



ASSOCIATION OF PENSION LAWYERS

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BY EMAIL ONLY

Dear Sirs

Consultation on the Proposed revision to AS TM1: Statutory Money Purchase Illustrations - publication date February 2022 (the "Consultation")

I am writing on behalf of the Investment and Defined Contribution Sub-Committee of the Association of Pension Lawyers of the United Kingdom ("APL"). The APL is a not-for-profit organisation whose members comprise over 1,100 UK lawyers, including most of the leading practitioners in the field, who specialise in providing legal advice on pensions to sponsors and trustees of pension funds and others, including the largest pension funds in the UK. Its purposes include promoting awareness of the role of law in the provision of pensions and to make representations to other organisations and governments on matters of interest to APL members.

As the majority of the questions in the Consultation are concerned with actuarial matters, and are not directed at legal questions, this response only addresses one specific issue regarding certain of the assumptions used in AS TM1, which is of particular concern to APL members and their clients.

The issue - current assumptions regarding Spouse's or Civil Partner's Pensions

Where required by legislation, pension schemes must provide statutory money purchase illustrations (SMPIs) to money purchase members. The law (the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013) does not require any spouse's or civil partner's pension to be illustrated, nor their purchase factored into the likely amount of the member's own benefit. However, the law does require the pension illustration to be calculated by reference to the "relevant guidance", which is Technical Memorandum AS TM1, and also requires any assumptions which may be made regarding pensions payable to spouses or civil partners to be stated in the SMPI (see the Disclosure Regulations - Schedule 6, paragraph 17(b)).

While AS TM1 does not require any spouse's or civil partner's pension to be illustrated, many pension schemes consider it helpful to members to illustrate spouse's and civil partner's pensions, and seek to do so. However, the current version of AS TM1 (4.2) does note that a spouse's or civil partner's pension may be illustrated, and sets out the assumptions to use when doing so:

"Spouse's or civil partner's pension

C.3.13 *Where illustrated, the amount of any spouse's or civil partner's pension should not exceed the amount permitted under the scheme rules or legislation.*

Age difference between member and spouse or civil partner

C.3.14 *It must be assumed that males are three years older than female spouses and that spouses or civil partners of the same gender are the same age as each other, except that:*

- *at the provider's discretion the member may specify the spouse's or civil partner's age to be used;*
- *the spouse's or civil partner's age shown in the provider's records may be used."*

A number of issues have arisen in practice with the existing assumptions, particularly where pension scheme members have chosen not to disclose (or indeed have not been asked to disclose) their gender (as is increasingly common as human resources systems and member intake systems often do not require disclosure of gender by the employee/member).

The practical issues are essentially that, where either the scheme member's gender, or the spouse/partner's gender are not known (and are not in the provider's records), it is difficult to apply the current assumptions in a way which avoids potential discrimination issues (i.e. by avoiding making an implicit assumption as to the member/spouse/partner's gender or sexuality). The requirements regarding age differences give different pension figures depending on the gender of the member and spouse/partner, and the assumptions used in preparing the illustration would need to be stated to the member. In these cases, providing two or even three separate illustrations of the potential spouse's pension would have been the only way to apply the assumptions in a non-discriminatory way. We are aware from industry comments that the issues with these age difference assumptions have been raised with FRC in the past.

Proposed change to TM1 - Questions 1 and 10

The consultation notes that the proposal for the new version 5.0 of TM1 is that it will apply both to ERI (estimated retirement income) figures and SMPIs, and the changes will remove the assumptions regarding the spouse/partner's pension and so "prescribe" the form of annuitisation to be illustrated as being a level annuity which does not attach spouse or partner benefits. This is noted as being aligned with current market practice, given that the majority of annuity purchases are of a level annuity without any spouse or civil partner's pension. In the consultation paper, this is described both as a "recommendation" (Q10) and a "Removal of the flexibility to show" a spouse's pension (para 6.1).

This approach has the effect of solving the issue above, as it simply removes the need to illustrate a spouse's/partner's pension at all. However, we are aware that a number of our clients do normally illustrate a spouse's/partner's pension as part of the SMPI as a matter of course, and may well wish to continue to do so. While we can see the value in a prescribed illustration methodology, particularly given the pensions dashboards programme requiring illustrations from different schemes to be provided

via one platform, we wonder whether it would be appropriate to permit schemes to continue to provide an illustration including a spouse's/partner's pension if they wish to do so. We assume that, if this were illustrated, the scheme could choose its own assumptions (e.g. assuming that a spouse/partner of a member was the same age as a member in all cases, thus avoiding any potential discrimination issues) for the purposes of the illustration.

We also note that the current legislation (The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, Schedule 6, paragraph 17) still contemplates a spouse or civil partner's pension being illustrated, and requires the assumptions to be set out in the SMPI. Is there any intention for the FRC to liaise with the DWP with a view to exploring any potential amendments to the legislation, assuming the format of the SMPI is "prescribed" in a form without a spouse/civil partner's pension?

Please direct any reply to the APL in respect of this matter to Caspar McConville at [REDACTED] or at the address set out above.

Yours faithfully

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For and on behalf of the Association of Pension Lawyers