

# Work and Pensions Committee

## Oral evidence: Defined benefit pensions white paper , HC 956

Wednesday 18 July 2018

Ordered by the House of Commons to be published on 18 July 2018.

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Members present: Frank Field (Chair); Jack Brereton; Alex Burghart; Rosie Duffield; Ruth George; Nigel Mills; Chris Stephens.

Questions 167 - 249

### Witnesses

I: Lesley Titcomb, Chief Executive, The Pensions Regulator; Mark Boyle, Non-Executive Chairman, The Pensions Regulator; and Anthony Raymond, General Counsel, The Pensions Regulator.

II: Guy Opperman MP, Minister for Pensions, Department for Work and Pensions; and Ronan O'Connor, Deputy Director, Private Pensions, Department for Work and Pensions.

Written evidence from witnesses:

[The Pensions Regulator](#)

## Examination of witnesses

Witnesses: Lesley Titcomb, Mark Boyle and Anthony Raymond.

Q167 **Chair:** Lesley Titcomb, might I ask you to begin our session, after my formal welcome to you all, by saying who you are and I will then ask your colleagues to identify themselves?

**Lesley Titcomb:** I am Lesley Titcomb. I am the chief executive of The Pensions Regulator.

**Mark Boyle:** I am Mark Boyle. I am the non-executive chairman of the Pensions Regulator, so I lead the board. I am also Lesley Titcomb's line manager, so responsible for the search for her successor.

**Anthony Raymond:** I am Anthony Raymond. I am general counsel between July 2017 and 2018. I was acting executive director for regulatory policy with responsibility for the White Paper.

Q168 **Chair:** Lesley, can you look at the journey that the Pensions Regulator's office has made under you? It is always difficult, when you are commenting on what might be your predecessor's role, but could you tell us where you started and where it is now, please?

**Lesley Titcomb:** Yes, of course. Thank you very much. When I arrived at the Regulator, in 2015, I made sure that I spoke to lots of people, the key stakeholders, and as a result of that, I identified an organisation that, in my view, was too reliant on educating those that we regulated. Bolder intervention was needed. Working with TPR's board, and with our staff, we put in place a programme to transform our culture and the way we do regulation, in particular, to be more proactive as a regulator with schemes. I believe that the change has been in three particular areas.

First, we are more proactive. We are clearer about our expectations. We are quicker to intervene where we need to do so, and to put things right, and we are tougher on those who do not behave in the best interests of the scheme members.

The second thing we have done is to secure additional resource for the regulator, and particularly for our case teams on the frontline of regulation. This means, to be blunt, that with more boots on the ground, we can do more, and we can intervene more quickly.

Thirdly, we have built a stronger relationship with Government. We have successfully made the case for new powers, for example, to authorise and supervise DC master trusts and more particularly, recently, within the White Paper, for some of the changes that we have sought there, particularly around funding and our information-gathering and investigation powers.



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I am very proud of what we have achieved. I am committed to seeing the work through during the rest of my time as chief executive through to next February and I am very confident that the changes will continue, because there is still more to do, under the leadership of the chairman of the board, the new CEO and the great leadership team there.

Q169 **Chair:** As we go through, because we are looking at Government's proposals, might you be non-modest by saying these are things that you lobbied for?

**Lesley Titcomb:** Absolutely. We would be happy to do that.

**Chair:** That would be really good. Thank you for that.

Q170 **Chris Stephens:** Mark, how do you see the culture changes we have seen continuing when we are going through the transitional period between chief executives?

**Mark Boyle:** The first thing to say is that it is very good that those changes are being noticed by our stakeholders. The changes are having an impact on their behaviours and it is really important that we keep that momentum up as we transition from Lesley to a new chief executive. I would say that there are two aspects to it that I am particularly focused on. One is making sure that Lesley and the executive team remain committed through to the end of her term at the end of February, which I am very confident she will, but I will be personally involved in ensuring that. Secondly, the process that I am leading to identify and bring in a new chief executive, which I will be happy to elaborate upon, really making sure that we get the right person with the right credentials to carry on that momentum and to follow through the very successful changes that Lesley has led. It is going to be really important to get someone with the right characteristics to do that.

Q171 **Chris Stephens:** I understand that the post is not yet advertised. Is that the case?

**Mark Boyle:** No, it is not. I am required to wait until I have formal approval from the Department. I have been pushing for that. I am told that I will get it before recess and I am hopeful about that, but I do not have it yet. Until I have that, I am not able to advertise. However, what I have been doing in the meantime is really cracking on, lining up a headhunter to work with us on this but the most important thing I have been doing is talking to a range of stakeholders, both internally and externally, to get their views on what those characteristics of an appropriate successor to Lesley should be. That has been moving forward.

**Chair:** Can I welcome the Minister, who has joined us? On the record, Minister, you will see that The Pensions Regulator looked at what the Pensions Regulator was like when she joined, where it is now, and indeed pointed to where she wanted it to be in the future. We also asked her not to be modest but when issues come up, changes that are being proposed,



to say that these are ones that the regulator pushed for. It would help us because we can then ask what the examples are, and how that would have worked, looking back on your history as The Pensions Regulator. So you are nearly up to date but I can't summarise it. Lesley has given us a good summary and the record will be there for you to read.

**Q172 Ruth George:** Anthony, the Department's recent consultation paper announced proposals to strengthen the regime of contribution notices and financial support directions. Have there been any instances in the past where you feel this improved regime might have helped to improve compliance?

**Anthony Raymond:** The package in the White Paper represents a strong set of proposals, which, first, will enhance our powers and strike the right balance between prevention and cure. There will be strong deterrents there as well so that those seek to avoid their pensions obligations will be deterred from doing so and provide a clear line of sight so that we have greater forewarning in relation to where things potentially go wrong. I would like to pick out two potential areas where I think the proposals around FSDs and CNs will support us.

First, in relation to FSDs, currently that process involves a three-stage process of first us establishing liability, so we need to go to our determinations panel, which is our internal committee to secure liability. Then parties need to come to us with a proposal as to what their support looks like. Finally, exactly what that support is, is settled, and again we have to go back to our determinations panel. That is the current legislative framework and that can take some time. We have a case on at the moment, on which the determinations panel issued a determination notice back in 2011, and that case is still in front of the Court of Appeal and is only at that first stage. Having one stage, which is proposed in the White Paper, we think will be very helpful for us. That is the first example.

The second example is in relation to our contribution notice powers. Currently, the contribution notice powers have a number of different requirements of us to look back at what Acts have taken place in order for us to exercise that power. Those are necessarily historic and can go back in time. The amount that we can secure off the back of a contribution notice has to be linked back to the date that Act takes places. I am sure the Committee will appreciate that the section 75 amounts, which is the amount that they need to pay on an insured basis to secure the liabilities of the scheme, can go up over time and, where those Acts go back in time, by some quite considerable amount, which can mean the members lose out. We are particularly pleased to see those changes as well.

**Lesley Titcomb:** Those are examples of particular changes to the process that we were very keen to secure.

**Q173 Ruth George:** Those changes, particularly, firstly, on financial support



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directions—you say you have had cases ongoing since 2011—are you hopeful of being able to apply the new regime and the single-stage process to cases that are going now through the three-stage process and speed them up?

**Anthony Raymond:** If cases are on foot now, that would be difficult. I would see the benefit on cases that we could be investigating at the moment, for example, or future cases, as being particularly those that will benefit from those changes.

Q174 **Ruth George:** Right, but will the new regime help you to move on the cases that have been very slow, as well as providing a deterrent?

**Lesley Titcomb:** We have to distinguish between cases that we are investigating and submitting it will help with those. Ones that have already started, such as the one that Tony referred to that has been running since 2011, we are in the hands of the court and, to a degree, the other parties, who have persisted in appealing everything at every possible stage, as is their right, within the process.

Q175 **Ruth George:** With the contribution notices on the historic amounts, is there any ability to revisit ongoing cases under the new regime or will it be a case of picking up new instances?

**Anthony Raymond:** I would distinguish, as Lesley has done, between those that are currently before the panel or before the courts, but with regard to historic ones, yes, it depends on exactly which change you are referring to. For example, some of the changes will be limited in time. For FSDs, one of the proposals is that we can look back further in time, but it is very unlikely that that will be retrospective so it would be looking forward. Parliament tends to be quite reluctant to make legislation retrospective.

Q176 **Chair:** Would you have a problem, Lesley on publishing and giving us that list of people that have been fighting all the way?

**Lesley Titcomb:** I can refer openly to the specific case that we are talking about, which is ITV Box Clever. It has been covered extensively in the press.

Q177 **Chair:** Are there others like that on the list?

**Lesley Titcomb:** If you look back through the history of the CNs and the FSDs that we have issued, which we have shared with this Committee before, there are a number on there where people have chosen to challenge us through the process. We then, usually, make that clear in the section 89 reports that we publish after the event, so a number of those situations are already public.

Q178 **Chair:** Might you bring them together for us?

**Lesley Titcomb:** We can certainly have a look and see if there are other specific examples that it would be helpful to highlight, yes.



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Q179 **Rosie Duffield:** This question is mainly directed to you, Anthony. How likely is it that the proposed new criminal penalty will be an enforceable and meaningful deterrent against wilful or reckless irresponsibility towards pension liabilities?

**Anthony Raymond:** In my experience, a criminal absolutely does focus the mind, particularly in the context of where people have an interest in maintaining their reputation in a business sense. I do think, absolutely, yes, it will focus the mind. It will potentially also mean that where a conviction is secured, a criminal court can also disqualify that individual, who will undoubtedly be a director, so I do think it will represent a very powerful deterrent. The Pensions Regulator has prosecuted eight people in the last four years. We are increasingly set up to take on those case and well placed to do so, and that demonstrates our appetite to do so in the future, as well.

Q180 **Rosie Duffield:** Had that been in place, are those the people you would have imposed that on?

**Anthony Raymond:** It really does depend. Some of the detail in relation to exactly what the elements of that criminal offence will be is still to be worked through. I can certainly think of an example of a case historically whereby I do think those powers would have been very useful. It was an instance where we received e-mails from a whistleblower and those e-mails clearly demonstrated that the parties were certainly reckless. They were speculating as to what steps they could take in order to avoid the pensions liability and they then went on to do it anyway, which is basically the definition of what recklessness is, which is the proposal in the White Paper. In that instance, historically we were not in a position to proceed because there simply was not enough money for us to do so, but I can see that with these powers, that would be a very different scenario and clearly were we to prosecute and secure a conviction, that would send a very powerful message to those who are possibly thinking of avoiding their obligations.

Q181 **Chair:** Anthony, let's imagine a case where somebody sells, for £1, a going concern employing large numbers of people and with a very big pension scheme, do you think that would come under the reckless behaviour that is being proposed?

**Anthony Raymond:** You would obviously have to look at all the circumstances, as I described. In the example that I was setting out earlier on, in that instance, there was clear evidence that the parties were doing that for the purpose of avoiding the liability. You would need to look at those surrounding circumstances to build that picture. Whichever way the legislation is drafted, there will still need to be a requirement that what actually happened and what was going through the person's mind would need to be demonstrated. Evidentially, those elements would still need to be there for a court, and more particularly a jury, to be satisfied that that is an appropriate conviction to decide upon.



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Q182 **Chair:** Given the answer you gave to Rosie, this could be an important extension of your powers, could it?

**Anthony Raymond:** Yes, absolutely.

Q183 **Jack Brereton:** My question is particularly to Lesley and is around trustees and, from some evidence we have heard, the importance of trustees being empowered and having the ability to take action when they need to. Do you think that the declaration of intent will particularly help those trustees and also help the regulator, in terms of taking and being empowered to take action?

**Lesley Titcomb:** Yes, absolutely I do. One of the issues that we have seen is that we need to get a better line of sight on what is going on in terms of corporate transactions and trustees need to have a better line of sight. The declaration of intention will help with in that the employer, in certain circumstances, will be obliged to tell the trustees, and then us, about what is intended, to set out clearly what the effect on the scheme will be, and then to indicate what any proposed mitigation for that is. What that does is enable that to be documented as the agreed way forward. For example, it then is a very useful piece of evidence for us, if we are then looking to use our avoidance powers for some reason, if that does not come to pass, if the agreements are not met, to use our avoidance powers because we think there has been material detriment to the scheme and people have not followed through on their commitments. There is a good statement of what was intended and then what was not delivered, so we think it is very helpful.

Q184 **Jack Brereton:** Do you think it goes far enough or are there other things that could be done to improve the situation for trustees so that they can take the actions they need to take?

**Lesley Titcomb:** As Tony has indicated, we do think that the White Paper is a good package overall because it gives that better line of sight for the trustees on what is going on, and for ourselves. We are also supportive of the changes to the notification regulations in the White Paper, the things that people have to notify to us on a regular basis and which are an important source of intelligence on what is going on in schemes.

Q185 **Jack Brereton:** What about dividend payments? Obviously, they are not covered.

**Lesley Titcomb:** They are not included, absolutely, and I do think that is for good reason, which is that there is already a general practice of declaring a dividend before it is paid anyway and trustees can reasonably be expected to be aware of that. However, what I do understand is that the Department for Business, Energy and Industrial Strategy is looking at this area in the context of its wider work on corporate governance and we hope to see it addressed in that.

Q186 **Chair:** Lesley, what sort of input would you like to make to that



departmental consideration and report? It is one of the things that we have been struggling with. It does not seem to me that there is any easy answer, or formula that you can apply, but you do have extremes like Carillion that borrow and pay dividends when the whole ship is going down. That is easy enough, isn't it, but there is a crucial middle ground here, isn't there? As the regulator, what thoughts do you have about the payoff between paying investors and meeting the company's responsibilities to pensioners?

**Lesley Titcomb:** That highlights very well, Chair, the complex decision that we have to make in these circumstances. Parliament has given us what some people refer to as conflicting objectives. I do not believe that they are necessarily are conflicting; I think they are a set of objectives where we have to balance. What we therefore are required to do is ensure that risks are being managed rather than that risks are being regulated out of the system in their entirety. We do have to balance this whole challenge of the interests of the members against the needs of the company to reward its shareholders, its debt holders, and to invest in its business, where appropriate.

Having said that, as we have indicated in our annual funding statement over the past couple of years, we do believe that there are a number of companies that are not getting that balance right and that are not putting as much into the scheme as perhaps might be sensible, given that they can afford to put in more. Where that is possible, we are encouraging them to fix the roof while the sun shines, to be frank, but that is a challenge and not all of them see it that way. What we will be looking to do, when we come to the funding code, which we are working on at the moment, is to see if this is an area where it would be appropriate to set out parameters and expectations more clearly. That is something that we will be within our gift, within the regulator, to do in our funding code.

Q187 **Chair:** Currently, is there any way in which you are able to monitor those companies where pension deficits are rising but companies are paying generous dividends, maybe increasing dividends?

**Lesley Titcomb:** Yes, and we do, and there are companies where we take that up with the employer. We have I think about 125 open funding cases at the moment, relating to various aspects of scheme funding. A number of those will related to the ratio of dividends to deficit recovery contributions. Where we feel that employers are not giving sufficient consideration to the interests of the scheme members, we will be prepared to take action.

Q188 **Chair:** Could you share with us the formula, the ratio? We want to think about it, from the Select Committee point of view.

**Lesley Titcomb:** We do not have a precise ratio yet. It is one of the things we will be working on, to see whether it is appropriate. A number of people who have given evidence to you already have suggested that



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an absolute ratio may not be appropriate and given that we are dealing with scheme-specific funding, and so on, that may be right.

To give you an example, however, of the type of thing that we look for, if we are seeing situations where there is a deficit but where the company is proposing, and announcing, that it is going to pay increasing levels of dividend, then we look to work with the trustees to try to secure matching increases in contributions for the deficit.

**Q189 Nigel Mills:** On that, I do sometimes wonder if we are heading towards a model where you become a trustee of every defined benefit pension scheme that is left and then you delegate the ones that are green-rated down to some trustees. Where is the balance between what on earth these well-paid, supposedly skilled, trustees are meant to do to protect their schemes and how much of that should be passed back up to you because they either cannot or will not, or just don't know how, they should be doing these things?

**Lesley Titcomb:** Trustees have a very important role to play here. You are absolutely right. We, despite our increased resources, do not have the resources available to police all 6,000 DB schemes, plus the 48,000-odd DC schemes, and all the rest of it, to that extent. We inevitably, therefore, have to also rely on the trustees. What we have been told, however, as I have said before, is that we can be clearer in our expectations and smaller schemes in particular want more clarity about what they should and should not do, the trustees tell us. We can be clearer in our expectations. We can be quicker, too, and by that I mean we can obviously process things more quickly—that goes without saying—but we can also arrive at decisions more quickly, take a view more quickly, and be prepared to express that to the trustees. Where appropriate, we can get tough, too, and that usually means getting tough with the employer in order to deal with the situation. We do have to pick carefully where we intervene. We are a risk-based regulator, as all are, because we need to know where we can direct our resources to greatest effect. That is why, for example, we think that the changes to the funding powers in the White Paper are so important. They are something that we have particularly sought, Chair, because we want, for example, to ensure that the burden of proving, or showing, what is appropriate or prudent, sits with the trustees and the employer and it is not up to us to demonstrate that something is inappropriate or imprudent.

**Q190 Alex Burghart:** Lesley, a quick question about voluntary clearance, which we know is seldom used at the minute.

What is The Pensions Regulator going to do to make this a clearer, more attractive option?

**Lesley Titcomb:** I will start, if I may, and I may ask Tony to chip in on this one as well.

Essentially, when voluntary clearance was first introduced, as the request of companies, it was quite extensively used, and that has declined. For



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example, at the moment we have nine potential clearance cases on the stock, which is fairly typical of recent levels. There are various reasons as to why that is.

What we are proposing to do, going forward, is to ensure that our guidance is as clear as it can be, and that we reassure people about the costs and the time involved in applying for clearance. I will give you one clearance case that we looked at over the past year, which we cleared in, I think, just over 24 hours. We can do it and we are set up to do so. We are being clearer publicly about where we think it will be good for companies to come to us for clearance, the types of circumstances, but in the end it is voluntary and many of the bigger schemes, in particular, are well advised and see no need to do so. What behoves us is to be as clear as we can about the situations where we think it is appropriate and about the process.

Tony, I think we are also looking, aren't we, at what we say about what constitutes the type of event and type of circumstance we should be looking at?

**Anthony Raymond:** Yes, that is right. At the moment, the guidance frames exactly what is a type A event, which can be materially detrimental. We are looking at that to see if that is broad enough.

The one thing I would also like to add, though, going back to what I was saying about the criminal powers and the punitive penalties that are going to be attached to the contribution-notice powers, is that in our view those will operate also to encourage more people to come for clearance because they will want to comfort. The clearance process is obviously there to give comfort that we will not exercise our avoidance powers but in circumstances where people have a greater concern, because the powers are first of all more effective, secondly there might a punitive penalty attached to it, and thirdly there is a risk of a criminal sanction, I think that will really focus people's minds in thinking again about clearance.

Q191 **Alex Burghart:** You have slightly pre-empted what I was going to say next in that I do wonder how far we expect clearer guidance to actually shift things. What you are saying is that this is part of a package.

**Anthony Raymond:** Absolutely, yes.

Q192 **Alex Burghart:** Stepping outside of what is within your remit, Lesley, do you think this package will make a substantial change to how often voluntary clearance is used?

**Mark Boyle:** It is perhaps worth thinking of a couple of specific examples of what is happening in practice. If you look at the GKN Melrose situation, that was an example of very clear, proactive involvement by the regulator, once that prospective takeover became known. There was contact made by the regulator with both sides, with GKN and with Melrose, which led to substantial dialogue and significant commitments



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being made, to the benefit of the pension scheme. We did something very similar in the current Sainsbury Asda situation, so it is happening on the ground. The advisers are noticing this and they are changing their behaviour accordingly.

**Lesley Titcomb:** We therefore think, yes, it could lead to more examples of clearance but as Tony has emphasised, what that gives is a safe harbour. If they do not come for it, our avoidance powers are still available if material detriment becomes apparent to us.

Q193 **Alex Burghart:** In 2016, Frank recommended that clearance be made mandatory. Do you think he was talking sense or do you think that is a stupid idea?

**Mark Boyle:** We can very well understand where that idea came from, and the thought that was behind it. We think that where Government have ended up through the White Paper represents a reasonable balance of making much clearer the expectations on parties to come forward, whether for formal clearance or for dialogue, together with the other package of proposals, including the prospective punitive fines, and also the way we are behaving differently. We believe that what is proposed is appropriate.

Q194 **Chair:** It was of course marked in the Conservative manifesto, wasn't it, this very proposal?

**Mark Boyle:** I think there were various people recommending it, yes, from different directions.

Q195 **Chair:** I am just wishing to share the insights.

Are you telling us, Mark, that both Melrose and Sainsbury's are in talks with you for voluntary clearance?

**Mark Boyle:** Melrose was in discussion with us, as were GKN, prior to being successful and that dialogue has continued. The dialogue continues with Asda and Sainsbury in that particular situation, yes.

Q196 **Nigel Mills:** It is intriguing that both the examples of voluntary clearance working were involuntary clearances to a certain extent, but maybe we should move on.

**Lesley Titcomb:** I should clarify for the record, Chair, that the GKN and Melrose situation did not come to use for clearance, in the end. We strongly encouraged them to do so. They did not come for clearance. That means that should anything emerge that constituted material detrimental, we could take action. What we did secure in that case, as you know, were a number of agreements about what would happen in terms of the pension scheme and we are monitoring those.

Q197 **Chair:** Sorry, Lesley, but this is very important. Under what circumstances might you be able to take action because they did not fully engage with you?



**Lesley Titcomb:** Not so much about fully engaged, but as I was indicating earlier, with the declarations of intent, where we have become aware of a situation, in advance of a takeover for example, being completed, where agreements are made between the parties, the trustees and the employers, as to what should happen, one of the things that might trigger us to look at whether material detriment had occurred is if the parties concerned did not live up to those agreements, which is why we continue to monitor a situation after the event.

Q198 **Chair:** So if Melrose does not live up to the publicly declared wishes for them to fulfil, you could take legal action.

**Lesley Titcomb:** We could investigate to see whether that constituted material detriment, yes. That would be one of the typical things that we would look for. It is not restricted to that, obviously, but given that they have not come for clearance, that is still open to us if something emerges subsequently.

**Chair:** Very important. Thank you.

Q199 **Nigel Mills:** I am always a bit nervous on clearances because in my limited experience of doing them, I tended to send the best-case scenario of all my modelling scenarios off and, hey presto, that always looked quite fine and if you didn't send of the worst-case scenario, if you were not asked for it, presumably in any transaction trying to work out what the risks are and getting full disclosure of what could go wrong, is probably quite hard, isn't it?

**Lesley Titcomb:** It is. I also think that the other thing we have found in the past is that people try to come to us for clearance with half-completed applications and they are not able, or not willing, to answer a full range of questions and that therefore becomes difficult as well. We do undertake to process things quickly and come to a view when we have a full application.

**Mark Boyle:** It is also worth saying that we are strengthening the calibre of the people within the organisation so that the right questions are being asked at the right time. That is a big part of what we are doing internally.

Q200 **Nigel Mills:** Going back to the issue of where you almost need to make sure that the trustees are doing their jobs properly, can we turn to deficit recovery plans and how we work out what the maximum length of those ought to be? Do you have any views on whether you should have a maximum length for those or how you determine what an appropriate length is?

**Lesley Titcomb:** The deficit recovery plan, and the length of any recovery plan, is one factor that the trustees and the employers have to come to agreement on if there is a deficit and one of the factors that we look at with interest, to see whether it is a reasonable approach, but it is not the only one.



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About just over 1,000 DB schemes have recovery plans of longer than 10 years, which is a figure that this Committee has discussed before. A significant number do, but in our view that is usually for a good reason. For example, if I take the example of a charity, it is dependent on donations. If we were to insist upon a very short recovery plan, that might drive that charity and the services it provides, to the wall and we would not, in my view, be having regard to what I talked about earlier, that need to balance our various objectives.

We operate a scheme-specific funding regime. The length of the recovery plan is one thing that may be considered. For example, in a funding case we have looked at recently, a comparatively small scheme, with a deficit of about £34 million, we felt it was appropriate to seek a shortening of the recovery plan. We got a halving of the recovery plan from 14 years to seven and a doubling of the cash contribution. It is a scheme-specific approach but there does have to be a good reason for people to have a long recovery plan and in particular, we are wary of back-end loaded, long recovery plans.

**Q201 Nigel Mills:** The PPF has advocated a comply or explain mechanism. Is that something that you think would be a helpful way forward, to have a recovery plan of no more than 10 years or explain why you need it?

**Anthony Raymond:** That is a very positive suggestion, it is one that we have also made, and it is something which is part of the proposals, that reversal of burden, which we were describing earlier on where in circumstances we have concerns about, the prudence as to the assumptions that are being made in relation to the technical provisions and the liabilities and the appropriateness of the recovery plan will be for the trustees and the employer to demonstrate to us, that they are appropriate and prudent, and that helps in a twofold way. It helps, first of all, in relation to the funding discussions that we are having with parties, but also where those agreements do not come to pass, and we need to exercise our powers, it also helps in that space as well.

**Q202 Nigel Mills:** Okay, so you think a fixed maximum would be a bad idea but in reality it should be exceptional that you go beyond 10 years.

As a Committee, we are quite keen to give you some—

**Lesley Titcomb:** I would not characterise as 1,000 schemes out of 5,500 as exceptional, so it is a little more than exceptional, just for the record.

**Q203 Nigel Mills:** That is probably fair.

As a Committee, we are quite keen to give you some more work to do and we would quite like to see the market produce some reliable, safe and well-run new products, like consolidated schemes and collective defined contribution schemes. Are you confident that either the existing regulatory apparatus or the plans in place to change it, can make these schemes safe and suitable?



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**Mark Boyle:** I will make a comment on resource to start with, in that regard, and then Lesley, perhaps you can flesh it out.

It is really important, with these suggestions, which we are in engaging with the Department on in terms of prospective super funds and CDC, that we are putting a big flag down that if we do get actively involved, we will need to supplement our resource because the resource that we already have is fully stretched. So, we would be looking to the Department to help us, but we are very much engaged with the Department at the moment in the preliminary thinking as to what would be involved in that regard.

Lesley, would you like to expand on that?

**Lesley Titcomb:** We are aware of a number of commercial propositions emerging for possible DB consolidation in the market at the moment. They are at various stages of advancement. Where we become aware of them, we engage with the people, go and talk to people, who are proposing them.

We do have a number of regulatory levers available to us now. I would highlight for example that we would strongly encourage people who are thinking of transferring a scheme into one of these consolidation vehicles, to come to us for clearance, but as previously discussed, clearance is voluntary. If they do, that gives us some levers, because we can seek legal undertakings and all that kind of thing. We can also, obviously, talk to these people about their business model, their set up, their financing, their governance, and all that kind of thing, and set out for them clearly what we would expect and like to see, according to their particular model.

If absolutely essential, we can now appoint an independent trustee to either the ceding scheme or the acquiring consolidator.

Personally I do not, and actually neither does the organisation as a whole, think that that is sufficient as it stands. We think we need to learn the lessons from the DC master trust situation and therefore strengthen the regulatory regime in this space as quickly as possible. To that effect, I wrote to the Department some time ago on this topic, highlighting the risks in this sector. We are very pleased that in the White Paper, Government have picked this up. We would like to see an authorisation and supervision regime for these consolidators.

Q204 **Chair:** As part of your organisation, Lesley?

**Lesley Titcomb:** Yes, absolutely, just as we are doing with DC master trusts, for example, where we also have a number of DB master trusts already, but the key point we would be looking at here are the fitness and propriety of the people who are directing and controlling, the business model, the sharing of profits or surpluses and where they go, and above all, the appropriate funding of the scheme, to ensure that it has sufficient resources, for example, if it suddenly decides to take on



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another three schemes, so that it does not become financially weaker by acquiring those schemes. We are also obviously keen, both from the point of view of the protection of members, but also from the point of view of the protection of the PPF, because these commercial consolidators do want to generally have the backstop of the PPF behind them, so it is essential that their funding is appropriate. In that way, we can ensure that they provide a covenant that is at least as strong as the scheme from which the members are being taken up, and we can ensure that if at all possible, the members' benefits are protected. We would not want to see cuts in benefits being part of this taking of them into consolidation. We are keen, therefore, to see a strengthening of the regime in this space.

**Q205 Nigel Mills:** So does the scheme that is thinking of transferring, or the consolidator, have to notify you in advance that they are thinking of doing it? Or is that a voluntary option?

**Lesley Titcomb:** I will ask Tony to comment on the detail but what I would say is that the ones of which we are aware at the moment are engaging with us willingly and openly and I sincerely hope that continues.

**Anthony Raymond:** Yes, that is right, and no is the answer to the question; it is a voluntary process. Clearance would be the obvious mechanism.

**Lesley Titcomb:** But notification, Tony.

**Anthony Raymond:** Oh, I see what you mean. Yes, there would be a notification; they would be required.

**Q206 Nigel Mills:** So you would get the chance to look at it before anything irreversible took place.

Can I ask you one other thing, Lesley? Your organisation has been dealing with auto-enrolment. Have you seen any sign that individual savers have become more engaged in pension saving and understand what they have and where or are we way off from getting real engagement with individuals?

**Lesley Titcomb:** I think we have to accept that getting younger people to engage with pensions is a challenge. They do not like to think perhaps so strongly about their later life, and so on. However, I do believe that automatic enrolment has been one of the most significant policy implementations of the past few years in terms of changing behaviour. We now have nearly 10 million people enrolled as a result, from over 1 million employers. That is a huge success. They seem to be remaining engaged and remaining saving, which is fantastic. We then have to ask ourselves, given also the ability for example to exercise freedom and choice at the age of 55, with those pension pots, what is the appropriate point at which to try to trigger engagement with them about their pension, the possibility of saving more, and that type of thing. We work collaboratively with a number of people in this regard. Obviously the



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Department but also the educational bodies, and we will for example be building a relationship with the new single financial guidance body when it comes along, which we think will have a strong role to play in this as well.

**Mark Boyle:** The other thing that is worth emphasising is the importance of continuing to educate that wider group of members, particularly on areas like scams. That is an area where the collaboration that we have been having with the FCA will result in, for example, an advertising campaign warning members about scams, and it is specifically focused at the member level, reflecting that fact, of the increased interest that they have.

Q207 **Nigel Mills:** I am tempted to ask if you still think there should be two pension regulators, or one or other should get all the powers.

**Mark Boyle:** It is a question that often crops up and I would expect that it will continue to crop up but the first thing to say is that the landscape of regulation is a matter for Government rather than for us, or the FCA. The one thing that has happened, and again it is an example of what has changed over the last couple of years, is that we have a much higher degree of collaboration and engagement with the FCA than was ever the case before, across lots and lots of different levels, not just through Lesley, given where she came from, but from chair through to working levels. The fact that we are going to have a joint strategy for the pensions area, which we will be developing with the FCA, which is to be published in the autumn, I think is a huge step forward. We have worked really hard to make sure that the gaps between us are limited but also that the duplication is minimised.

**Lesley Titcomb:** The other thing I would point out is that wherever you draw regulatory boundaries, there are always boundaries. For example, we also work very closely with the PRA. I sit alongside the PRA on the board of supervisors of EIOPA, the European authority, for example, in terms of the regulation of defined benefit schemes, which is much more like the prudential regulation of insurers. Wherever you draw the boundary, there is always a crossover issue. As the Chair said, when push comes to shove, it is collaboration across that boundary that is key, wherever it sits.

**Nigel Mills:** Is it in the right place, though?

Q208 **Chair:** Mark, I am conscious of time. The last word goes to you, Lesley. We may be seeing you again, because you hold the post until February of next year.

**Lesley Titcomb:** Until February, that is right, yes.

**Chair:** If, by chance, we don't exchange views in this formal gathering, can I thank you for the robust way you have always put forward your views to us, for the way you have tried to search for truth, and the way that we, equally, as a Committee, have tried to search for truth. We are



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immensely grateful to you and we are mindful of the journey that you have been on and where we are now compared with where we were when you took over. A huge thank you.

**Lesley Titcomb:** Thank you very much. I appreciate that.

**Chair:** Don't think, quickly, that we are not going to ask you back.

**Lesley Titcomb:** Of course, indeed. If you need to do so, please do. Thank you.

**Chair:** Thank you very much.

### Examination of witnesses

Witnesses: Guy Opperman MP and Ronan O'Connor.

Q209 **Chair:** Could you introduce yourselves?

**Guy Opperman:** My name is Guy Opperman. I am the Member of Parliament for Hexham and I am the Minister for Pensions and Financial Inclusion.

**Ronan O'Connor:** I am Ronan O'Connor. I am the deputy director in DWP and I lead on defined benefit policy.

Q210 **Nigel Mills:** Minister, we have seen some hopefully scurrilous, speculative newspaper reports that possible the Secretary of State is less keen on the pensions dashboard than you are. Can you dispel these concerns for us and update us on where we are on the pensions dashboard?

**Guy Opperman:** The long and the short of it is that you will understand that this is a matter upon which Government do have to make a decision. No decision has been made. When a decision is made, it will be communicated in the appropriate and proper way and it is probably not appropriate for me to comment any further than that.

Q211 **Nigel Mills:** You have been a little clearer in the past in your support for the pension dashboard. I seem to recollect a quote of, "It will happen" coming out of your mouth. Should we be concerned that there is a realistic prospect that this will not happen now?

**Guy Opperman:** Clearly, you can quote back to me things I have said in the past and I fully accept statements in the past. That having been said, as you know, the Department and Government have been doing a feasibility study. They are reviewing that and a decision will be made. When a decision is made, I promise you that we will communicate it in the usual way. You and I know that that is the only comment that I can make.

Q212 **Chair:** What is the usual way—sorry, Nigel—because one way would be a statement that we could question you on the floor of the House?



**Guy Opperman:** There is a variety of ways that Government does this—you are way more experienced, Chair, than I am in these particular matters—and different Governments have done it in different ways. There can be a written ministerial statement. There can be an oral statement if the Speaker grants it.

Q213 **Chair:** Or an urgent question?

**Guy Opperman:** Or an urgent question. I think it is more particularly the communication, though. If you are going to make a statement of what the Government intend to do, it is not done by a UQ—you would turn it into a statement technically—but I do take your point.

Q214 **Nigel Mills:** Without getting into words you cannot say, presumably you still accept we have a big problem in the pension landscape of people not understanding how much saving they need for their retirement and not understanding how much they have, given it could be across multiple auto-enrol schemes if they have moved round employers. Do you accept that fixing the knowledge gap, so that people at least understand where they are in a way they can understand, is vitally important to making the pension system work, the choice of retirement work, otherwise we end up with a whole load of a mess, don't we?

**Guy Opperman:** You know I cannot be drawn on the dashboard but I will make a couple of key points that I think do help you. The first is that the very first thing this Government did after the last election was to introduce the single financial guidance body. That was the very first Bill that we brought before Parliament that we debated. It started in the Lords. It was amended at great length.

At the heart of that is a greater understanding of financial capability; at the heart of it is better guidance in relation to pensions, and there are definite measures going forward to assist in this process, as you rightly identify.

Yesterday I met with Hector Sants and John Govett, who are the Chairman and Chief Executive of the super financial guidance body. We have set up this organisation to take it forward. I would give that as a very good example of work we are already doing.

The second is that you will be aware that Ruston Smith, who helped on the auto-enrolment review, is leading a taskforce to present a single or dual-page statement that will go out to every holder of a pension as to what it is their pension entitlements, rights and obligations are, going forward, such a very simple statement. You will be aware that other countries have done a similar thing and we are looking to copy that. In my view, it is a massive step forward in terms of greater understanding of that.

Finally I would make the point that auto-enrolment has clearly enhanced massively the number of savers into pensions. However, fintech is coming on and catching up as well and there is greater understanding in



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terms of long-term savings, given the various fintech companies that are getting into this space.

Q215 **Nigel Mills:** If they cannot get the data out of a pension scheme as to who has got what, there is not much for them to show people, is there?

**Guy Opperman:** The Department has done great work in terms of Check your State Pension, which you will be aware is a project that has been many years in the making. It is very successful. You will be aware that there are very positive steps in relation to the Ruston Smith programme to have a genuine understanding of a single or two-page sheet of what it is that you have.

Q216 **Nigel Mills:** That is not very fintech, though, a two page sheet. It gets 17—

**Guy Opperman:** If it is an annual statement, then I think it is something that you are getting that is comprehensible and it is of great assistance. Certainly all the sector is getting behind that.

Q217 **Alex Burghart:** Minister, just to go back to the future process around the pensions dashboard, you said that the Government have to make a decision on this. By when do you expect that decision to be made?

**Guy Opperman:** We are a little bit late on the making of these decisions but that would not be the first time the Government, in various shapes and forms, have been tardy in provisions of those decisions. I cannot comment on a particular date but it will be done fairly soon.

Q218 **Alex Burghart:** Within this year you think?

**Guy Opperman:** I would be very disappointed if it wasn't done this year.

Q219 **Chair:** Guy, before this scurrilous news story I think most members of the Committee were under the assumption that Government were backing this scheme.

**Guy Opperman:** It is a fair point to say that in 2016 the Chancellor set out—and I cannot remember the exact quote, doubtless you can go back to the specific quote in the Budget—an enthusiasm for a dashboard. How it is to be provided, and in what shape or form it is, is genuinely a matter for ongoing debate.

There is a host of different pension companies that produce their own internal dashboards, but there is an acceptance that there is a proper and legitimate debate as to whether one has a single or multiple dashboard, whether the host is a Government organisation or a non-Government organisation, access to data and how you handle that particular data, whether there is any commercial benefit arising out of access of that data.

With respect, you should go back to the original statement from 2016 by the Chancellor as to how we look at the usage of data, going forward, for the provision of greater information for the man or woman in the street



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as to their pension assets, but then accept—as I think, to be fair, we all do accept—that there are a multitude of different issues that need to be decided as a follow on to that.

**Q220 Jack Brereton:** My question follows on from that about data. We have heard at this Committee before about the fact that the data of many pension companies is not in an acceptable standard, potentially. Particularly with older schemes, data has been lost and there are still a considerable number of paper records. Therefore, what I would like to know is what is being done to pressurise those companies to make sure that their data records are brought up to an acceptable standard?

**Guy Opperman:** It is fair to say that there is no statutory obligation—Ronan will correct me if I am wrong on this—at the present stage to compel them to bring—

**Q221 Jack Brereton:** Do you think there should be?

**Guy Opperman:** Let me answer the first question and then I will come to your second, I promise you I will.

At the present stage, I do not believe that there is a statutory process that compels them to bring that data, which is in paper form in some shape or form, into a data format. There is no doubt that there is pressure being applied to bring certain possessors of information—that is in a very traditional non-20th century, let alone 21st century format—into the 21st century so that that information is accessible, so that it isn't just a paper system on an ongoing basis.

Whether one would need to do a piece of statute to do that is a separate issue but there is certainly consideration of that. If I were to speak to the individual trustees of the various organisations who have only paper records, I don't think there is any doubt about their awareness that they need to update their records to a data format. They would be very clear of that.

**Q222 Jack Brereton:** But there is awareness and there is taking action to do something. I don't think that we have seen sufficient action so far in terms of those companies taking action, so do you think that further pressure does need to be applied to make that happen?

**Guy Opperman:** If we were to sit here in a year's time and have this debate and discussion, it would certainly be my wish that there would have been a change such that the individual trustees of those schemes had taken actions to put their information in a data format. That would clearly be a very good thing.

I am going to push back slightly. There is a proper, legitimate debate about the cost of that: who should bear the cost; whether they are able to do that if they are a really small scheme; access to said information; who that information goes to; what that data looks like; and the transport of that data. The idea that we would not rather have all



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information in accessible data format all of us can agree, but the devil is in the detail and there is significant detail.

Q223 **Chair:** You were on the record in 2017 saying it will happen.

**Guy Opperman:** I believe I gave statements in newspapers and held a consultation on the matter as well and various other things. To be fair, that was a consultation and a feasibility study that we are considering. To be fair, the Chancellor in 2016 made his views clear, as well, higher up the food chain than me, but there is a perfect legitimate consideration of the way ahead and the steps that can be taken and above that I cannot comment.

Q224 **Chair:** Very good. Can we move to our recent report that thanked, almost praised you in the way that you had brought together the trade union side, the Post Office and the employers to create what is in fact for this country a new product, which I think—with 40 years' experience here—may well prove to be the most important innovation that one has seen. Because it brings together two strains of different pension activity. On the one hand, people's natural wish to own their own stake but, at the same time, wanting their cake and eat it. What is wrong with that? They want collective cover as well. Could you comment—not being too modest, please—on how you see this as a possible development in changing the pension scheme in a way we have not seen for decades upon decades?

**Guy Opperman:** I am going to park my own modesty or immodesty and put that to one side. I am certainly not going to use analogies of having cake and eating it. I would seriously accept that the Department, to its great credit, has embraced the potential for CDSs as being a potential way forward that we can get behind and we can facilitate into statutory form on a long-term basis.

It is fair to say that I have held several meetings with the CWU and with Royal Mail. I am unashamedly a supporter of unions. Not everybody has that view but I am wholeheartedly a supporter of them. I am particularly a supporter of them where they are being practical and pragmatic, which to its great credit the CWU is being. Those two organisations when they have come into the Department, and they have had extensive discussions with Ronan and his team, have been—I used the expression I think on the last occasion I was here—joined at the hip in their determination to see through a project that is innovative, different and, you are right, has great potential.

If it helps you, clearly, I think what I am supposed to say is I will provide a detailed report in the usual way by Government within the eight-week statutory period to your report. I think what I am not supposed to say is I welcome your report and it makes some very good points. I have not told Mrs Opperman about this but I confess I am taking your report away on holiday to have a read through, because I have not read it in detail. I have read the edited highlights, which is an enthusiastic endorsement of



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CDCs and an urging of Government to get a move on to the best of their ability is how I would summarise it. If it helps, I would make a—

Q225 **Chair:** You have the points, so I would not take it away with you on holiday.

**Guy Opperman:** In this job there is a lot of very heavy duty reading that you have to do, which you don't get a chance to do necessarily when the House is sitting particularly when we are having quiet weeks like this week.

The serious point is that we are working very much with the two organisations. Obviously on this I have kept my opposite number, Jack Dromey, very much appraised. We had a cross-party meeting where I and Jack, the CWU and the Royal Mail all met and discussed the matter. I have taken the view—it was my decision to do so—that it is better to involve Jack very much in this process. He obviously has tremendous links to the unions. I also want him to be fully informed, not only of what the Government are trying to do but also whether there are bumps in the road and difficulties and the like.

When I gave evidence to you on the last occasion with Ronan, we tried to set out a broad timeframe around which we are working. We have communicated that in broad terms to the two organisations and I would like to think we could not be doing anything more to facilitate the ongoing successful outcome that we all seek.

**Chair:** Congratulations. Thank you.

Q226 **Chris Stephens:** Turning to The Pensions Regulator and the new chief executive, Minister, could you outline to us what qualities you would like to see in the new chief executive? What you are essentially looking for as a Minister.

**Guy Opperman:** You will be aware, as was said just now, that that is a decision obviously ultimately up to the TPR board. I made it my business to meet the regulator last Thursday. I spent the whole day in Brighton sitting down with Lesley and Mark, and engaging in series of meetings with all the various—effectively, what you and I would call—department heads. It is now a 600-man-and-woman organisation with a multitude of different areas to cover, and I tried to do a deep dive into each and every aspect of it.

The pensions landscape is patently changing. The regulator is patently changing. They have set out a blueprint for the TPR future, which I think is something that, in broad terms, they are embracing and clearly that is the roadmap for the future for them and I think that is the best way forward.

As the Chair and others were saying, it is a very different organisation compared with where it was in 2015, and I suspect very different as well as to where it was in 2010. Also bear in mind that when the Labour



Government set it up, we are not even talking 18 years ago, so this is a very young organisation that is evolving with the events that it has to deal with and it is expanding dramatically.

I looked at headcount. I may not be exactly right but, roughly speaking, headcount in 2014 was 456; a headcount in 2018-19 is 620. That is a dramatic increase in what it is doing. I looked at headcount in relation to—so we are focusing very much on DB today. It is patently clear that is a very, very key part of what the regulator does and no one disputes that, but they have more than doubled the number of people who were focused upon defined benefit in the organisation in the last couple of years. I say “couple”, three or four years. That is a dramatic change in the way that organisation is evolving.

You talk about who the particular person is. I know that the Chair has very strong views on this, which he has communicated privately to me. I would make the point that it seems to me there are four key aspects to this. You need someone who is a good manager, who is going to manage over 600 individuals in an organisation. You need someone who is a good regulator because that is fundamentally—the clue is in the title. I think your Chair would also urge that such a person was more of an enforcer, going forward, of TPR future and the work it has done and, also, someone who can communicate what they are doing. That is a big ask.

It is tempting to focus on the area in which there is difficulty, which clearly, as we are discussing today, is DB, all right, and to say, “You have to have someone who is really focused on that”. I would just counter that slightly with a comment, which would be: the unspoken success story of successive Governments over the last 10 years is auto-enrolment. One of the reasons auto-enrolment is this wondrous success story, from the Labour Party to the Coalition to the Conservative Party, is because The Pensions Regulator has run this system so well, has 1 million employers signed up, has nearly 10 million employees signed up and has done all the enforcement, all the regulation. All of that part of it on an ongoing basis. Putting it bluntly, that means that that is a massive part of what the regulator does but it is an unsung part is my point.

I would make the point that there are many different aspects. I knew that before, but, having gone to see the regulator and spending a deep dive day there on Thursday, I was particularly impressed by the multitude of different things that they are doing, which is not just DB. I don't know if Ronan wants to add anything that I have missed on that

**Q227 Chris Stephens:** That is a fairly full answer, Guy, but what I was thinking, in terms of what you are looking for in a new chief executive, is to keep the cultural change going because there has been positive change there and it is keeping that going. That is essentially something that the Department is looking to take over.

**Guy Opperman:** I would not disagree with that in any way whatsoever, and we have a good record as well. If I look at the most recent



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appointment that we have just made, Hector Sants to be chair of the Single financial guidance body is a significant figure to run an organisation like that, which is a very proactive intervention list person with a very proven track record from being chairman of StepChange to head of a merchant bank, that is a good cross-section, someone who can really drive that forward. I would welcome someone like that.

I have made the point. If it helps you, Chris, I have spoken at about 15 different events over the last three months, effectively, trying to discuss, debate and go through the White Paper with various organisations and to various pensions' conferences. I always include in the speech to these organisations, "Don't be shy. Please apply".

**Q228 Ruth George:** Thank you very much, Minister. Turning to look at the White Paper on the consultation on DB, which has just come out, and on the penalty regime. The White Paper in March proposed or said it is expected, that there will be a penalty regime linked to the contribution notice, effectively creating the possibility of a highly punitive fine. That has been translated rather than being linked to the contribution notice to a penalty of up to £1 million. Bearing in mind that Sir Philip Green settled for £363 million, what sort of difference will a £1 million fine have made?

**Guy Opperman:** If you have not had the benefit of this wondrous colour chart that I am now going to hold up, which looks like it has been acquired from—

**Chair:** I can certainly see the colours but nothing else.

**Guy Opperman:** I will happily give you a copy but it is also in the consultation that we launched on 26 June, which goes until 21 August, on the fines and the sanctions. Basically, when the White Paper comes out, we straightaway consult on whether we have it right or do not have it right, and obviously I come here and I listen to you and wait for your report. I would refer you to that.

The key point to make is this: there is a difference between the £363 million contribution, which Philip Green made in respect of BHS, to the different types of penalties that we are now proposing. The reason why the £1 million civil sanction exists is that that is a lesser penalty than if someone has done something of a criminal behaviour.

There are two different standards of behaviour. If you identify a particular instance and the regulator gets involved, the regulator could take the view that this is not a criminal matter and it is only a civil matter, which obviously has a lower burden of proof and has a lower-fine system. It is an up-to-£1 million fine. But what we are consulting on is in relation to the criminal matters, which would be an unlimited criminal fine. Now, "unlimited" is as long as a piece of string. How it got translated in the press is that the high point of any penalty was only going to be a £1 million fine. That is not the case.

**Q229 Chair:** Therefore, it was not a misprint. We thought maybe you meant £1



billion.

**Guy Opperman:** I think how you put it in the press was that you thought the accounting—I am not going to say that Diane Abbott had done the accountancy but that we had missed off a few noughts, in circumstances where that was not the case, it is that the civil fine is £1 million. The criminal fine is unlimited.

Q230 **Ruth George:** It was very much talking about a penalty being linked to the contribution notice. We have just been hearing from The Pensions Regulator about the amount of time and effort that they get tied up in in the courts. There are going to be far more cases that it is going to be possible to prosecute on a civil basis than on a criminal one. Do you not think that there would be merit in a reasonable civil penalty deterrent, as was proposed by this Committee and seemed to be proposed in the White Paper in March?

**Guy Opperman:** I will let Ronan come in because he has detail on that particular thing. I would stress, though, that if you look at this there is a series of different stages. It depends on the nature of the culpability and the wrongdoing as to whether you are going to require a civil penalty or a criminal penalty. That is set out in our consultation of 26 June. Ronan, if you want to come in on this.

**Ronan O'Connor:** What we have done is, rather than just looking at the issue of fines on its own, we have looked at the whole suite of tools that the regulator has. We have taken some of the lessons from auto-enrolment, where they have a suite of escalating fines that have been very useful. We have brought that in for the first time, or we propose to bring that in, to defined benefit.

We are also attaching that to new wrongdoing. Therefore, we are giving them a set of suites that are again designed to impact on people's behaviours. That is up to £1 million. The reason we came to £1 million is that is the level that the FCA operate at, so it is compatible with regulators in other spheres and we would see that there is something that the regulator can act on more quickly but it is going to be on breaches of administration.

What we are focusing on is "wilful and reckless". We are looking to criminalise some behaviour. If you are criminalising some behaviour, that is an incredibly high bar and it is appropriate for the courts to decide the appropriate criminal sanction. On that we want an unlimited fine. We do not want to fetter the court's ability to have a fine.

If you look at some of the cases that we look at, if the regulator has cause to believe that there has been wilful and reckless endangerment of the pension fund, such that it has to issue a contribution notice, at the same time the regulator is going to be considering, "Was that behaviour so bad that I should now refer this to the court as well?" I think that is appropriate. You are going to have a continuation notice of a significant



amount but there is also going to be a criminal sanction levied against you, and that could be an unlimited fine or it could be a very, very large fine.

The determining factor for that fine by the courts would have to be the detriment of a scheme. If you are looking at a very large contribution notice, it seems to be logical that you are also looking at quite a large fine if that, indeed, is the criminal sanction the court applies.

**Q231 Ruth George:** Thank you very much. We heard in the earlier session—and I think you were here, Minister—that The Pensions Regulator will very much welcome the new powers that are coming in and the sanctions. It has a lot of cases ongoing on now. They are coming in all the time and legislation will probably not be in place until about 2020.

The White Paper in March proposed looking at the feasibility of a penalty regime applying in respect of acts of omission prior to enactment and, in particular, after the date that this document is published; in other words, in March. I am sure that will be particularly welcomed by the regulator if not by perpetrators.

The consultation paper at the moment, while it quotes that passage, does not explicitly state in the proposals that it is something you are looking to take forward and there is no question about the feasibility within the consultation document from June, so is this something that you are still seriously looking at doing and you still hold that in place, that companies should now be looking at what was proposed in the March White Paper and be acting in accordance?

**Guy Opperman:** The short answer to it is yes. We want companies to have been changing their behaviour since March 2018. We specifically set that out at paragraph 17 on page 12 of the White Paper. We did look at—and it is probably right that I address this in terms of retrospective behaviour, because I know that that is a matter that the Committee is interested in—to what extent the Department and the state is able to look at criminal matters in retrospective behaviour and we have taken advice from the Attorney General's office. The advice, most robustly, is that that is not appropriate in terms of a retrospective matter on a criminal basis. There is, I think only in relation to The Holocaust and the War Crimes Act 1991, an indication that you can judge people on past behaviour with new law basically.

We can have a separate debate about whether individuals involved in various companies—whether it is the Carillion investigation—are guilty of the criminal act of fraudulent trading or wrongful trading or whatever, but, in terms of what we as a Department can do through a White Paper and then future Acts, we believe that the criminal matter is we cannot do anything retrospectively as advised by the Attorney General's officers. But we can, in terms of these matters, set out a change in behaviour from the date of the White Paper. That is something that Government have done in the past and, provided it is sufficiently flagged up as being



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appropriate, that is something that we believe that we can do going forward.

Q232 **Ruth George:** You believe that that is enforceable? Because unless it is enforceable it is not going to be effective.

**Ronan O'Connor:** I think on criminal matters we cannot criminalise behaviour in the past, and until we are certain about what the actual criminal behaviour is, until we have defined it—and we still have a consultation—you cannot say, “We are still deciding but, once we decide, even when there is some uncertainty—” so there is a question.

In the past where we have in pensions’ law looked at retrospection, it has been where the courts have overturned a definition that we long held, and we immediately said, “We are going to change that definition to retain its original meaning and it will be retrospective”. That is very, very clear. In 2008 when we were looking at some changes to “material detriment”, we had information from the regulator about acts that were being contemplated so we could say, “From this date we intend to change the law”. That is not the case here because “wilful and reckless” describes a type of behaviour, not particular actions.

In terms of retrospection, the outcome from “wilful and reckless”, which may well be the regulator investigating and looking at a contribution notice, will be retrospective as to an arraignment set in terms of looking backwards and being able to look at the date on which you can calculate the amount and so on. People that are, right now, taking decisions that turn out in the future to have had a detrimental effect will be affected in the future by what we are doing now. But in terms of us saying, “We have criminalised this behaviour” and people who are acting, although outside the spirit of what we would like, it is just not done to go back and say, “We have now criminalised that behaviour and we are going to—”

**Guy Opperman:** Can I also help? It is important that the Government set out a deterrent effect. By deliberately putting in the passage that we did, at paragraph 17 on page 12, that effectively trustees and businesses should be aware of these matters being taken into account “from this day forward”—the publication—it has definitely had an effect. The reason we know that is that the whole host of businesses and trustees are now conscious that we are looking at this particular matter and that we are expecting them to change their behaviour from this word “now”.

We fully accept it takes a while. I have to wait until the Queen’s speech of next year. Even though we are trying to get this Bill prepared way in advance—I am midway through most of my consultations, I want to be drafting this year so that I am absolutely match fit and ready to go when the Queen’s speech comes next year—I accept that it is not going to be until the end of 2019, maybe 2020 that the final statute will get on the books. Therefore, my deliberate intention is to flag up what we propose to do. The impact of that is it changes behaviour.



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**Q233 Ruth George:** Do you not think that that impact would have been stronger had it been more clearly set out in the consultation paper that came out in June? That that was absolutely your intention because, surely, that will be strengthening that deterrent effect?

**Ronan O'Connor:** Defined benefit is all about the choices that trustees, employers and the regulator have to make. It is all about behaviours and it is scheme-specific. Trying to simplify things to say, "This is a wrong decision. Do this. Don't do that" does not work in a world in which you are weighing up the implications of: this deal that we are about to do may strengthen the employer and, therefore, may benefit the pension fund but, in the meantime, we might have to either lengthen the recovery plan or divert money from a pension fund into the employer or, indeed, into another payment.

What we are trying to do is to say that we want to look at behaviours and a range of behaviours. If we were to try to describe, "Wilful and reckless" only means this one thing; for example, it only means ignoring a contribution notice" that might be a good thing but, to date, we have not had anybody who has ignored a contribution notice. What we are trying to do is affect behaviour. That then means that we use "wilful and reckless" in the widest possible sense, and we allow the regulator and the courts to determine at the time whether there is enough evidence to say that what they did was wilful and reckless.

It is a very strong standard by which boards should be judging their behaviour and it is right that we make them think and don't oversimplify and say, "As long as you just don't do that you are okay".

**Q234 Chair:** Can I just sum up on this because we need to press on? You are trying to set a new standard of behaviour, which has been outlined in the White Paper. There will be legislation coming but you will expect all the relevant authorities to use the existing law that they have to guarantee that new standard of behaviour.

**Ronan O'Connor:** Yes.

**Chair:** Thank you.

**Q235 Rosie Duffield:** Hello. Minister, your consultation does not currently propose adding dividend payments to the regulator's notifiable event regime, saying that dividends are a matter for the Department of Business's ongoing review of corporate governance. Depending on its findings, are you open to potentially reviewing whether excessive dividends should be included in that?

**Guy Opperman:** Yes.

**Rosie Duffield:** Great. Okay.

**Guy Opperman:** I thought I would give you a short, simple answer.

**Rosie Duffield:** Thank you. That is the best answer we have had all



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morning.

**Chair:** I think that is brilliant, don't you?

**Rosie Duffield:** Yes, correct.

**Chair:** Absolutely great. We have two other questions, so maybe—

**Guy Opperman:** I could give you a longer answer to that.

**Chair:** No, that is very, very clear.

**Guy Opperman:** It is a matter for BEIS. Once BEIS comes back if it—we are one Government. If it changes its views or if it comes up with a view then we will accord with that view.

**Chair:** It is a wonderful answer, thank you.

**Guy Opperman:** I thought you would like it.

Q236 **Jack Brereton:** When the Pension Protection Fund gave evidence to us, it particularly raised the point about the technical provisions metric becoming increasingly insufficient to cover the risks to PPF. It is noted that three out of five schemes have technical provisions currently below the level that will be required to meet PPF benefits. Do you see this as a concern?

**Guy Opperman:** I am going to push back on the question because the implication from the question is that if three out of five are effectively heading for the PPF that will mean 60% of all of the schemes that we are concerned with would be in significant difficulty heading to the PPF. The reality of the situation in this organisation is that only 2% of scheme members are in the PPF, not 60%, and that is 10% of all schemes. There is a difference between where they are at the present stage and their likelihood of ending up in the PPF. The question implies massive alarm bells that the PPF is going to be swamped by 60% of all schemes.

Therefore, I want to push back on the presumption of the question because the reality is that there is a list on the PPF website of organisations that are in the PPF. The figures themselves, the fact that it is 2% of members but 10% of schemes gives the indication that the vast majority are very small schemes that have got into difficulty. It is certainly not our expectation, in any way, shape or form, that three out of the five DB schemes that are in existence are going to end up in the PPF.

I don't know if Ronan wants to come in and expand upon that because he does this in a lot more detail than I do.

**Ronan O'Connor:** I think that is right, The PPF were not suggesting wholesale change, so I think it is saying two things: one is they were describing the state of DB funding at the moment and, as Lesley has said, it is important to understand that the system that we have, which Parliament set out, is a system of risk management. It is not a system of



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risk elimination. Within our DB framework we give the regulator a very difficult job, which is to get right into the middle of all these difficult decisions and help people manage risk. In other words, what is the correct amount of risk to take?

What the PPF is talking about there is that, depending on the maturity of its scheme, the amount of money they may need now to demonstrate they have enough money is less than the amount of money that it would cost them to go out to the insurance market and buy PPF cover. That is even more expensive. It is not saying, "They don't have enough money. Should they go into the PPF for the PPF to cover them?" it is just making the point that these schemes could not go to the insurance market and pay the 30% premium. That is the first point. It is not saying we would necessarily lose on each one going in.

The other point is that, when we are thinking about scheme funding, because of the recovery plan we allow risk, we allow a deficit and we allow them to manage that over a period of time. It may well be that right now they are running a deficit against a PPF buyout but, as time goes on, their position will improve. That is what the system is about.

**Q237 Jack Brereton:** Although PPF suggests that the current aggregated 179 deficit of all the schemes is £85.6 billion.

**Ronan O'Connor:** Yes. That would be the cost of going to an insurance company and buying PPF cover, not the cost that it would cost the PPF. You will know this from looking at pensions, there are lots of different metrics and sometimes it is not quite clear what they are measuring. The PPF 179 is the cost of buying an insurance market cover, so yes there are deficits but the system explicitly allows for those deficits.

We know the cost to the system of having no risk whatsoever, and it is up to £1 trillion, but we believe that our system uses the money it has most efficiently and manages those risks most efficiently.

**Guy Opperman:** Can I help you with that? Having pushed back at the question rather robustly, it is fair to say that, first of all, the White Paper does set out that the regulator is going to revise the DB funding code. My understanding is the TPR is going to consult upon the nature of that revision on an ongoing basis. I am not sure it is going to be this year. It will probably be next year. Clearly, there is a desire to strengthen the expectation for all schemes to have a long-term objective that is an improvement on the present basis.

My summation of that would be: we accept that the present situation is not an ideal situation and that the DB funding code needs revision. It is very complex and—Ronan is right—there are a multitude of metrics by which you judge the valuation of a particular scheme. How you get that code, how you then apply it to individual schemes that are vastly different, is going to be difficult but we are certainly on it.



Q238 **Jack Brereton:** Thank you. I was going to ask about the code next—

**Ronan O'Connor:** I can add to that. One of the things that I don't think your question will cover, which is what we think is one of the key changes we are making, is requiring every pension scheme to be explicit about what their long-term objective is. Is their long-term objective to buy out an insurance market? If we set up a consolidation regime to move to consolidation, is it to move to self-sufficiency or do you require ongoing support? The complicated nature of scheme funding is that the deficit, part of that calculation depends on what you are aiming for.

The PPF's comment, which we agree with, is that schemes that are targeting the wrong target may well be under calculating the amount of money they need in a small number of cases. By requiring these schemes to have a long-term objective, to be quite explicit about what they are trying to do, will feed back into the valuation process and will then raise in the shorter term for some schemes that are not doing it properly, the amount of money they should be targeting. There are two things. It decreases the risk for the members, decreases the risk for the PPF. It makes the conversation between the trustees and the employers much easier because they both know what it is they aiming for, and that will then be reported in the chair's statement.

We are requiring all DB pension funds to have a chair and to set out in a statement what their long-term objective is, what decisions they have made to pursue that and how they are doing against it. That will be made to the regulator probably every three years. Again, this is back to trying to change behaviour, trying to encourage good governance, and we think that will be quite a significant change that is different to the fines and the sanctions regime, but it is about decision-making and what it is you are trying to do.

Q239 **Jack Brereton:** You said there is only a small number, potentially, who are affected by this ruling.

**Ronan O'Connor:** Yes. Going back to the Government's position, the defined benefit regime is working very well, except in a small number of cases. We have seen those very small numbers of cases and how devastating they can be for individuals.

Q240 **Jack Brereton:** What percentage would you suggest?

**Guy Opperman:** Only 2% of scheme members are in the PPF. The message that one would give—and I have given repeatedly, and successive Ministers have given and I think this Committee accepts—is that the vast majority of people who have a DB scheme will get paid in full.

**Chair:** Alex, why don't you complete our session please?

Q241 **Alex Burghart:** Yes, a very quick question about commercial super funds, the first of which has started to launch. How do you feel about



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this, given that your consultation on consolidation has not yet launched?

**Guy Opperman:** Super funds who operate before the new authorisation and legislation regime is in place are not operating in some sort of regulatory vacuum, is the key point I would like to get across. As a DB pension scheme, they are still subject to and are required to comply with the DB legislation that presently exists.

If I can give a comparative example, we set out the Master Trust regime in statutory form and then we did the regulation that followed. I did the regulations in a Statutory Instruments Committee, literally two weeks ago, when it was passed by the House on the nod and by agreement but some many months after we had passed the Act.

A similar point applies in relation to super funds. The DB system is presently legislating for it. As a Government, we accept that we need to do more and we will be legislating to do more to take super funds into appropriate proper legislation, going forward. That is something that we are going to do and we are going to be doing it as soon as we possibly can.

Q242 **Alex Burghart:** Obviously speed is important in this area.

**Guy Opperman:** Of course.

Q243 **Alex Burghart:** One of the things that we have been concerned about is regulatory arbitrage, sponsors using super funds as a way of de-risking on the cheap. What are you going to do to address these concerns?

**Guy Opperman:** We do not see super funds as an alternative to buyout. The super funds looking to come into the market should be seen as a new option for certain DB schemes and employers who are relatively well funded but who cannot afford buyout with an insurer and are unlikely to be in a position to do so in the future. We are proposing to regulate. We believe we have the sufficiency of regulations for the present purposes, but we do want to regulate further and we are going to be doing it as soon as we possibly can.

Q244 **Alex Burghart:** Just to end where we began: what does “as soon as we possibly can” mean?

**Guy Opperman:** Ronan and I were whispering at the back. My understanding is that, in relation to super fund regulation, it is not something I can do by secondary legislation, so I have to do it by primary legislation. My options on that are fairly simple: either I wait until I get a piece of primary legislation as part of a larger DB Bill, which is what I am planning to do. The Department is in the process of, and I would like to think way ahead of the curve, given that it is not coming in until next year. We are doing our consultations now. We want to be drafting this winter.

The alternative is, if it was genuinely urgent, I could apply—although this is very difficult to do as you know—to bring in emergency legislation if



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that was the situation. I don't believe that is the situation at the present stage. The matter is under review but it is a matter that can be dealt with through DB legislation at the present stage. The organisations who are contemplating becoming super funds, I think are acutely aware that legislation is coming down the track and that they are being closely watched and monitored and are working with the Department and with the regulator.

Q245 **Chair:** What do they bring to the table, Minister?

**Guy Opperman:** I am going to pass over to the expert on the process. There is potential for the super funds, whether it is in consolidation or a greater capacity. The person I know who is taking forward one of them is an enthusiast for them and has been before this panel in the past but, Ronan, do you want to add in your take?

Q246 **Chair:** Is it that they are going to do the investment strategy better and, therefore, get greater gains on return on capital?

**Guy Opperman:** That is it.

Q247 **Chair:** If they are not doing that what is the whole point?

**Ronan O'Connor:** The benefits of scale are backroom and administrative. The costs are well known but that is not the primary reason for doing it, so, yes, individual pension funds can save money by amalgamating. The greater gains are getting access to investment strategies and investment markets by virtue of scale. If they can move from a pension fund of being a couple of hundred million into the tens of billions, and be part of that, then they should have better access to better investment strategies, better investment advice.

The other thing that consolidation will bring is additional cash. There will be a price that the employer and the fund has to pay to convince the trustees that this scheme is better off in a consolidator than it is staying with the employer, so this is around: how much additional funding and investment can the employer attract to put into the pension scheme to decrease the risk for members in that pension scheme? Along with the additional investment that the consolidators are bringing that should mean that those pension schemes will have less risk for a member. Therefore, it is a better investment strategy but just cash as well.

Q248 **Chair:** I still remain apprehensive.

**Ronan O'Connor:** As we do, which is why we believe we have to legislate.

Q249 **Chair:** They are being set up now and you are going to bring in legislation. If not retrospectively will that legislation cover, from that day forward, the activities of these funds even if they have been established before your Bill comes back?



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**Guy Opperman:** That is about four different hypothetical questions that I will attempt to answer. The answer to that is that they are covered by the present DB legislation, so that is the basis upon which they are done. If I do a consultation, much as I have done with the White Paper, I can try to get the changes that I am about to introduce by future statute written into the White Paper. That will then strengthen the way in which the individuals are then judged, which is exactly the same approach that we have tried to do in the White Paper. Ultimately, it will not be in effect until I bring in the new statute.

**Chair:** Very good. Many thanks.

**Guy Opperman:** My thanks as always.

**Chair:** Again, congratulations on the new initiative, the Post Office scheme. It has great potential I think.

**Guy Opperman:** Thank you. We are working on it.

**Chair:** Thank you very much.