

Introducing Pension Regulation

Further Consultation Response Summary

1. Background to the Further Consultation

Pension arrangements in Jersey are presently only approved as a product under Part 19 of the Income Tax (Jersey) Law 1961 (**Part 19**). The functionalities of approved Jersey pension arrangements may be regulated by the Jersey Financial Services Commission depending on whether they carry on some other form of regulated business, such as trust company business, insurance business or investment business. Where pension schemes form part of an international group, they tend to be regulated by foreign regulators. Some pension plans, however, operate outside of regulation and any direct regulatory supervision.

The Government of Jersey issued its first consultation paper on the introduction of pension regulation into Jersey in November 2018¹. This consultation paper focussed on whether local pension arrangements and pension related activities in Jersey should be regulated, how and by whom. The feedback was generally supportive of regulating all Part 19 approved pension arrangements and the pension activities carried out in respect of them.

This feedback was published in the second consultation paper issued in December 2019². The focus of the second consultation paper's additional proposals was primarily what should be the principles for regulation of pensions in Jersey and how the relevant authorities and agencies should work together.

2. Executive Summary to the Further Consultation

The consultation generated 25 responses in total of which 18 were from industry participants and 7 from individuals.

The consultation paper had 9 questions: these questions fell into 7 key topics:

- (i) Principles of Scheme management and accountability
- (ii) Lay Trustees
- (iii) Records
- (iv) Reporting
- (v) Co-operation with relevant authorities
- (vi) Remit of the Ombudsman
- (vii) Regulation of International Savings Plan

Several respondents made further comments on the proposed approach Government had determined to make following the first consultation and the timing of such proposals.

Set out below is a high-level summary of the responses received by Government.

¹ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/CD%20Consultation%20on%20Pension%20Business%2020191115%20JR.pdf>

² <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Introducing%20pension%20regulation%20feedback%20and%20further%20consultation%2020191218%20CB.pdf>

(i) **Principles of scheme management and accountability-** Respondents were generally supportive of such principles, but the majority made a request for Government to keep pension regulation proportionate and focussed on specific risks applicable to Jersey pension plans (where there was a regulatory gap) rather than adopting a blanket approach. A number suggested Jersey should make use of guidance and tools offered by UK Regulator with a view to keeping costs down. Also, it was suggested where there are Group schemes regulated in other equivalent jurisdictions, such as UK, these should be exempted from additional regulation in Jersey. Overall it was felt that more detail on how the standards or requirements were to work was required.

(ii) **Lay trustees** – there was a mixed response as to whether they should be regulated or not. It was generally considered unhelpful to regulate them in the same manner as professional trustees, but all respondents supported the principle that there should be some standard level of knowledge and understanding with a CPD training requirement of lay trustees. Many suggested using the online UK Trustee Toolkit.

Some respondents were concerned that if lay trustees were regulated, they would struggle to find candidates particularly where the scheme is an employer scheme with the board constituted from representatives of the employer and its employees. One respondent suggested adopting a model similar to the regulation of 'Natural Persons carrying on a single class of Trust Company Business' rather than adopting the level of regulation such as applies currently to ordinary Trust Company Business. A couple of respondents noted that professional trustee and corporate trustee had been conflated at certain points in the consultation, but that not all corporate trustees were regulated, citing in-house employer trustee companies which do not hold themselves out to others as offering trustee services. Further clarification was sought as to how it was intended such corporate trustees should be regulated.

(iii) **Cooperation with relevant authorities** -all supported full cooperation with the Regulator and Comptroller, and to create an information gateway between the two.

(iv) **Record keeping**– the main concern was to keep this obligation reasonable and proportionate. Generally, respondents felt more detail on these obligations was required before they could comment further.

(v) **Reporting** - the requirement for reporting was generally supported, but it was felt that care needed to be taken to ensure the obligation remains relevant to the specific scheme types and that appropriate member data privacy is maintained. Many respondents said care was also needed to keep the proposed reporting obligations reasonable, proportionate and cost effective and more detail was required.

(vi) **Remit of Ombudsman-** all respondents supported clarification of the Ombudsman's remit and for it to extend to all Jersey pensions plans and not just those managed by financial service providers. The main concern was the cost impact of increasing its remit and how that could lead to an increase in costs to the consumer.

(vii) **Regulation of International Savings Plan** – Various industry members through the Jersey Finance suggested that regulation of these plans should try and dovetail with existing regulation of providers under different Codes of Practice to avoid duplication and avoid any question about their historical regulatory position.

Industry respondents were divided as to whether this form of regulation should fall within the concept of pension regulation, particularly given their different tax treatment.

- (viii) **Staged approach** – A number of providers felt that a staged approach to allow providers and unregulated schemes time to meet the new obligations and put in place the relevant changes would be beneficial. They also felt it would be beneficial to stage the introduction of pension regulation so as to understand how each set of changes played out in practice, although others said introducing regulation piecemeal was not helpful.
- (ix) **Additional feedback on initial proposals** – Concern was raised by those non-industry respondents as to the proposed regulation of Self-Invested Pension Plans (approved under Article 131B of Part 19). Respondents' concerns focussed on the lack of additional consumer benefit in imposing such a change as these plans are already subject to an annual supervision requirement by Revenue Jersey (they are obliged to submit their annual accounts to Revenue Jersey for its review), and with a likely adverse outcome of an increase in cost to the individual for the management of such plans.
- (x) There was also significant concern from international pension schemes and their providers as to the risk of 'double compliance burden' where the regulatory provisions Jersey adopted did not match those already applicable in other jurisdictions. Certain respondents felt this might have an adverse impact on an already limited market for pension provision in Jersey. Many respondents said that regulation of pensions should be targeted at achieving better outcomes for the ultimate consumer, higher quality, lower cost and better security and better control of funding rather than be a "tick box" exercise.

3. Principles of Scheme Management and Accountability

These principles were broken down into requirements relating to:

- (i) Governance standards
- (ii) Conflicts of Interest
- (iii) Communication with members

(a) Governance standards

Respondents were supportive in general of the governance requirements. However, a number sought clarification as to the proposed definition of 'governing body'. Many respondents emphasised the need to keep such standards and obligations reasonable and proportionate, e.g. regularity of meetings to be commensurate to size and activities of the scheme.

One respondent suggested an additional governance requirement was needed for the governing body to monitor the employer covenant of any defined benefit occupational pension scheme. This was helpful.

There was some disagreement that the responsibilities of the governing body once identified needed to be divided, as in practice trustees as the governing body delegate several of their functions to administrators and would not separate them out between board members. This criticism is recognised as fair. It is rather intended that if the governing body, having identified their duties, chose to delegate to one of their number or to a third party, this needs to be captured in a written agreement or terms, and if outsourced, the governing body should follow the JFSC Outsourcing Guidance.

Some respondents questioned, particularly in the case of lay trustees, the appropriateness of applying the same level of key person background and suitability checks as apply currently to registered persons. Respondents felt this risked discouraging good candidates from applying as volunteers. Others questioned if exemptions could apply if a person was already approved under an alternative equivalent regime such as the FCA's Senior Managers and Certification Regime.

All accepted it was appropriate to have a complaints procedure. Certain respondents which operate from the UK wished for any such requirement to dovetail with their existing regulatory requirements or to be exempted from them with only a requirement to signpost the Channel Island Financial Ombudsman as the point of appeal. Further consideration will be given to such an approach.

Respondents agreed in principle with the need for separation between the scheme and sponsor. However, certain respondents identified that in some cases exceptions should apply in relation to 'self-investment', i.e. to have either a bank account or fund units held where it is linked to the business of the sponsor. Alternatively, to limit such investments to a fixed percentage, e.g. 5%. These are sensible suggestions. It is agreed this risk can be managed by a clear conflicts policy. It was also noted that one of the States schemes was not held separately and there was some overlap in its management and the members of the governing body of the scheme. More consideration needs to be given to how the public sector schemes are brought within regulation as there are statutory provisions in place for them, which may need amending.

In relation to the proposed governance of investment strategies, some respondents wanted greater clarity on what was meant by the term 'goals of the scheme', as it could mean simply to provide for retirement benefits to be paid to the members. There was also some additional clarity sought as to the use of the term 'member profiles' in the context of a group scheme where the requirements of individual members will not be assessed, and respondents believed should be based on a generic member profile. These are valid comments.

Respondents emphasised the need for any regulation of investment strategies to be practical and not to place unrealistic and unnecessary burden on the manager or administrator. It was considered that any regulation should acknowledge the need and the appropriate manner of determination of default pre-set strategies for members who did not wish to make investment choices. These strategies should be based on generic member profiles and tailored to a typical member with a balanced risk strategy. This is helpful and in line with guidance issued by The UK Pension Regulator (TPR)³.

Finally, a couple of respondents questioned the appropriateness of requiring a 'prudent approach' to the adoption of any member investment strategies as for defined contribution plans, members' retirement outcomes hinge on the performance of the adopted investment strategies. It is common for trustees of such schemes to offer a high risk, balanced risk and low risk strategies. To require a 'prudent approach' some respondents felt would be confusing and increase the risk of complaints from members. It was suggested if such a term was to be adopted it would need to be defined. The term 'good' for 'good retirement outcomes' was considered also to need clarification.

The purpose of these governance requirements is to ensure that the pension plan, whether a personal plan or a group plan, is managed so that its members can understand what

³ <https://www.thepensionsregulator.gov.uk/en/trustees/managing-dc-benefits/investment-guide-for-dc-pension-schemes->

investment strategy is being adopted and how that strategy will affect delivery of the member's retirement benefits and their value at the point of them being drawn. The proposals also reflect on the fact that some occupational pension plans may be closed to future accrual and therefore different considerations should apply in relation to their investment strategy than would apply to an ongoing scheme. Also, some occupational pension plans offer defined benefit pensions whereas others offer defined contribution pensions: the investment strategies could be very different in such circumstances, as one is guaranteed by employer contributions whereas the other relies entirely on investment performance. It is noted, any proposed regulation needs to capture these differences and the issues identified above.

(b) Conflicts of Interest

All respondents agreed that as a minimum, the governing body of a pension scheme should have a conflicts policy which required conflicts to be identified and recorded but not all agreed there was any inherent issue with using related parties to provide additional services, such as investment management provided it was appropriately disclosed.

One respondent questioned the proposal for regulated persons to have policies to ensure members and beneficiaries should be 'put first' and suggested instead they should be 'treated fairly'. The term customer was questioned but this term was intended to capture persons who took out individual policies without reference to an employer scheme.

Certain respondents believed that a Statement of Investment Principles (**SIP**) did not remove bias. Others wished to understand if guidance would be issued on the Regulator's requirements from a SIP and that it would be beneficial if it mirrored existing requirements set out in the JFSC Insurance Business Code of Practice and that of the FCA and TPR. This is noted.

There was some anecdotal experience shared by respondents with Government about certain providers in the Island providing advice where they had a clear conflict of interest and failing to give consumers the full range of pension products which were available to them or encouraging them to make transfers to other products so as to get paid a fee. Mis-selling is therefore key to this issue.

It was emphasised by certain respondents that pensions are a form of investment and should be treated as such. 'Value for money' was held by respondents to be one of the most relevant criterium for investment strategy for a pension scheme. A conflict of interest would interfere with this outcome.

One respondent suggested members who are transferring their benefits from one approved arrangement to another should be required to take independent advice (if the benefits exceeded a threshold amount) and that a panel of such advisers could be established to manage any conflicts. Presently, members are not required to take such advice before making a transfer of benefits but if a member does that advice is regulated in respect of defined benefit scheme transfers only. One industry respondent noted that mandatory advice does not always have the best consumer outcomes as it can result in consumers opting for the cheapest option which does not always result in the best advice.

Certain respondents said that there was a blurring of lines as to whether the activities of certain local providers fell into pure administration or carried some element of investment advice or investment selling by way of selling to members a pension product, operated through their Group platform, which incorporated all aspects of the services required for

delivering a pension to local consumers. The changes to the law to regulate investment advice given in relation to pensions will clarify this.

The Government recognises that it is important that all providers offering investment type advice to consumers holding pension benefits and who are remunerated (directly or indirectly) should be captured by regulation.

Certain respondents said that the trustee role should be wholly independent from the investment advisory or investment management role and even administration role. One respondent felt that members' best interests could only be properly served by such division of roles and failure to do this undermined the key principles and objective of this proposed regulation. Others, however, recognised in such a small market this might not be possible. In default it was suggested that where such a conflict existed there should be mandatory independent monitoring of scheme assets to give members better protection or the Regulator should have power to intercede. These suggestions are noted, and it is suggested, subject to the Regulator's views, such provisions would sit better under a regulatory guidance than under any statutory provisions. This guidance could also set out clear expectations of roles, scope and contractual relations, such as one respondent felt would be beneficial.

Other respondents said guidance was required for Trustees of defined benefit schemes which were in deficit as there were significant conflicts likely to arise in relation to lay trustees who were either representatives of the employer or the employees. This was particularly of concern where the occupational pensions scheme was managed by lay trustees. It was felt clear guidance would be of benefit to these individuals as to how to respond to certain conflicts, such as these. Again, this is noted.

Certain respondents felt it was necessary to differentiate between providers operating from within Jersey and those already caught by UK legislation and TPR guidance. To the extent Jersey wishes to extend its regulation of conflicts of interest across to non-resident persons, it was suggested the proposed regulation should adopt the same or equivalent requirements to that of the UK. This will be for the Regulator to take under consideration.

Government notes all the feedback given. The feedback has identified this governance matter is the area which for the local retail market presents some of the key consumer harms and which Government is keen to address as a matter of urgency together with the Regulator.

(c) Communication with Members

There was mixed feedback about the benefits offered by annual statements. Some supported the basic requirement of one being provided but noted that in other jurisdictions this was only required for defined contribution schemes and not defined benefit schemes where members only have the right to request a valuation of their benefits from time to time. Others felt that hard copy statements had been replaced in most modern schemes with online member dashboards which were given real time valuations.

There was some further clarification sought as to the basis on which these member valuations should be calculated. Would the Regulator adopt standard industry assumptions? One question was whether benefit projections of members should be made gross or net of fees and charges as this can make a substantial impact on members' benefits. Good practice already requires it should be net of fees. It was recommended by certain respondents that the Regulator use work done by the UK Department of Work and Pensions in designing simpler annual statements.

There is sense in the proposal being modified so that the valuation requirement of member annual statements should only be in respect of defined contribution schemes, where the valuation will be based on current experience rather than a historical position (as is often the case for defined benefit schemes) and then only in paper form if a real-time or more frequently updated digital form of valuation is not available direct to members. The assumptions or standards to be used for the fund projections in these annual statements will need to be determined by the Regulator so they are consistent across all schemes.

A more simplified annual statement summarising contributions in and payments out and fees taken from a member's benefits for an individual's tax reporting should still be provided by all approved pension arrangements.

Fee transparency was considered to be a key priority that any regulatory proposals should deliver. These are already regulatory requirements for registered persons carrying on trust company business and investment business from within Jersey. It was suggested there needed to be better consistency in the method of providers charging and disclosing of their fees. This is noted and could form part of guidance to be issued by the Regulator. There was some concern whether the cost in delivering to members a breakdown of all the fees that applied to their benefits might be disproportionate and risk it being passed onto the members, particularly in the case of employer administered occupational pension schemes.

Required disclosure of a scheme's ESG policy was felt by many respondents to be inappropriate. It was a subjective issue and certain respondents felt that only where an ESG policy was adopted should it be disclosed and clearly explained. Others felt the ESG market needed to develop further so that the same standards were applied across this market. Respondents also questioned what value or benefit it added, as any ESG strategy should already be determined and explained by the investment manager and not by the governing body who typically delegates this function to an investment manager. Others felt it would be covered by a SIP. Some respondents felt that a general ESG policy requirement would help members make more informed choices and facilitate a change in mindset within the industry more generally.

Furthermore, respondents felt different considerations applied in relation to individual schemes and corporate arrangements generally from an investment perspective, and this should be reflected in any proposed regulation. A SIP was therefore appropriate for an employer group scheme but not necessarily for a personal plan, where tailored investment advice will have been given to the member.

Government is mindful of recent EU developments concerning the required consideration and disclosure of ESG risk factors as part of the obligations of operators of occupational retirement benefit schemes⁴. There has also recently been a commitment from NEST (the Government workplace pension scheme) and Aviva with respect to their pension members' default investment fund options. Both have committed that these funds will be invested in accordance with a net carbon target of 2050, with an ambition for it to be delivered by 2030. A certain sum for each will be invested into climate aware strategies, i.e. ESG impact investments. The value of the funds held in these default options is £32billion (Aviva) and £12.2billion (NEST). This position is in accordance with a mounting campaign led by Mark Carney (ex-Bank of England Governor) and across Europe with the EU to enable climate change through the finance world.

⁴ IORP II Directive (EU Pensions directive) (2019)

The Government of Jersey in its Government Plan is also committed to the prioritisation of climate change with a Carbon Neutral Strategy targeted to be delivered by 2030. It has also adopted a principle of sustainable wellbeing in its Public Finances (Jersey) Law 2019. Government therefore is keen to encourage the pension market to follow the trend towards sustainable finance investment and to be aligned to developments in the UK and Europe.

4. Lay Trustees

Most respondents agreed that pension trustees should all be held to the same standards. The issue was how this should be achieved by regulation or some form of guidance or training. Most respondents did not believe the level of regulation should be the same as applies to a professional corporate trustee acting by way of business.

The overriding concern was how regulation of trustees and its cost might impact the local pension market, which was already small and risk some employers of occupational pension schemes to reconsider offering this type of benefit to their employees. Respondents were keen that regulation should be reasonable and proportionate.

Member nominated trustees were identified by some respondents as often having little or no specific pension expertise. There was concern as to how regulation of such individuals might impact on any employer multi-jurisdictional occupational group schemes. These tend to have a single trustee board and would have difficulty in complying with additional regulation where it is not required in their principal jurisdiction, such as the UK or Isle of Man. This is a matter which needs further consideration to ensure local members of such schemes are adequately protected.

Many respondents argued that regulation of lay trustees would potentially limit the number of candidates wishing to take on this office in the private market and move it to a professional market only or require schemes to take out professional indemnity insurance. This consequence would impact negatively on the cost of running a pension scheme and the diversity of the trustee board and risk some closing. However, other respondents argued that the risks to members outweighed any disbenefit as this presented an unacceptable systematic risk, effectively underwritten by Government and taxpayers. Further some respondents advised that modern technology now enabled delivery of a combined trustee and administration platform at a relatively low cost without compromising standards in reporting and accountability.

Certain respondents suggested using the TPR's Code of Trustees Knowledge and Understanding⁵ and the Trustee Toolkit⁶ to ensure all trustees, lay or otherwise, meet the relevant industry standard.

Some respondents noted that where regulation of trustees had been introduced, such as in Guernsey, there had been a corresponding creep on trustee fees. Some respondent questioned the expertise of certain professional trustees' ability to deal with some of the complex pension issues that arise in relation to defined benefit schemes particularly.

One respondent suggested adopting the model of regulation equivalent to 'Natural persons carrying on a single class of Trust Company Business'⁷.

⁵ <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/trustee-knowledge-and-understanding>

⁶ <https://trusteetoolkit.thepensionsregulator.gov.uk/>

⁷ <https://www.jerseyfsc.org/industry/guidance-and-policy/natural-persons-carrying-on-a-single-class-of-trust-company-business/>

One respondent suggested as an alternative to all lay trustees needing to be regulated the requirement for a pension trustee board to have as a requirement the appointment of at least one professional trustee and to provide that all new pension schemes should only appoint professional trustees. Others suggested there should be a blanket exemption for lay trustees but with power for the regulator to require the appointment of a professional trustee where put on notice about governance issues. Certain respondents said as a minimum the Regulator should be able to disqualify a lay trustee if they became bankrupt, convicted of fraud etc. Presently, this is a power of the Court under Article 51 of the Trusts (Jersey) Law 1984⁸: this power would need to be extended or a new power vested in the Regulator.

One respondent felt additional analysis would be required if introducing this requirement for regulation in respect of public service pension schemes and how this might impact on the statutory provisions and impact their existing boards.

Others felt there should be no exemption and no distinction between regulated trustees and lay trustees.

Certain respondents felt more consideration was needed to be given to the differences between professional trustee and corporate trustees and a clear definition was required for both terms. One suggests a person or corporate that is regulated for trust company business and individuals acting as such would fall into the category of being an approved principal person. The other could either be regulated as trust company business or could be the vehicle of the employer and be unregulated and manned entirely by non-professional persons. Reference was made to the recent work being undertaken by the UK TPR in defining the term 'professional trustee'. Better clarity was needed as to how such different types of trustee should be classified in any new proposed regulation. Government acknowledges this and agrees whatever regulation which is put in place should seek to recognise the distinctions.

It is also recognised the key objective is to ensure standards of lay trustees are equivalent to the professional trustee and obligations need to be put in place to ensure this is achieved. One option that is being considered is bringing lay trustees within the remit of the Ombudsman.

5. Record Keeping

Respondents main concern was to keep this obligation reasonable and proportionate. Certain respondents noted the proposal was only to apply to regulated entities and not to lay trustees and agreed to the proposed obligations on this basis.

One respondent suggested it would be helpful if the Regulator provided guidance giving further detail of its expectations of the type of breaches which needed to be reported and timescales. It was suggested this guidance could mirror the requirements set out in the Insurance Business Codes of Practice.

Certain respondent sought clarification and raised concern as to the proposed obligation to disclose the financial position of the scheme to the Regulator 'at any time'. It was noted that the approach in the UK was only to disclose this information on a triennial basis for defined benefit schemes (after completion of the triennial valuation). It was suggested this

⁸ https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/13.875.aspx#_Toc33211556

approach was more appropriate. This is acknowledged, a requirement to disclose the financial position of the scheme after its latest valuation would be a sensible requirement.

The obligation to maintain records to show compliance with regulatory requirements is one which UK schemes already comply with. However, it was noted by one respondent that there was no requirement to report all complaints to the Regulator in the UK, only a requirement to advise members of the scheme's complaint procedure and to the role of the Ombudsman. These are points which will be considered further.

It was suggested by one respondent that there should be a requirement to protect member data built into this proposal. It was also suggested that there should be some form of reconciliation against scheme members holdings built into this requirement for the investment manager, and any discrepancies reported to the Regulator.

One respondent suggested this information should be reported to the Income Tax Office rather than require duplicative reporting, and that it should be limited to annual reporting. It is acknowledged that duplicative reporting should be avoided but for ongoing supervision of local pension schemes it is considered this responsibility sits better with the Regulator than the Income Tax Department.

Government will take forward this feedback with the Regulator when determining how to proceed with imposing this additional obligation on pension providers.

6. Reporting

Respondents generally supported the requirement for reporting, but some said that care needs to be taken to ensure it remains relevant to the specific scheme types and appropriate member data privacy is maintained. Many respondents said care was needed to keep this obligation reasonable, proportionate and cost effective.

One respondent suggested that the reporting requirement could capture employer contributions to ensure they have been paid over and invested in accordance with the relevant obligations. It is suggested this reporting would be more in the nature of an exceptions report to be provided by the scheme identifying to the Regulator any maladministration or contribution shortfall rather than for the Regulator to cross check this information.

One respondent suggested the information gathering should build upon the annual reporting already required to be given to the Income Tax Office and duplicative reporting should be avoided. It was also suggested that reporting should be in line with the reporting obligations imposed by the UK TPR. One respondent suggested consideration should be given to reporting which is required upon certain trigger events occurring, adopting again the UK TPR's definition of a trigger event.

Some respondents said they needed more detail as to what would be included in this reporting before they could comment further. It is agreed further consultation will be required once there is more detail on the proposals.

7. Co-operation with Relevant Authorities

This proposal was fully supported subject to appropriate member data privacy controls. Certain respondents noted this offered the benefit of avoiding duplicative provision of information.

It was suggested a pragmatic approach should be taken when resolving pre-regulation issues affecting schemes.

One respondent suggested that information sharing with the Comptroller should be to facilitate reconciliation rather than punishment. The rationale for this was due to the draconian sanction which can be imposed where scheme approval is withdrawn, i.e. imposing 50% tax on members' benefits. A number of respondents questioned the level of tax charged on withdrawal of Comptroller approval. It was suggested further guidance on managing reconciliation would be required to ensure fair and reasonable processes and with additional guidance on what constitutes a 'genuine error' defence.

Government notes the benefits of information gateways and sharing of data between different relevant authorities and it will look to enable the same where it is possible to do so without breaching individuals' personal data rights or human rights.

8. Remit of the Channel Island Financial Ombudsman

Many respondents supported the proposition to bring occupational and public sectors schemes directly within the scope of the Ombudsman and to ensure its mandate is aligned with the future Pensions Regulator. It was suggested any extension of remit needed to be reasonable and proportionate, particularly that schemes did not get unduly burdened by the costs of defending such claims.

Some respondents believed the extension of the Ombudsman's remit to schemes managed by lay trustees would be inappropriate as it would result in financial awards being issued against such persons who have neither been acting by way of business and may not have indemnities against such awards. This would, however, leave members of such schemes without recourse to the same protections offered by the tribunal of the Ombudsman. This is a significant detriment.

Public pension schemes were recognised as appropriate to bring within scope. It was noted that there was no ability for these members to take complaints to a third-party ombudsman or complaints commission. The only option was to take the matter to the Royal Court with all its consequential cost implications: this was seen as a barrier to members making complaints.

Certain UK respondents noted that the UK Pension Ombudsman does not have jurisdiction over Jersey-related matters. This means that Jersey members of multi-jurisdictional schemes with a UK parent will have less protections available to them than those afforded to their fellow members. Certain respondents felt this needed greater consideration.

Some respondents believed there needed to be safeguards to ensure spurious, repeat or vexatious complaints are excluded from the Ombudsman's consideration. It is acknowledged that the management of such claims will impose an additional costs burden on schemes. However, it would be dangerous to try and legislate for non-admittance of specific type of complaints. Government believes it is better left for the Ombudsman to determine these matters.

Certain respondents said the legislation needed review and simplification as it was unnecessarily complex and therefore unclear in its application. This is acknowledged.

Other respondents said it was important that the Ombudsman had the requisite skills, technical knowledge and experience to opine on pension disputes and complaints. To the

extent it relates to a financial service provider, this is already expressly within the Ombudsman's remit and it is noted that his office has dealt with more than 50 such complaints since it was established. Accordingly, Government believes the Ombudsman is well-placed to deal with any extension of his remit.

One respondent raised concern that extending the Ombudsman's remit would result in a hike in the annual fee for either the trustee or member and therefore be detrimental to the industry.

For respondents who held self-invested pension contracts (plans approved under Article 131B of Part 19) it was felt there was little benefit in extending the Ombudsman remit to their pension plans as they would, in effect, simply be complaining about their own behaviour.

Certain respondents felt that if the Ombudsman's remit was extended, it would allow responsibility for the local pension market to be shared between his office and the Regulator as it is in the UK. The Ombudsman could take responsibility for aspects relating to pensions such as complaints, maladministration and issuing guidance. In this manner the Ombudsman would be responsible for setting 'market standards' or 'good practice'. This would enable better consistency of practice and expertise across the local market, which is presently seen to be very inconsistent.

The Government believes there is benefit in sharing the roles and responsibilities for the pension market across different agencies and welcomes the suggestion of the Ombudsman taking on this role with a wider reach across financial and non-financial service providers.

9. International Savings Plans (ISPs)

Certain respondents believed to bring ISPs within scope of a pensions' regulator would help align Jersey with its competitor International Finance Centres across the world and there was an imperative to do this. Some respondents said these vehicles were increasingly being established by international employers in place of international pension plans.

However, it was also noted that the behavioural activities of ISPs did not match those of a pension and therefore could prove challenging to regulate in the same way. It was also noted that ISPs were meant to be an alternative saving vehicle to a pension so it might not be appropriate to bring them within scope. Some respondents believed that the different tax treatment and definition of these arrangements meant they should not be brought into scope.

One respondent said that if ISPs were brought within scope, death benefit arrangements should also be considered.

It was felt by some respondents that bringing ISPs within regulation would enhance the reputation of Jersey as a well-regulated territory and to not bring them within regulation would have an anomalous result. This is acknowledged, but it remains unclear as to whether this product should be regulated by a pension's regulator or by the JFSC as Regulator of financial service business. It is noted that an ISP is obliged by law to have a regulated person act in relation to it⁹.

⁹ https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/24.750.aspx#_Toc33032106

Some respondents felt it was more important to dovetail any new pension regulation with that already incumbent on regulated service providers of ISPs so that the new pensions regulation followed similar principles and requirements as already exist for financial service business in Jersey. This would limit the demands on the Regulator as it would be using models similar to those it already has in place.

The issue of regulation of the administration function of ISPs was raised by one respondent to note that provided both the trustee and administrative functions were managed by the same person, regulation of the trustee should be adequate. This raises issues as to recognition and equivalence of any proposed regulation of pensions with foreign regulators. Jersey needs to be mindful when regulating both ISPs and pensions that it does not introduce requirements which duplicate or conflict with existing regulatory requirements, unless there are sound policy reasons for doing so. This will enable better portability of such benefits and mutual recognition of these arrangements by foreign tax and regulatory authorities so that more individuals will be encouraged to save for their retirement.

There is not a clear case to indicate ISPs should be brought under the remit of a Pensions Regulator. Given that these products are already managed by regulated persons, it is considered more sensible to wait to see how Government's proposals for regulation of the pension market develop.

10. Conclusions

As is evident from the responses Government has received and from industry in general, there are clear benefits to regulating of the local pension market but no 'one size fits all' solution to regulation and the principles which should apply.

Issues that will need to be considered include

- (i) The regulatory overlap with other jurisdictions with more advanced regulation of this market;
- (ii) The interrelationship between regulation of currently regulated and non-regulated persons;
- (iii) The overlap into the domestic employment relationship;
- (iv) The complexity and variety of legal structures and legal relationships, which constitute a pension;
- (v) The size of the local pensions market;
- (vi) The local consumer appetite to save using a pension product rather than other saver products or options;
- (vii) The likely cost impact of regulation on consumers;

The Regulator will also need appropriate time and resources to develop its approach and to fully regulating this complex market.

As such, the Government considers a phased approach to regulation to be appropriate, with the aim of addressing the key harms already identified by its previous consultation and this one, and those in the JFSC's investment business consultations within the local pensions market as a priority. These were identified as:

- (i) excessive charging by financial service providers in the local pension market;
- (ii) lack of transparency of fees and charges imposed on members' benefits;
- (iii) unsuitable and/or self-interested advice being given by financial advisers to members;

- (iv) the barrier to making and resolving complaints when an occupational pension scheme is managed by a non-regulated person.

In the main, these issues fall within the 'retail' side of pension provision in the Island, which is undertaken by way of business by financial service providers. It consists mainly of issues relating to the investment business side of pension provision. The Government proposes to close of the regulatory gap in an early phase.

The Government also considers it appropriate to address the difference in standards and knowledge of the 'lay trustee' market. As a first step, it believes altering the remit of the Ombudsman will enable standards of this market to improve and the correct considerations and member protections to apply when appointing lay trustees to a pension scheme.

Full regulation of all types of locally approved pension plans and functionaries will follow in the next phase. The regulation of ISPs can then be considered with better understanding of how pension regulation will work and its suitability to be regulated as such.

15 October 2020