but we are very keen to push that partnership approach because the schemes are best placed to make the decisions and understand all the moving pieces in any decision.

Q45 **Chair:** I understand what you say about making sure that this is a partnership, but in one of the previous panels we heard the suggestion of having an independent arbiter, particularly in relation to decisions around buy-out. Do you think it would be beneficial for the Government to consider that?

Julian Lyne: It would be fair to say that we have not considered that as the Bill moves through and more clarity comes to the fore. We see our role very much as providing a framework for the questions to ask, but clearly in time that is a question that will need to be asked. Whether it is for us to decide, whether it is TPR or not is less clear. I don't know if you want to add anything, Fiona.

Fiona Frobisher: No.

Chair: I understand I put you on the spot.

Q46 **John Milne:** You will have heard the previous panel answer this question. How would you describe the respective roles of employers and trustees in decision making on discretionary payments and how has this changed over time?

Julian Lyne: Do you want to start from the policy side, Fiona?

Fiona Frobisher: It is an interesting question. Is it a legal question or a philosophical question? I think Hywel would say that from a legal point of



view that would be in the scheme and the scheme deed and rules, and different people will have different powers. There are rules set down about who makes which decision, what needs to be taken into account and what the latitude for decision making is. I think he talks a lot about that, and a lot of that will be defined in the scheme's rules.

From a more philosophical point of view, which I think is where you are asking that from, the employer sponsors a scheme. They originally set up the scheme to provide a pension to their employees or increasingly, in a lot of cases, they have bought a company that did that but they stand behind the scheme—so they stand behind the risks to the scheme and behind the deficit to the scheme, which is where if the scheme went into deficit they are asked to pay it. We spend a lot of time getting trustees to think about the employer covenant, which is really them standing behind that scheme and standing behind any risks they take, and that is what leads you to what a decent funding arrangement is: by understanding how much the employer can take on. That, if you like, is their role.

The trustees' role is very clearly to act in the interest of the beneficiaries, which is mainly the members. I think the panel before this one made a very clear point that all trustees do that—member-nominated trustees, employer-nominated trustees, professional trustees. They are all acting for the benefit of the membership and the widest range of the membership. When things are going well, trustees and employers are both driving to the same place. The employer wants people to have a good pension. Trustees are looking after the members' interests. This is why I say you can get a really good partnership working together. They can agree what the best outcome is to make sure that the goal is met, whether by getting the scheme to buy out, which is securing those promises, or whether the decision is to run it on—"We think we're the best people to look after it." In a good relationship, that will work well. Where it becomes more difficult is where things are constrained, where there are big deficits in the scheme, and where there are constraints on what the employer can stand behind—risks and those kinds of things—and harder decisions have to be made.

Julian Lyne: I would highlight two points from my perspective. I think trustees focus on securing the benefits that have been promised when an individual joins a pension scheme. I get a sense that there is clear focus on that. Then clearly, once that is achieved, other considerations are taken into account.

I think Fiona mentioned earlier that the trustees are responsible for all the members in the scheme and that sense of fairness across all the membership is really front and centre of trustees' minds. Trustees have a very complex role, both in terms of investment and funding, to make sure that they are treating all the members fairly.

Q47 **John Milne:** You say all trustees have that obligation to all members and yet there is clearly a group of members, the pre-1997 pensioners, who were not treated fairly. I think we can all agree on that. How has that happened if that is the obligation and all trustees are subject to it?



Julian Lyne: Here we are talking about the discretionary increases. In terms of the promise to the individual members and understanding the context of the cost of living crisis, what we are seeing here is not a scam or fraud situation; this is a situation where members have joined a pension scheme, have been promised a pension and that is what they are getting. From our perspective, this discussion is about the discretionary piece, which is not part of that explicit promise. I realise that that is a difficult point of clarity for the individuals involved and affected by the impact on the purchasing power, but this is not that people are not getting the pension they have been promised. I think it was referenced in the earlier session. I think one of the individuals in the first session mentioned that they are not getting the pension that they were promised. I do not know the details of that, but that is not what we are talking about when we talk about discretionary increases with this Committee. I don't believe so.

Fiona Frobisher: All I would add is that this is a discretionary increase that would be on top of the benefit that had been promised. We are acknowledging that by not increasing the benefit pensioners' purchasing power goes down and we start to get to an issue about adequacy. The question is about whether there should be something linked to defined benefit that it should be adequate, which is not in the rules. That is not what they are asking for but I think it is an important consideration.

As the regulator, we are concerned about adequacy. We regulate the system as it exists but particularly with regard to DC, we are, as I think you know, looking at what we can do where we know there are adequacy problems on that side as well to make sure that those pensions deliver as good pensions as they can through working effectively, providing value for money, looking at how they turn pots into pensions, that kind of accumulation, and anything that we can do in those areas to get to better pensions for the members.

Q48 **John Milne:** We know that successive Governments have ruled out statutory requirements over a very long period. We have heard what some campaigners would like to happen. What do you as a regulator think would be effective as an alternative?

Fiona Frobisher: Alternative legislation? I am not sure I can comment on government policy because the legislation is what it is. We regulate the rules as they are, and at the moment the rule is that this is a discretionary decision.

Julian Lyne: Our role is about making sure that trustees understand their responsibilities and options and promote the conversations they should be having with employers within the context of the legislation as it is today.

Q49 **John Milne:** In cases where discretionary payments have been refused, are there, in your view, meaningful routes for scheme members to challenge decisions, bearing in mind what has happened over the last 20 years?



Julian Lyne: The complaint process we are seeing at the moment is that members would first go to their scheme and make a complaint. If they are not happy with the resolution, they would go to the pensions ombudsman. We have very strong relationships with the pensions ombudsman, from general counsel, from the operational side, if there is anything that we as the Pensions Regulator need to understand about the complaints they are receiving. When it comes to discretionary payments, we and the pensions ombudsman would look at the discussion, the framework, the debate and at the consideration that trustees and employers are making. They are not opining on whether there should be a discretionary payment but will be looking at whether the due process was followed and the proper discussion was had, and that has happened in a number of cases.

Q50 **John Milne:** Do you think that you have sufficient powers as a regulator to oversee decisions here and make the necessary interventions?

Fiona Frobisher: This is not the only discretionary decision that trustees make. Trustees make all kinds of discretionary decisions. When we have asked about discretionary payments, we have found that people had made an almost equal number of payments to different cohorts. They have made discretionary payments for pre-1997 cohorts and to different cohorts, early retirements or other groups that have needed them. They make a series of discretionary decisions and, to some extent, even coming to a decision on a funding plan and that kind of thing. Because schemes are so complex and their rules and promises are different and the employers that sponsor them are different, I think those are decisions best made by the people closest to them, the trustees and the sponsoring employer.

We are quite happy that our role is in making sure that trustees have the right tools to do the job, that they have the right knowledge and understanding to undertake those things. We will provide guidance about the matters that we think they should take into account when they take those decisions, the questions they should ask and the conversations they should be having with the employer. I think that does give us the robust system that we need for these schemes.

Q51 **John Milne:** Over the course of this morning we have heard lots of ideas and suggestions for remedies and campaigns and so on, but it does feel as if there is no way through. The problem has not been solved over a long period. I am not feeling that I have heard anything today that suggests that the problem will be solved now. Yet pretty much everyone agrees that the moral case is clear, if not the legal case, so what, in your view, could be done? What new powers with you or anywhere else could be granted to solve this problem? It has happened, so how can we solve it?

Julian Lyne: All the suggestions that have been made this morning have the potential for unintended consequences, be they the wrong decisions being made or cost implications across the piece. I think the regulator believes that in the current situation, where we are engaging with



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trustees, trustees have a range of options and, as I think was mentioned earlier in discussions about the pensions Bill, the surplus withdrawal gives trustees added potential leverage. As for where we are today, from a regulatory standpoint we feel it is as good a position as we are going to be in within the current legislation.

Q52 John Milne: That is as far as you are going to go. Okay, I will move on to another issue: surplus extraction. Our predecessor Committee concluded that strong governance would be essential to protect scheme benefits if surplus extraction was made easier. What assessment have you made of the strengths and weaknesses in governance across DB schemes?

Fiona Frobisher: I think this might be more a question for Julian.

Julian Lyne: There have been a couple of trends over the period. We have seen a big increase in the number of independent trustees, going from roughly 30% of schemes having independent trustees to over 50%. It varies, depending on the statistics that you see.

In a world where trustees are put under so much pressure, making quite fundamental decisions, we have been on record as saying that the role of the trustee and the ability of trustees to make informed decisions has escalated in the last few years. We have been very vocal about the role of independent trustees and understanding the importance of member-nominated trustees, getting that diversity of thought and support within the trustee group. We are seeing our engagement with trustee groups and independent trustees increasing to match the challenges that they face. I think you can see that.

I have a team that specialises in working with independent trustee boards. We are doing a lot of work on trusteeship and a consultation about it is coming out later this year. The focus on trusteeship and governance has risen over the last few years and I think that is reflected in some of the guidance and support that we are giving trustees.

We are also engaging with trustee boards and independent trustees and asking them what more we can do—what more they need from the Pensions Regulator to help them make decisions. Trusteeship has always been an important part of UK pension provision, and increasing support and progress with, say, the pensioners' toolkit and consultation is focusing on how trustees can deliver for pension scheme members, which ultimately is what it is all about.

Q53 John Milne: Thank you. Do you think particular governance arrangements carry higher risks?

Julian Lyne: It has been mentioned already today, but I think it is right that whether you are a member-nominated trustee, employee appointed or an independent trustee, you still have that fiduciary responsibility to look after the needs of all members. That is sacrosanct.

There have been some questions about the increase in numbers of sole trustees. There is perhaps a bit of a misnomer there, that that might



mean one individual working as a trustee. The reality in a lot of cases is that a single individual is working as part of a broader organisation. Our statement is clear that in some circumstances it may be appropriate to have a sole trustee. If a scheme is moving to buy-out, that is a technical transaction, there is a timing issue and there is sophistication to the decision making that might mean a smaller governance group could be more supportive.

It is also important to note that the industry guidelines for sole trustees is that any decision is peer-reviewed, and I think that is reassuring. We always say that whether you are independent, sole or member nominated, you still have your fiduciary responsibilities; you need to prove that you are thinking about the membership as a whole. It is an area we are going to do more work on because, as the models evolve and change, we need to make sure we keep abreast of unintended consequences. At the moment, however, the focus on trusteeship is helpful in raising standards and making sure that they deliver for members as a whole.

Q54 Chair: Are there other examples of governance arrangements around the world that you think we could learn from and perhaps use to inform some of the potential changes that the Government might want to make?

Fiona Frobisher: I am going to say always. It is always worth looking around the world at other governance arrangements to see what they do. The obvious point to look at—we have looked at it and other people are looking at it—is how you get the member voice in. There are various systems that use member panels or employee panels, those arrangements, to get the voice in. There are examples of bigger schemes, particularly on the DC side, that do that in the UK. There is quite a lot of innovation around member voice and how you reach out.

A DC master trust with hundreds of different employers has to think about it very differently. They still need to act in the interest of all their membership, and understanding their membership really drives them. Perhaps one of the things that came out of the panel before this is that we may need to think about how we can bring that more innovative work around membership and communications on that side of the house into the DB area, reaching out to the membership more.

Q55 Chair: Jack Jones in the first panel referred to the Canadian model. Do you have thoughts on that?

Julian Lyne: Yes, we do. We have conversations with similar regulators in different markets and we look at Canada. We tend to be looking there more in terms of the career average and how they manage the structure of their DB system rather than at the governance but, of course, it does have consequences. We look at the Australian model a lot for DC. That is pretty well understood. We look at the Dutch model for how risk is shared. A lot of conversations are going on about what we can learn from other markets. Canada clearly has a very mature pension range. We look at and engage with all sorts of different markets.



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- Q56 **Mr Peter Bedford:** Some of the views from panel one suggested that there is a better approach between trustees and engagement with scheme members to understand their priorities. What is your view on that and how could it be improved?

Julian Lyne: Should I speak from what we are seeing? I think it comes down to that partnership. I do not want to repeat the number, but with 4,800 schemes we see a lot of different models. These are private pension arrangements. They are set up by companies so the employer is always going to have a significant role and say about how decisions are made. We see some good models where trustees and employees have that good partnership. In the circumstances of this morning, it is less functioning in this area. It comes down again to the myriad decisions that need to be made, be it surplus extraction, be it discretionary increases. Those debates will always be lively conversations between trustees because they come at it from different perspectives and the model does allow for that to happen.

- Q57 **Mr Peter Bedford:** You touched on a few things there. How would you propose to address those things through your guidance—surplus extraction and engaging members—because there will be competing tensions there? How would you incorporate that into guidance?

Fiona Frobisher: We produced some guidance on surplus decisions. As the law stands, in most cases you would have had to have written a specific rule into your scheme rules, which not everybody has done, but you would have to have done that and you will have to generally be at a buy-out level of funding, so it is not available to most schemes. However, we have set out some of the things that you would need to think about, which I touched on earlier, around objectives, funding and the needs of different bits of your membership.

We have stated that we expect to update that more when the current Bill gets Royal Assent, and there are changes to that power so that power will become more available to everybody. Most schemes will be able to do it, and they will be able to do it at a lower level than buy-out funding. It will still be at a level that needs to be secure. What exactly that will be we will not know until this has gone through the full legislative process, but I believe that it will be a very secure level, and trustees will require that to be a very secure level before that goes out. There is a similar level for the considerations that trustees will need to put in. We will engage with the trustees and employees about it before we write the guidance, when we have a clearer view of what the legislative framework will be.

Julian Lyne: I will just give you a bit of colour, because I had that exact conversation when I was in the room with a group of actuaries. On one side of the room the actuaries were saying that we need to come out with explicit guidance on what is right and what is not. The other side of the room was saying we cannot do that because each individual scheme is different, the covenant and the employer is different, the whole relationship is different. I think as we progress through the Bill we will get more clarity on what guidance is required by trustees and their advisors.



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Q58 **Chair:** The evidence from panel one suggested that more is needed to ensure trustees engage with scheme members to understand their priorities. Do you agree with that?

Fiona Frobisher: I agree that it is a fundamental role of the trustees to engage with their memberships and ensure that they understand their priorities. I think many trustees already do this well and it is an area that we would look into if we thought they were not doing it. It is an essential part of good governance. An essential part of the trustees' role is understanding their membership, so it is an aspect that we look at.

Q59 **Chair:** Schemes buying out benefits with an insurer can enhance member benefits at that point. I asked this question of the previous panel. To what extent do you think schemes are doing that or not?

Fiona Frobisher: We don't have figures on that. I have no numbers on it.

Q60 **Chair:** Trustees will not have the same power at that point to refuse the release of surplus to an employer, so what alternatives would you support? For example, would you require them to show that they have considered whether scheme members' reasonable expectations of benefit enhancements have been met?

Fiona Frobisher: That sounds reasonable. It may depend exactly on the rules and what is in the rules, but there will usually still be some requirement for consent at the end to release the surplus.

Q61 **Chair:** Do you have any final comments before we wind up today's session?

Julian Lyne: Only to repeat that I think this is a very difficult conversation for the members who are impacted. As a regulator, we see our role as making the governance of pensions as effective for the broad membership as best we can. The pensions Bill going through gives an opportunity to consider how we can best help trustees do their role in supporting members of all shapes and sizes.

Chair: Amanda Hack has a final question.

Q62 **Amanda Hack:** Apologies; I have not listened to panels one and two so I do not have the benefit of information that has already come forward.

A pension is deferred wages, and I am wondering how else we could get the voice of those pension holders. Most of the conversation that I have observed has been very much around the trustees and about the employers, but the members, the recipients, are the ones who are being impacted by whether or not to make a discretionary payment, whether or not to look at indexation. What are we doing and how do we improve the voice of the pensioners, the people who have agreed for deferred wages to go into a pension pot, because they could have chosen not to do that, and contributed their own money? How do we make sure that those voices are heard much more loudly? I have not heard a huge amount on that and what your role as regulator is in that.



Fiona Frobisher: It is an interesting question. It is fundamental to the trustees' role to understand the needs of their membership because they are acting on their behalf and they need to do that. As the regulator of trustees, I suppose it is fundamental for us to ensure that they are doing it. As you will be aware from sitting here and going through these things, pension matters and defined benefit pension matters are extremely complex. We are talking about cohorts of memberships going back to before 1997. We have lots of different cohorts of memberships, lots of different rules, so part of the answer has to be about how we as an industry communicate with those members and how we simplify matters.

I have said that we see a lot of good practice. In DB schemes, I have seen lots of very good practice in very specific situations, where there have been very difficult situations because employers have been going into insolvency or those kinds of things and suddenly we have had a very good, clear communication campaign so that the membership understands what is happening. There is some very good, clear communication on the DC side—that is very important—but maybe more could be done across the piece in the DB area using some of the learnings from both of these areas.

Q63 **Amanda Hack:** My point is that in all the poor behaviour that has gone on in the pension sector, it has not been the employees or the trustees who have lost out; it has been the pensioners. I think that right now there feels to be very little of a safety valve for those individuals. We talked in the previous panel about the 1997 indexation and how it was not fair on those future members, post-1997, but if post-1997s are getting an increase and it is indexed and the pre-1997s are not indexed, investment is an important part of that conversation. It just feels a bit like it is stacked against members, and I do not know how we create that balance back for members and future pensioners.

Julian Lyne: I think it is through a combination of the role of the member-nominated trustee on the board and, as has been mentioned, how you broaden that in terms of the broader communication.

Chair: Thank you both for joining us this morning. That concludes today's session.