AMPS
Annual Conference

The Royal College of Physicians

Tuesday 22nd May 2018

AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

Chairman's Opening

Zachary Gallagher

AMPS Committee Member &
Berkley Burke

AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

Chairman's Opening

- Welcome and Housekeeping
- Agenda
- Interactive voting: explained
- Speaker feedback: explained
- Anonymous questions
- Sponsorship: thank you

AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

Voting question test

Who will win the 2018 World Cup?

- England
- Costa Rica
- Someone else
- Football

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AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

AMPS update

Zachary Gallagher

AMPS Committee Member &
Berkley Burke

AMPS Conference: 23 May 2017

- Pension Liberation Industry Group: response to pension scams consultation
- Pensions tax relief: evaluation of alternative systems
- Transfers and Re-registrations Industry Group: update
- Land and Buildings Transaction Tax
- Qualifying Recognised Overseas Pension Schemes
- Peer-to-peer lending
- Brexit and financial services

Pension scams consultation

- Launched by HMT/DWP on 5 December 2016
- Closing date for responses: 14 February 2017
- AMPS response issued 13 February 2017
- Government response issued 21 August 2017 promising "tough new measures" including:
  - *Banning cold calling*
  - *Limiting the statutory right to transfer*
  - *Making it harder to open fraudulent schemes*

Financial Guidance and Claims Act 2018

- Royal Assent: 10 May 2018
- Section 21(1): "*The Secretary of State may make regulations prohibiting unsolicited direct marketing relating to pensions.*"
- 21(4): "*Regulations under this section are to be made by statutory instrument.*"
- 21(6): "*If before the end of June in any year the Secretary of State has not made regulations…the Secretary of State must…publish a statement by the end of July…explaining why regulations have not been made and setting a timetable for making the regulations, and lay the statement before each House of Parliament…*"

Finance Act 2018

- Royal Assent: 15 March 2018
- Paragraph 4, Schedule 15: New subsections (g) and (h) to Section 158(1) Finance Act 2004, “Grounds for de-registration”:

(g) that the pension scheme is an occupational pension scheme, and a sponsoring employer in relation to the scheme is a body corporate that has been dormant during a continuous period of one month that falls within the period of one year ending with the day on which the decision to withdraw registration is made, or

(h) that the scheme is an unauthorised Master Trust scheme.”

Voting question 1

What is the typical period for registration of new schemes submitted by your organisation to HMRC?

- Within 3 months
- 3-6 months
- More than 6 months

Voting question 2

Has your organisation received notice of any enquiry from HMRC relating to schemes with a dormant employer?

- Yes
- No
- Don’t know

Pension Schemes Act 2017

- Royal Assent: 27 April 2017
- Section 1(1): Master Trust schemes: definition:

…an occupational pension scheme which–

(a) provides money purchase benefits (whether alone or in conjunction with other benefits),

(b) is used, or intended to be used, by two or more employers,

(c) is not used, or intended to be used, only by employers which are connected with each other, and

(d) is not a relevant public service pension scheme.

Master Trusts: Consultation

- Launched by DWP on 30 November 2017
- "*…some SSASs with multiple unconnected employers would fall within the Master Trust scheme definition. We do not, however feel it necessary for the regime to apply to these schemes…The members of a SSAS are all trustees and therefore, could be said to be investing for themselves.*"
- Closing date for responses: 12 January 2018
- AMPS response issued 12 January 2018
- Government response issued 19 March 2018

The Occupational Pension Schemes (Master Trust) Regulations 2018 (draft)

- Regulation 27(1): "*Part 1 of the Act does not apply to schemes to which one or more of the following paragraphs apply.*"
- Regulation 27(3): "*This paragraph applies where the scheme is a relevant small scheme…and-*

(a) the scheme has only one member, or

(b) 50% or more of the trustees are members of the scheme.

AMPS visits The Pensions Regulator

- Brighton, 7 July 2017
- AMPS: Zachary Gallagher, Geoff Buck, Sarah Hawkins
- TPR: Lesley Titcomb, Fiona Frobisher
- Broad agreement that SSAS is a good thing

Henry Stewart Conference: “Self-Invested Pension Planning Now”

- London, 28 September 2017
- Debate: “Is there a real future for self-investment?”
- Agreed yes

Voting Question 3

How optimistic are you about the prospects for ‘self-invested’ pensions, compared with three years ago?

- More
- Less
- The same
- Don’t know

AMPS Compliance and Technical Seminar: 9 October 2017

Compliance:

- MiFID II
- General Data Protection Regulation
- Senior Managers and Certification Regime
- Financial Sanctions
- Professional Indemnity Insurance

AMPS Compliance and Technical Seminar: 9 October 2017

Technical:

- Statutory right to transfer
- Pension scams consultation (TPR speaker)
- Pensions Dashboard
- Commercial property update

Compliance Subcommittee: Recent interests

FCA Consultation Papers:

- CP18/11: “Reviewing the funding of the Financial Services Compensation Scheme” (closes 1 August 2018) (follows CP16/42 and CP17/36)
- CP17/39: “Quarterly Consultation No 19”: reference to referrals to The Pensions Ombudsman
- CP17/40: “Individual accountability: Transitioning FCA firms and individuals to the Senior Managers & Certification Regime” (follows CP17/25)

Compliance Subcommittee: Recent interests

FCA Discussion Paper:

DP18/1: “Effective competition in non-workplace pensions”

- “*Individually arranged contract-based DC pensions”:*

- individual personal pensions

- stakeholder personal pensions

- self-invested personal pensions

- “*It is estimated that the 5 largest SIPP operators (by assets under administration) control almost 60% of the market share. It is reported that around half of all SIPP operators are thought to have portfolios comprising less than 2,000 SIPP accounts…”* (Source: Mintel report, SIPPs, December 2016)

Compliance Subcommittee: Recent interests

FCA Discussion Paper:

DP18/2: “Transforming culture in financial services”

- “*…we start by defining (culture) as the habitual behaviours and mindsets that characterise an organisation.”*
- “*We expect firms to foster cultures which support the spirit of regulation in preventing harm to consumers and markets.”*
- *“Understanding the dynamics of culture facilitates progress, but firms’ behaviour will only transform for the better if change is chosen rather than imposed.”*

Compliance Subcommittee: Recent interests

- “TPR and FCA: Our strategy for pensions” announced 21 February 2018: “*The FCA and TPR are working together on a pensions regulatory strategy, which will set out how we will work together to tackle the key risks facing the pensions sector in the next 5-10 years.”*
- “Stakeholder” events announced for London, Edinburgh and Manchester: held in March 2018, with AMPS representation
- “Joint call for input” published 19 March 2018; comments welcomed by 19 June 2018

Technical Subcommittee: Recent interests

- Land and Buildings Transaction Tax
- *In specie* contributions
- Trust Registration Service

Land and Buildings Transaction Tax

- LBTT Technical Bulletin 1, 14 October 2016:

"*We…have concluded that generally (in specie) transfers give rise to an LBTT liability, on the basis that (a) such a transfer is a land transaction and (b) the assumption of the liability by the receiving pension fund is debt as consideration.*"

- LBTT Technical Bulletin 3, 28 December 2017:

"*Following further representations…Revenue Scotland has concluded that while such transfers are still considered to be land transactions, debt in the form of liability assumed to pay benefits to pension scheme beneficiaries will not generally be considered to be given as chargeable consideration…*"

In specie contributions

- "HMRC 02/16" version of APSS105 includes section on contributions "as a result of the transfer of an asset or assets in lieu of a cash contribution debt"
- Meeting 23 September 2016 between AMPS representatives and HMRC. Minutes (written by HMRC) state: "*HMRC view the legislation and the intention of Parliament was that contributions by members should be in cash.*"
- Tribunal, 26 February 2018. Judge Gething: "*…satisfaction of a monetary obligation or debt in cash or kind amounts to "payment". I do not therefore accept HMRC's assertion that the normal meaning of contribution paid is confined to a payment of cash…I vary the decision of HMRC by allowing the appeal in full.*"
- HMRC to appeal?

Trust Registration Service

- The Money Laundering, Terrorist Financing and Information on the Payer Regulations 2017 (SI 2017 No. 692): effective from 26 June 2017
- Part 5 applies to a taxable "relevant trust" including *inter alia* "*a UK trust which is an express trust"* where liable to a tax type detailed at Regulation 45(14) *(Income Tax/CGT/IHT/SDLT/LBTT/SDRT)*
- "Express trust" definition referred to in "Draft HMRC Guidance" of 22 November 2017: "*…a trust that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust."*
- Regulation 44, under Part 5 of SI 2017 No 692, imposes extensive requirements on relevant trusts for maintaining records and reporting to any law enforcement authority
- Regulation 45 imposes obligations on the Commissioners of HMRC to maintain a register and relevant information thereon

Trust Registration Service

- Extensive discussion between AMPS and HMRC, before and after 5 March 2018 reporting deadline
- Association of Pension Lawyers involved in AMPS/HMRC discussions
- Consistent HMRC line: requirements apply to registered pension schemes
- Reports of different message to AMPS member firms

Trust Registration Service

- Further draft HMRC guidance seen by AMPS May 2018:

"*Usually trustees will provide the necessary information on the TRS but if the pension scheme has already been registered with HMRC (under the Manage and Register Pension Schemes or Pension Schemes Online) then the trustees do <u>not</u> need to register separately on the TRS. The TRS legislation provides HMRC with the discretion to determine the format by which trustees must submit the information about the trust.*"

"*HMRC will <u>not</u> issue a civil penalty for failure to comply with TRS legislation should a scheme instead be registered on PSO/MRPS and we do not deem this to constitute a criminal offence under the TRS legislation.*"

- Reaffirmed at Pensions Industry Stakeholder Forum, 9 May 2018

Trust Registration Service

- Further extract from draft HMRC guidance seen by AMPS May 2018:

"*If a pension scheme registered on PSO/MRPS has submitted information on the TRS then going forwards it does <u>not</u> need to do anything further in relation to the TRS. The scheme administrators can update the details about their trust on PSO/MRPS.*"

- HMRC guidance is not legal advice!

Voting Question 4

Did your organisation register taxable relevant trusts on the TRS?

- Yes, by 5 March 2018
- Yes, after 5 March 2018
- No
- Don’t know

Voting Question 5

If your organisation registered taxable relevant trusts on the TRS, does it intend to maintain those records on the TRS?

- Yes
- No
- Haven’t decided yet

AMPS Compliance and Technical Seminar: 16 October 2018

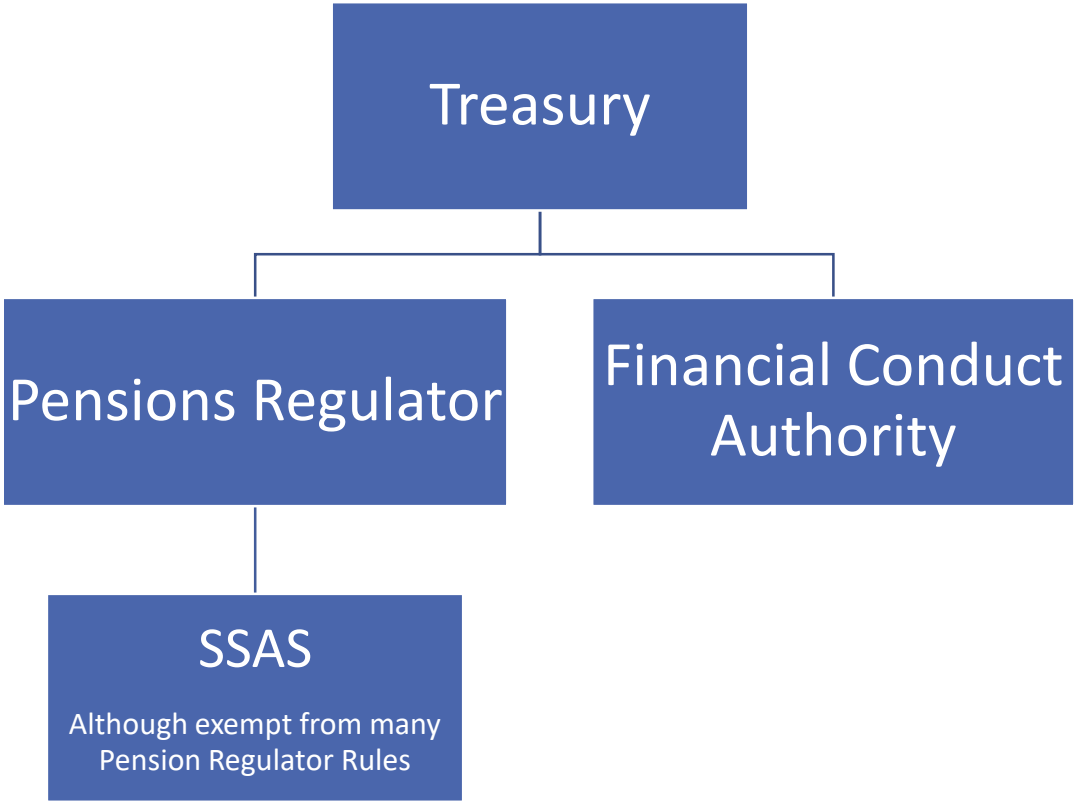
- Agenda in preparation
- Suggestions welcome!

Technical CONNECTION

SSAS Pension Update

Claire Trott
AMPS Treasurer

SSAS are regulated!



Pre A-day

- Association of Pensioneer Trustees
- IR12 – governing rules
- Pension Schemes Office updates

Post A-day

- No Pensioneer Trustees
- HMRC
- Change in control
- Scheme Administrator requirement
  - No rules on who this could be

September 2014

- “Fit and proper” rules
  - HMRC can refuse registration
  - HMRC can deregister schemes
- Assumed to be “fit and proper”
  - Often discovered to late if not correct

Looking backwards

Pre 2006

Scheme established by Deed and contributions paid immediately

Post 2006

Have to apply online and contributions can only be made to a Registered Pension Scheme

Now

HMRC review application to register
No time limit!
If no decision in 6 months, can appeal to tribunal

All makes planning difficult ……

Technical CONNECTION

Further powers being added

- Received Royal Assent on 15 March 2018
- Allows HMRC to align pension scheme tax registration with The Pensions Regulator authorisation and supervision regime for Master Trust Schemes
- Allows HMRC to prevent a new scheme being registered if sponsoring employer is dormant
- Will also allow HMRC to deregister schemes
- Attempt to prevent fraudulent schemes and potential scams.

Technical CONNECTION

ANDREW WARWICK THOMPSON – TPR Executive Director

The Pensions Regulator

> *So I believe that pension transfers to SSAS arrangements ought to be banned. In fact to put a stop to their abuse, I believe that an outright ban on the establishment of any more SSAS arrangements also warrants serious consideration*

https://blog.thepensionsregulator.gov.uk/2017/02/14/helping-trustees-stop-scams-why-we-need-a-safe-scheme-list-and-a-ssas-transfer-ban/

The Market

Where are your SSAS **mainly** coming from?

A Setting up new schemes for transfers

B Setting up new schemes for new contributions

C Scheme takeovers

D There really is no pattern

What are the issues

- Ceading Providers seeing SSAS as dangerous
- Non-standard assets moving to SSAS?
- Scheme delays in set up and transfers

How is it for you?

What delays are you experiencing in setting up a new SSAS?

A One week

B One month

C More than one month

D No delay

Technical CONNECTION

The positives

- Still clearly a place for SSAS in today's world
  - Ease of provider changes (no more transfers)
  - Control - trustee flexibility
  - Investment flexibility
  - Commercial property
  - Loanbacks where appropriate

What about the future?

What are the options

- A return to Pensioneer Trustee?
- Approved Scheme Administrator list?
- FCA regulated firms only?

What do you think?

What is the best way to regulate SSAS?

A A return to the pensioneer trustee

B Approved Scheme Administrator List

C FCA regulated firms only

D Something else

Technical CONNECTION

Questions

TPR:
An overview & update

Anthony Raymond

The Pension Regulator

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OPEN QUESTIONS

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FSCS principles and Civil Liability Test

James Darbyshire

FSCS

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An Introduction to FSCS: Our Role

- The Financial Services Compensation Scheme ("FSCS") is the UK's statutory fund of last resort for customers of financial services firms.
- Established under Part 15 of FSMA 2000.
- FSCS is a set of rules made by the FCA and PRA.
- Administered by FSCS Limited.
- We are accountable to, but operationally independent of, the regulators.
- Under section 213(3)(a) FSMA 2000, the scheme is required to pay compensation for claims made in connection with "*regulated activities carried on by* [authorised persons]".

Ask the audience: Question 1

- **Question:** Which of the following are ‘protected’ by FSCS?
  - (1) Deposits
  - (2) General insurance policies
  - (3) Investment business
  - (4) Advice and arranging of mortgage business
  - (5) General insurance mediation
  - (6) Debt management business
- **Multiple choices:**
  - (a) (1)-(3)
  - (b) (1), (3) and (4)
  - (c) (1)-(5)
  - (d) All of the above (i.e. (1)-(6)).
- **Correct Answer:** (d) All of the above (1)-(6).

An Introduction to FSCS: Our Role

FSCS's role is to protect consumers who have incurred financial losses when firms regulated by the FCA and/or PRA (and their predecessors) are unable, or likely to be unable, to pay claims against them.

FSCS comprises five different sub-schemes, namely:

- Deposits
- Life and general insurance policies
- Investment business
- Advice and arranging of mortgage business
- General insurance mediation
- Debt management (from 1 April 2018)

(2) Qualifying conditions

Compensation

Qualifying conditions: Compensation

Before FSCS pays compensation to a claimant, FSCS must be satisfied that the requirements of the COMP Rules are met.

COMP 3.2.1R states:

"*The FSCS may pay compensation to an eligible claimant, subject to COMP 11R (Payment of compensation), if it is satisfied that:*

> *(1)* ***an eligible claimant*** *has made an application for compensation (or the FSCS is treating the person as having done so);*
>
> *(2) the claim is in* ***respect of a protected claim*** *against* ***a relevant person*** *(or, where applicable, a successor) who* ***is in default****; and*
>
> *(3) where the FSCS so requires, the claimant has assigned the whole or any part of his rights against any one or more of the relevant person, any third party or, where applicable, a successor, to the FSCS, on such terms as the FSCS thinks fit*."

There are therefore 4 key requirements.

Qualifying conditions: Compensation

(1) The claimant must be an "*eligible claimant*"

Eligible claimant is defined in the negative. An eligible claimant is any person who is not listed in COMP 4.2.2R (or is listed in that Rule but falls within one of the prescribed exceptions in COMP 4.3R or 4.4R).

For example, Overseas Financial Institutions and Collective Investment Schemes are not an eligible claimants unless an exception applies.

Qualifying conditions: Compensation

(2) The claim is in respect of a "*protected claim*"

In other words, the claim must be covered by FSCS.

The protected claims are set out in COMP 5.2R, and include a "claim" in connection with:

a) protected investment business; or

b) protected home finance mediation; or

c) protected non-investment insurance mediation; or

d) protected debt management business.

A "claim" means "*a valid claim made in respect of* ***a civil liability****…owed by a relevant person to the claimant*".

Qualifying conditions: Compensation

(3) The claim is against a "*relevant person*"

The compensation scheme only provides cover for claims against particular people or organisations. The *relevant person* is defined in COMP 6.2R:

"*A relevant person is a person who was, at the time the act or omission giving rise to the claim against it took place:*

(1) a participant firm; or

(2) an appointed representative of a participant firm."

Broadly, an authorised person or appointed representative pursuant to FSMA (or their successors).

Qualifying conditions: Compensation

(4) That "*relevant person*" is "*in default*"

FSCS may determine a relevant person to be "*in default*" pursuant to COMP 6.3.2R:

"*The FSCS…may determine a relevant person to be in default when it is, in the opinion of the FSCS (or the FCA):*

(1) unable to satisfy protected claims against it; or

(2) likely to be unable to satisfy protected claims against it."

Or (COMP 6.3.3R):

"the relevant person is the subject of one or more of the following proceedings in the United Kingdom (or of equivalent or similar proceedings in another jurisdiction):

(1) the passing of a resolution for a creditors' voluntary winding up;

(3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager".

Qualifying conditions: Compensation

If the following are present, FSCS may pay compensation:

- ✓ **Eligible claimant**
- ✓ **Protected claim**
- ✓ **Relevant person**
- ✓ **The relevant person is in default**

- COBS 10 limits the maximum amount of compensation payable to a claimant. The limits apply to the aggregate claims in a category of protected claim against a relevant person (or successor). For example, in relation to a protected investment business claim the maximum compensation payment is £50,000.
- FSCS must calculate compensation “as soon as reasonably possible after it is satisfied that the conditions in COMP 3.2.1R have been met” (COMP 12.2.8R).
- Generally, FSCS must pay compensation “as soon as reasonably possible” after compensation has been calculated, usually within three months.

Ask the audience: Question 2

- **Question:** How much has FSCS paid out in compensation since it was established in 2001?
- **Multiple choices:**
  - (a) £400 million;
  - (b) £2.4 billion;
  - (c) £1.1 billion;
  - (d) £26.1 billion;
- **Correct Answer:** (d) £26.1 billion

(3) Three SIPP operator defaults

An overview

Three SIPP operator defaults: An overview

Which SIPP operators were declared in default?

On 19 January 2018, FSCS declared three SIPP operators “in default”:

1) Stadia Trustees Limited;
2) Brooklands Trustees Limited; and
3) Montpelier Pension Administration Services Limited.

In addition to being the SIPP operator, Stadia and Brooklands were also the trustee of the relevant SIPP.

Three SIPP operator defaults: An overview

On what basis were they declared in default?

- FSCS received a number of compensation claims in relation to the three SIPP operators.
- Many of the investments were higher risk such as oil investments, foreign hotel room investments and foreign vineyard investments and made by consumers with little investment experience and modest funds to invest.
- FSCS must make its determination whether to pay compensation in accordance with the COMP Rules.
- FSCS carried out a thorough examination of the claims.
- Pursuant to COMP 6.3.2R, the three entities above were declared in default on the basis that they are unable or likely to be unable to satisfy protected claims.

Three SIPP operator defaults: An overview

Examples of SIPP Operator failures:

FSCS was satisfied that there were claims where the conduct of the SIPP operators FSCS has declared in default gives rise to a civil liability to the investors because the SIPP operators failed to exercise reasonable care and skill, breached regulatory requirements and/or breached trustee duties.

Instances of SIPP operator failures include:

a) Failing to carry out any due diligence on the underlying investment held in the SIPP.

b) Receiving information that indicated that the non-advised investors did not understand the SIPP investment and/or that they were not receiving any advice and yet failed to seek clarification of the investor's understanding.

c) Failing to check that advisers who advised investors had the necessary FCA permissions.

d) Not having the necessary authority from the investor to authorise the underlying investment being made via the SIPP.

FSCS Financial Services Compensation Scheme

Three SIPP operator defaults: An overview

What compensation is payable?

- Many of the underlying investments held via the SIPPs are illiquid and have little or no current value resulting in consumers having lost a substantial portion of their pension pot.

- Subject to the facts of each claim, given the role of the SIPP operator and the requirements of the COMP Rules, FSCS considers that the calculation of compensation on the basis of the value of the investment made into the SIPP is likely to provide the claimant with fair compensation subject to the requirements of COMP 12.4R.

(4) FSCS Funding Review

Rule changes for FSCS funding from 1 April 2019

Financial Services Compensation Scheme

Funding: Rule changes for FSCS funding from 1 April 2019

Following the funding review, the FCA has now published CP18/11 containing the final FEES rule changes relating to FSCS, which will come into force on 1 April 2019. In summary, these include:

a) increasing the FSCS compensation limit for investment provision, investment intermediation, home finance and debt management claims to £85,000.

b) merging the Life and Pensions and Investment Intermediation funding classes.

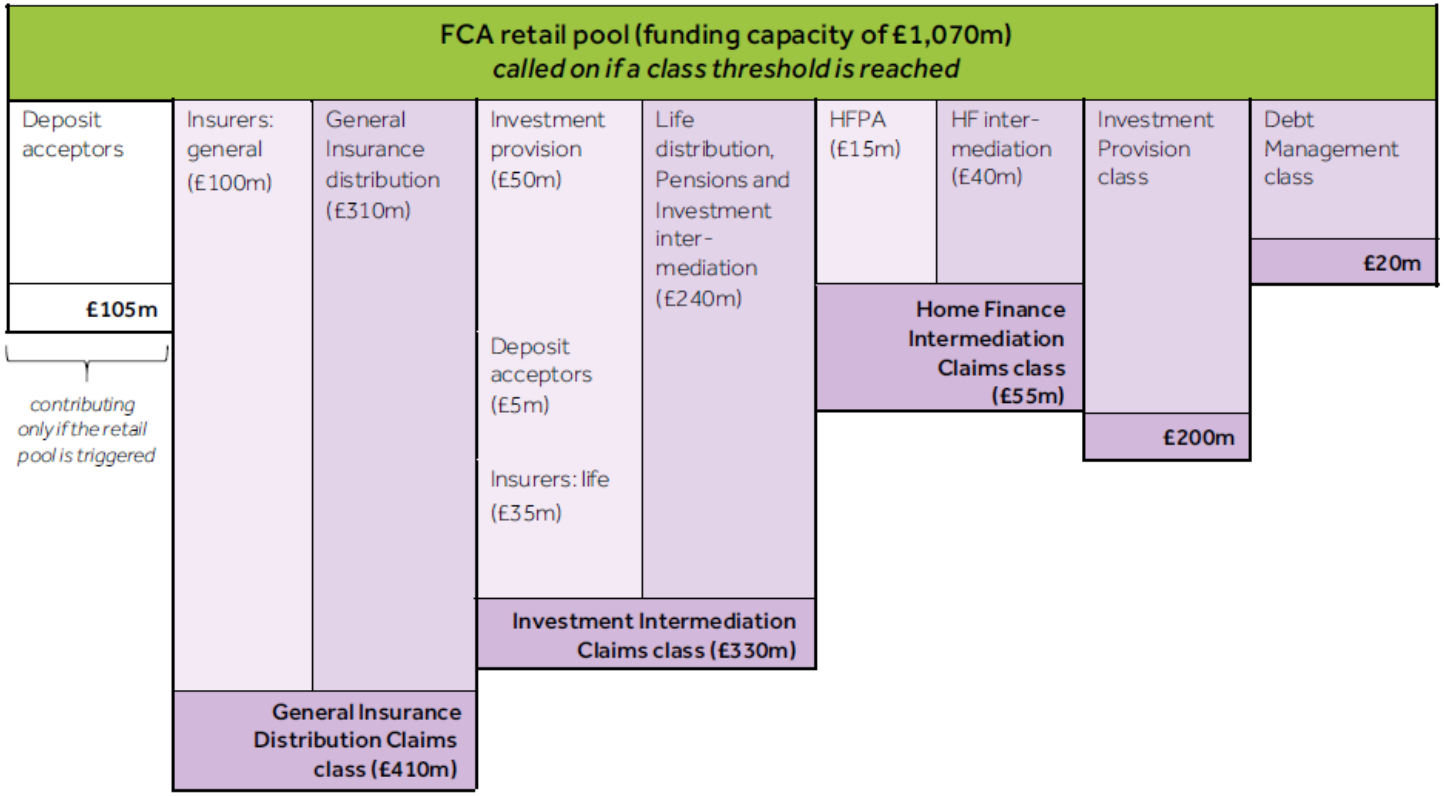
c) providing that all of the new FCA funding classes (except the deposit acceptors class) will benefit from and contribute to the retail pool (including the investment provision class).

d) requiring product providers to contribute around 25% of the compensation costs which fall to the intermediation classes.

e) moving pure protection intermediation from the Life and Pensions funding class to the General Insurance Distribution class.

Funding: New funding classes > 1 April 2019

- Life and Pensions and Investment Intermediation funding classes are merged
- Product provider categories are added to the intermediation classes, which contribute around 25% of the compensation costs to intermediation defaults



Consultation on PIF's PII cover

- Some PII providers have sought to limit their liability by preventing the FSCS from making a claim on the policy, e.g.
  - through a specific clause excluding the FSCS as a claimant, or
  - by relying on broad, general insolvency clauses which exclude claims relating to the insolvency of the firm or of third parties (e.g. investment funds which the firm has advised on).
- FCA is also consulting on draft rules (in the IPRU(INV) sourcebook) to ensure that PIFs should have PII policies that do not limit claims in this way. The consultation closes on 1 August 2018.
- The changes should make it more likely that FSCS can make recoveries from PII providers, reducing future levies on firms.

(5) FSCS Recoveries

Duty and process

Financial Services Compensation Scheme

FSCS Recoveries: Duty to recover

To mitigate the costs of compensation to levy payers, COMP 7.4.1R requires that where FSCS takes an assignment or transfer of rights from a claimant, FSCS must:

"*pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue*".

FSCS Recoveries: Process

Assignment of Rights

Pursuant to COMP 7.2.1R:

"*FSCS may make any payment of compensation to a claimant in respect of any protected claim conditional on the claimant assigning the whole or any part of his rights against any one or more of the relevant person, any third party, or, where applicable, a successor, to the FSCS on such terms as the FSCS thinks fit*."

Under COMP 7.3R, FSCS can also be subrogated to all of the rights of the claimant.

Duty to Pursue Recoveries

Pursuant to COMP 7.4.1R:

"*If the FSCS takes assignment or transfer of rights from the claimant or is otherwise subrogated to the rights of the claimant, it* ***must*** *pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue*."

FSCS Recoveries: Potential routes of recovery

- Insolvency Practitioner
- FSCS as an active creditor
- Professional Indemnity Insurance
- Third party claims

FSCS Recoveries: Successful recoveries

The Telegraph

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Iceland rejects UK repayment deal

Iceland has rejected new proposals to pay back the £2.3bn that Britain spent on compensating savers when internet bank Icesave collapsed, according to early results of a referendum last night.

FINANCIAL TIMES

ft.com/personalfinance

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June 30, 2009 6:09 pm

£103m suspected fraud uncovered at Keydata

By Matthew Vincent, Lucy Warwick-Ching and Brooke Masters

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2 March 2011 Last updated at 17:39

68 Share

Welcome Finance claims taken over by FSCS

fscs
Financial Services Compensation Scheme

» Q & A

fscs
Financial Services Compensation Scheme

THANK » YOU

GDPR

Philip Thomas

Reed Smith LLP

AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

Ambulance chasers and how to combat them

May 2018

Paul Gair, Partner

Patrick Shee, Associate

The rise and rise of SIPP complaints

- Both the FOS and the FSCS have seen increases in SIPP related complaints;
- The FOS have received 521 new complaints so far this year which is a major increase on the 371 for the same period last year;
- Increasing attention from Claims Management Companies (CMCs) and specialist claimant law firms who are:
  - looking for the next pit of claims; and
  - visibly trawling for prospective claimants through extensive advertising.

Pensions mis-Selling risk

- CMCs & law firms are comfortable and experienced using the FOS
  - It is quick, free and less onerous than the courts
  - It is arguably more likely to give the customer a positive outcome (fair and reasonable test)
  - Q3 2017/18 – the FOS saw 546 complaints regarding SIPP products (54% upheld)
- Consumers could still litigate if:
  - The FOS rejects their complaint; or
  - They want redress over £150,000
- Litigation Risk
  - Precedent setting
  - Read across risk

What types of claims are being seen / will be seen

- Advising clients to transfer personal pensions into a SIPP;
- Advising clients to invest in non-standard assets / funds;
- Breach of statutory duty:
  - Communications must be fair, clear & not misleading; and
  - Investments must be suitable for the individual customer.
- Negligent advice, mis-statement or management of the investments.

What firms need to do – be prepared

- Set up a formal process (or review the current process) to:
  - Ensure themes in complaints are quickly identified;
  - Ensure a consistency in responding;
  - Decide upon an agreed strategic approach to complaints (pre & post FOS);
  - Deal with complaints efficiently;
  - Minimise litigation risk; and
  - Identify lessons learned to revise current products and sales processes.

Case study 1

Mr v a Financial Advisor (FA)

The FA advised Mr to transfer his 3 personal pensions into investments via a SIPP. Mr was advised to invest 87.5% of his pension fund into an unregulated collective investment scheme (UCIS) as he was many years (25) from retirement. Mr was not a sophisticated investor but his attitude to risk was recorded as 'adventurous' on account of a risk questionnaire he completed. Mr was provided with warnings of investing in such funds which were highly specialised and highly speculative.

Was the complaint upheld?

Yes - upheld

It was decided that:-

- Mr had been inappropriately defined as 'adventurous' and the FA ought to have questioned the output of the questionnaire. Had they done so then the UCIS would have been deemed unsuitable;
- The SIPP was Mr's primary pension provision – and as such a UCIS was again unsuitable especially as 87.5% of his pension was exposed to it;
- Despite the warnings the FOS also found that Mr was not fully aware of risks involved.

Case Study 2

Miss v a SIPP Provider

Miss invested c£800k in a SIPP. She was assessed as having a medium appetite to risk but ought to have been assessed as having a low appetite to risk. 1/3 of the pension was invested in a particular 'risky fund' which exposed Miss to higher risk and it ultimately did not perform as well as the SIPP provider had hoped. Overall however, the pension increased in value.

Was the complaint upheld?

No - it was not upheld

It was held that:-

- The ‘risky fund’ was appropriate for the investor’s portfolio as only 1/3 of the pension was invested;
- The overall performance of the portfolio was to increase in value;
- Although the particular ‘risky fund’ may have been higher risk than Miss wanted, when the total risk of the portfolio was looked at, the FOS were satisfied it met her risk profile.

Questions?

Disclaimer

This presentation is a summary only. It is not intended to constitute advice and may not be relied upon as such.

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OPEN QUESTIONS

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LUNCH

Altus Business Systems

BARCLAYS

delta FINANCIAL SYSTEMS
Knowledge ~ Technology ~ Solutions

ORIGO

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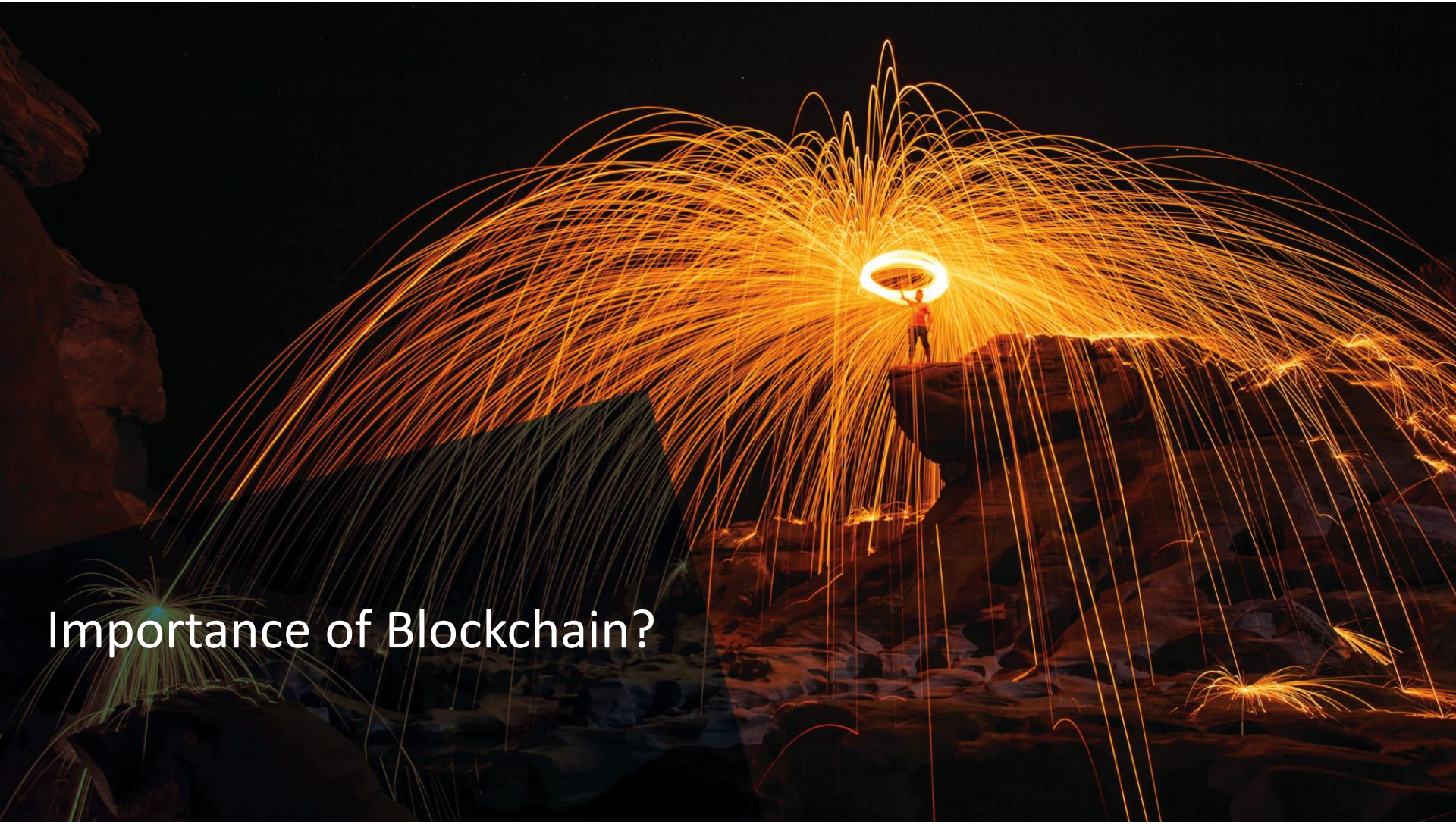
Hogan Lovells

An Introduction to Blockchain

AMPS Annual Conference

John Salmon

22 May 2018



Importance of Blockchain?

Blockchain: The buzz

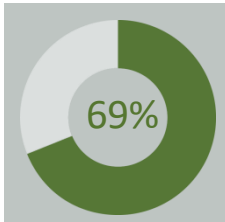
What others are doing

15m – 30m

People worldwide estimated to own cryptocurrencies

90%

of North American and European banks are exploring blockchain



of banks are experimenting with permissioned blockchains

How much is being invested?

$400bn +

Market capitalization of all cryptocurrencies

Raised in over 300 token sales in 2018

The global blockchain market is expected to be worth

US$20bn

by 2024

Cost savings

30%

The potential for reducing bank infrastructure costs

Potential annual savings for banks

US$8-12bn

US$15-20bn

Potential annual reduction in costs of banks' infrastructure attributable to cross-border payments, securities trading and regulatory compliance, by 2022

“ [blockchain is] a platform for truth and trust … I’ve never seen a technology that I thought had greater potential for humanity.”

Don Tapscott
One of the world’s leading authorities on innovation and the social impact of technology

“[blockchain] could yield significant gains in the accuracy, efficiency and security of such processes, saving tens of billions of pounds of bank capital and significantly improving the resilience of the system.”

Mark Carney
Governor of the Bank of England

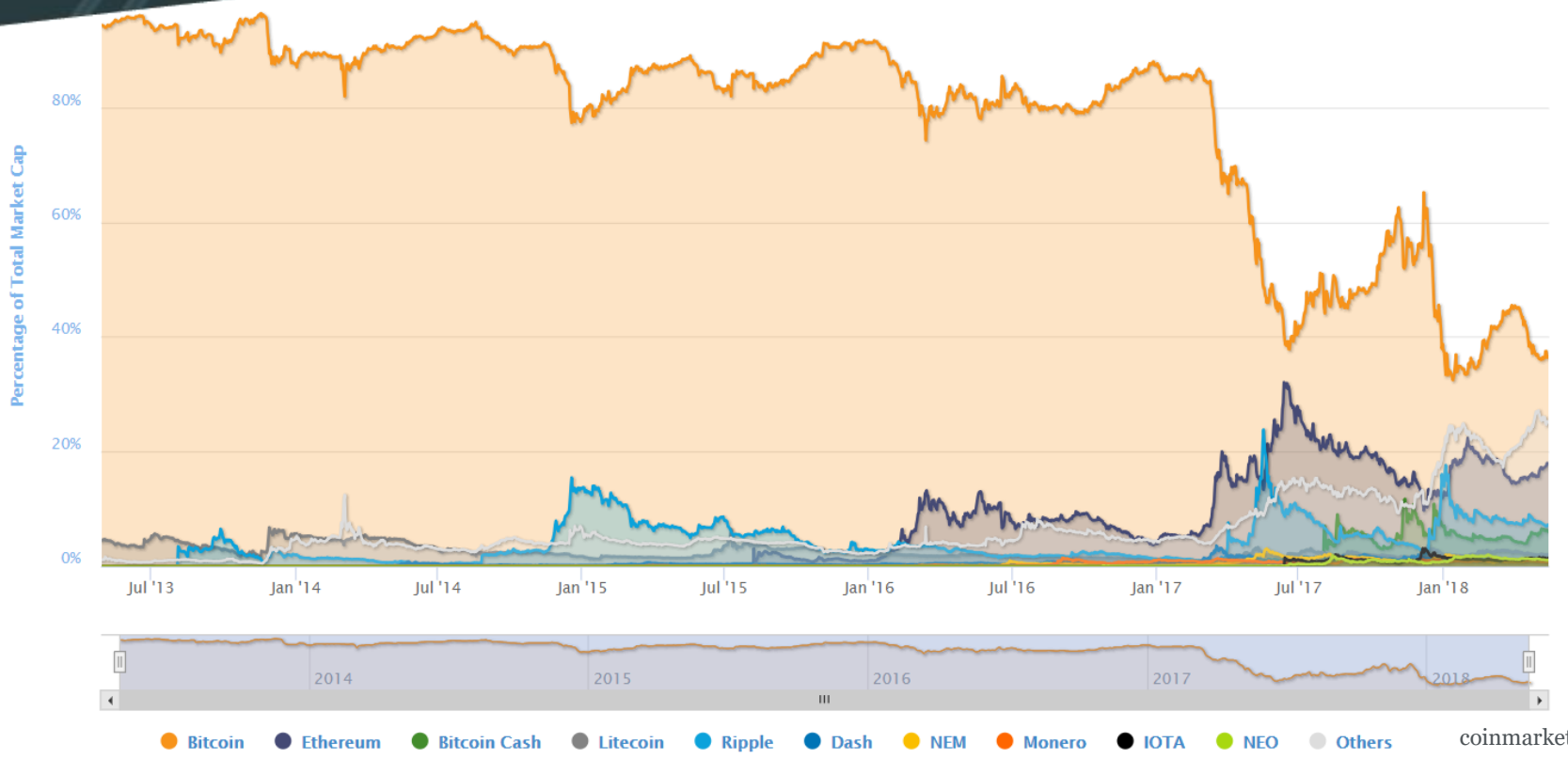
Blockchain: The buzz

#	Name	Market Cap	Price	Volume (24h)	Circulating Supply
1	Bitcoin	$141,043,099,683	$8,277.56	$5,692,240,000	17,039,212 BTC
2	Ethereum	$69,446,061,240	$697.99	$2,235,660,000	99,494,777 ETH
3	Ripple	$27,013,449,157	$0.689295	$312,309,000	39,189,968,239 XRP *
4	Bitcoin Cash	$21,583,170,775	$1,259.75	$727,096,000	17,132,900 BCH
5	EOS	$11,190,589,338	$12.97	$1,519,900,000	862,606,131 EOS *

https://coinmarketcap.com/ (Accessed 17 May 2018)

Blockchain: The buzz

Cryptocurrencies:
% of Market Capitalisation (Dominance)



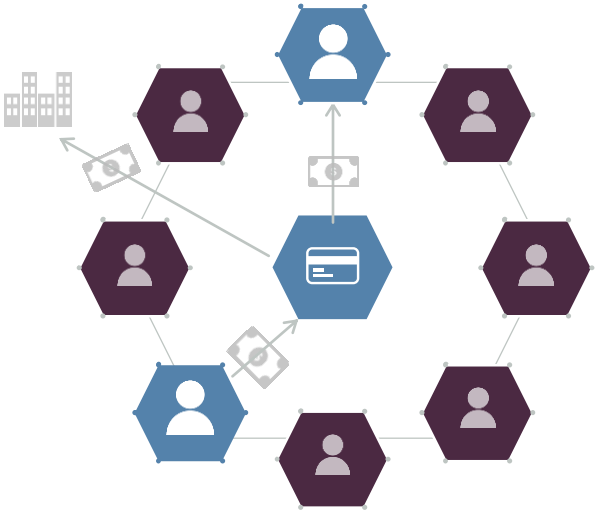
coinmarketcap.com

What is Blockchain?

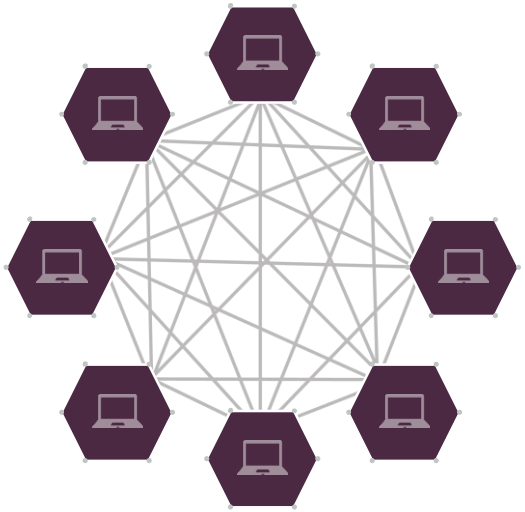
Bitcoin

Instead of your bank having control over your account ledger, control of the ledger is decentralized and dispersed among multiple computers on the network.

Each computer holds a copy of the distributed ledger.



Current payment systems require third-party intermediaries that often charge high processing fees…



…but peer to peer payment using a distributed ledger could allow for direct payment between individuals.

How blockchain works

No central party	*Cryptography*	*Game theory*	*Consensus protocol*	*Encryption*
Bob wants to send Alice a Bitcoin using an app on his phone called a 'wallet'.	To do so, Bob must know his 'Private' key, and Alice's 'Public' key.	'Miners' around the world are alerted to the transaction request. They compete to verify the transaction (including confirming Bob has enough Bitcoin) by solving a mathematical puzzle.	The first miner to verify the transaction will be paid in Bitcoin. The wider network check the miner's work and form a consensus that the transaction has happened.	Once verified, the transaction is added to a block with other transactions which is then appended to the blockchain – a linear public ledger of all transactions. Alice receives a Bitcoin in her wallet.

Potential benefits of blockchain technology

- Reduce costs of overall transactions and IT infrastructure
- Consensus in a variety of transactions
- Irrevocable and tamper-resistant transactions
- Ability to store and define ownership of any tangible or intangible asset
- Improved security and efficiency of transactions
- Increased accuracy of trade data and reduced settlement risk
- Enabling effective monitoring and auditing by participants, supervisors, and regulators

Blockchain in Pensions

The Pensions context

APG and PGGM develop a blockchain application for pension administration

Finextra

Blockchain could revolutionize retirement planning

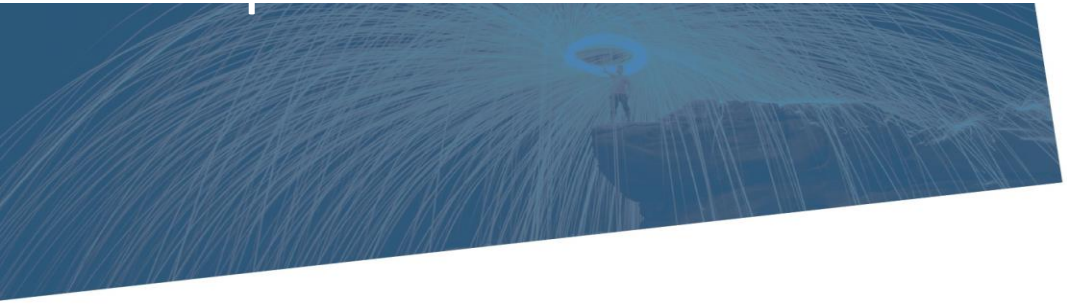
Investopedia

" *Life-based funds, such as those that pay a whole life annuity, can be fully autonomous and operate without a central trusted pensions fund*".

P Sestoft, ITU Copenhagen

Blockchain technology 'could transform pensions administration': KPMG

Investment and Pensions Europe

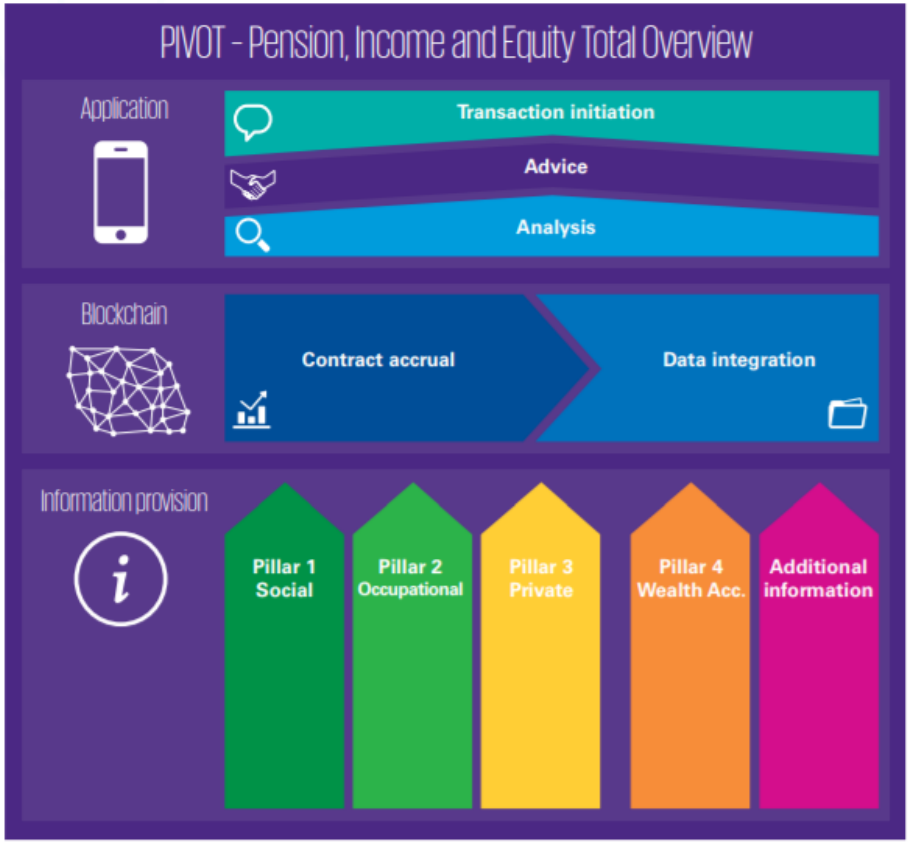


- Identity problems
- Pot follows member – tracking of pots
- More efficient sharing of data across the eco system
- Investment as an asset class – HL example

Pensions use case:

PIVOT

- Combat pension apathy with greater communication
- **Distributed ledger technology** facilitates the sharing of information from various sources (the four pillars)
- **Smart contracts** take this information and calculate pensions accruals in real-time
- **Result:** Real-time data on pensions can be analysed in a mobile application available to customers

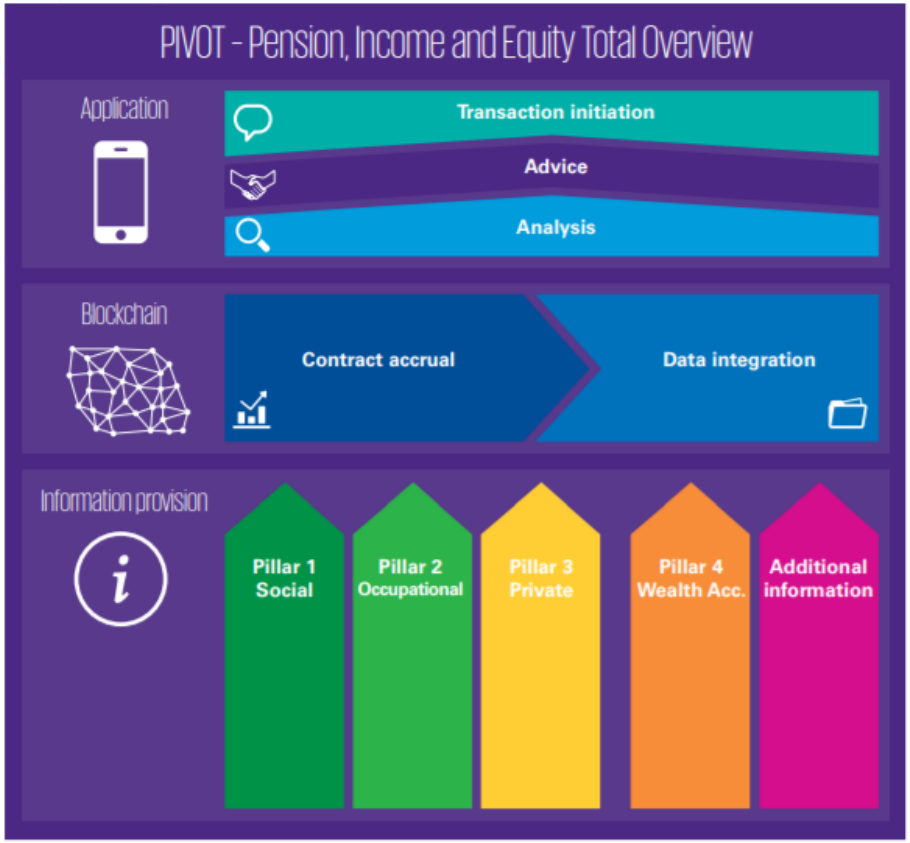


Source: https://assets.kpmg.com/content/dam/kpmg/nl/pdf/2017/sector/pensioenfondsen/more-insight-less-pension-apathy.pdf (May 2018)

Pensions use case:

PIVOT

- Practical application examples:
  - When a customer receives a salary increase, PIVOT can advise the deposit of part of the increase in the pension accrual and (with the customer's approval) transfer this every month.
  - When a customer marries, PIVOT can inform him or her of the consequences on his or her pension.
  - When a customer with employment pensions becomes self-employed, PIVOT can advise on pension gap prevention steps (e.g. through additional savings).



Source: https://assets.kpmg.com/content/dam/kpmg/nl/pdf/2017/sector/pensioenfondsen/more-insight-less-pension-apathy.pdf (May 2018)

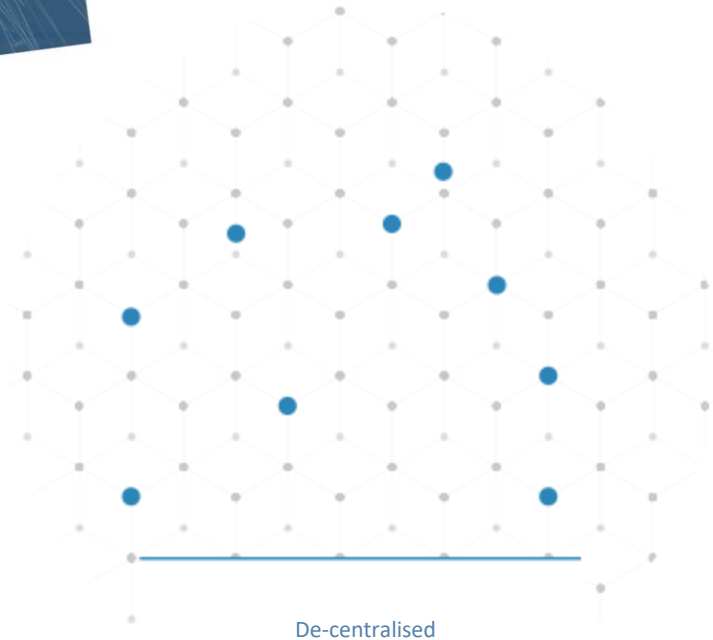
Key Legal challenges

Key Legal Issues

Decentralised Nature

Centralised

Traditional model of value transfer



De-centralised

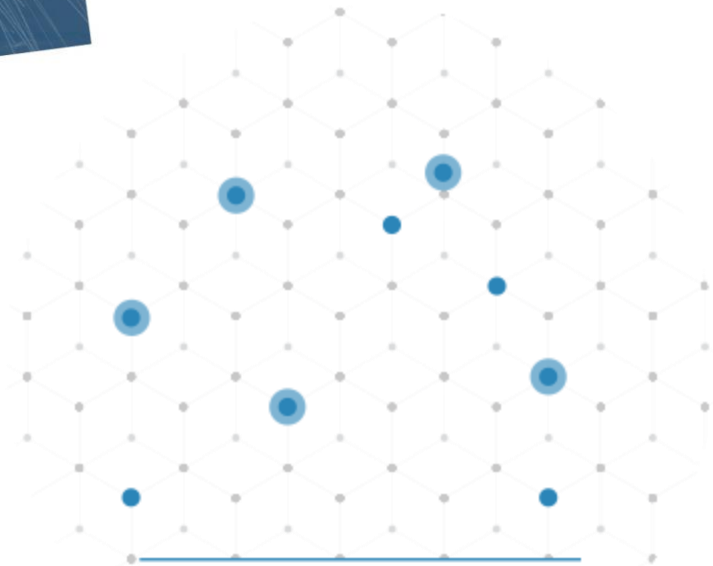
Blockchain

Key Legal Issues

No Central Party

Central party who is trusted and possibly regulated depending on the sector

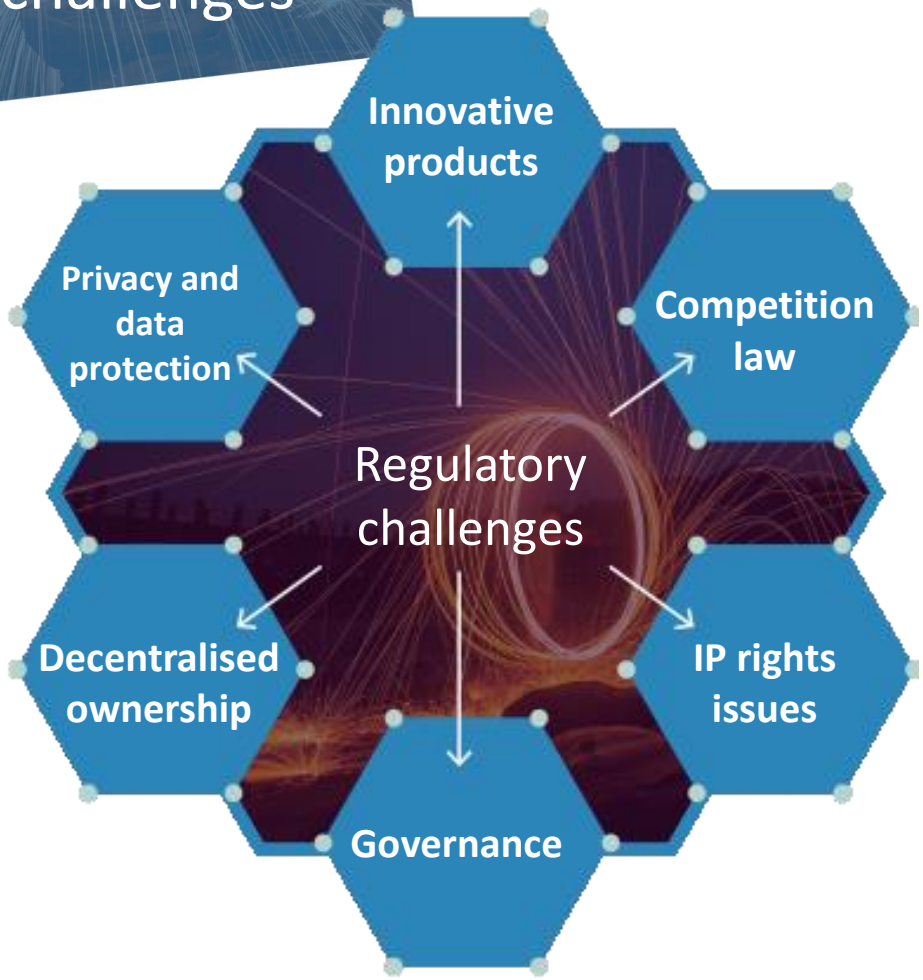
Traditional model of value transfer



Regulatory requirements need to be complied with – may need to regulate decentralised parties

Blockchain

Key regulatory challenges



Questions?

Hogan Lovells

www.hoganlovells.com

Vulnerable Clients

Spencer Gardner

Coffin Mew

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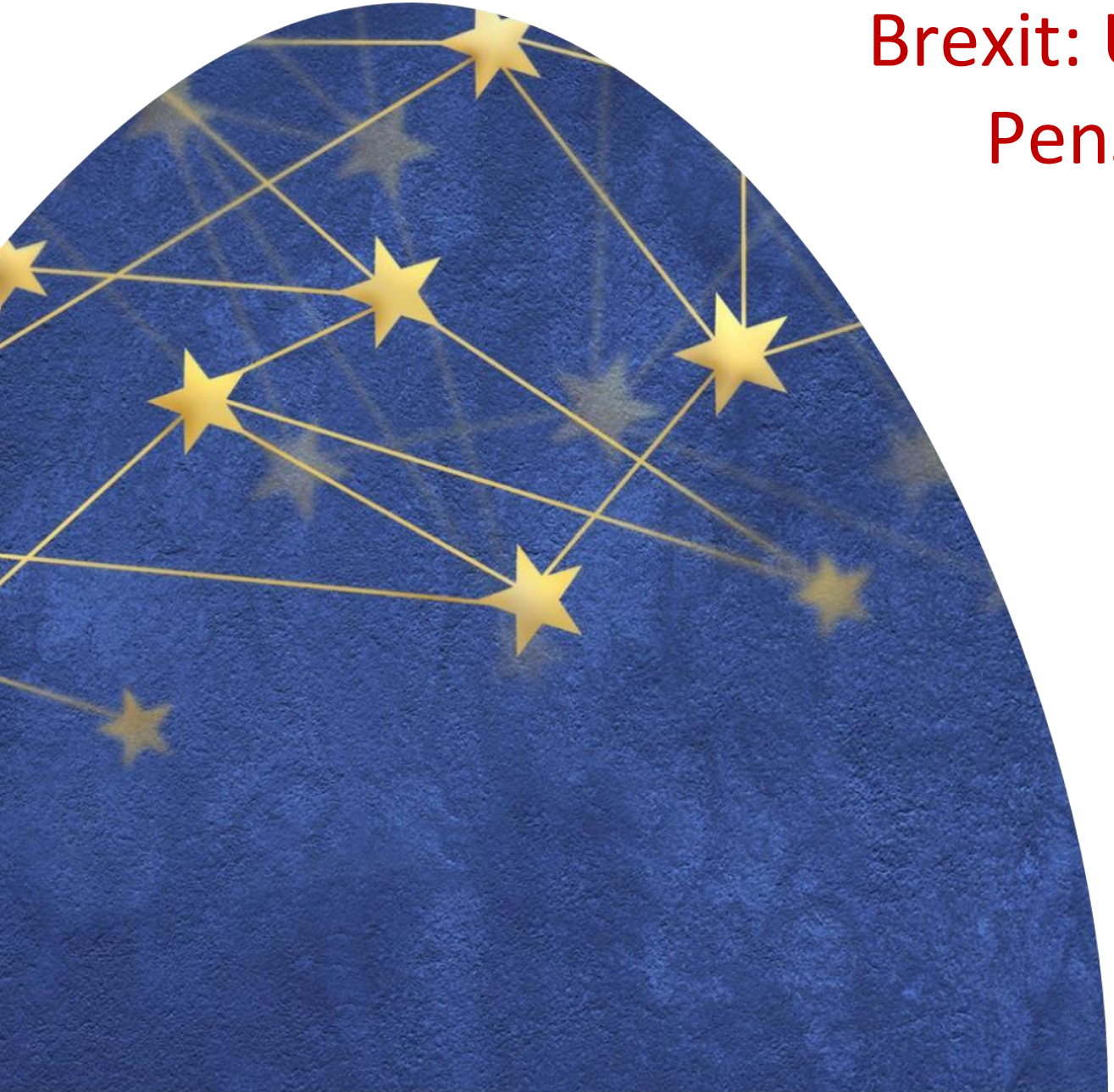

Brexit: Update and a Pension Provider Perspective

Tobin Ashby

22 May 2018

Pinsent Masons

Brexit Update

October 2018
- Proposed end of negotiating period for withdrawal agreement

March 2019
- Brexit Day

December 2020
- Transition period until this date?

- Ireland and Customs Union
- Indication, EU Endorsement and Ratification
- Joint Implementation Committee
- UK Political Uncertainty

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What might the trade deal look like?

How do the off-the-shelf Brexit options stack up against the Prime Minister's objectives?

		PM's Lancaster House speech	Stay in the Single Market but leave the Customs Union	Leave the Single Market but negotiate a customs union	Leave the Single Market and Customs Union, but negotiate a bilateral trade agreement			Leave the Single Market and Customs Union with no deal
			Norway	Turkey	Switzerland	Ukraine	Canada	WTO option
"Red lines" — Defensive interests	Control migration from the EU	✓	✗	✓	✗	✓	✓	✓
	End the jurisdiction of the European Court of Justice	✓	Partial	Mostly	Mostly	Partial	✓	✓
	End applicability of EU regulations	✓	✗	Partial	Partial	Very limited	✓	✓
	Pursue an independent trade policy	✓	Mostly	Very limited	Mostly	✓	✓	✓
	Stop obligatory budgetary contributions to the EU	✓	✗	✓	✗	✓	✓	✓
	Exit CAP and CFP	✓	✓	✓	✓	✓	✓	✓
Offensive interests	Tariff-free trade with the EU	✓	✓	✓	✓	✓	✓	✗
	Access to the EU single market for services	✓	✓	✗	Very limited	✓	Very limited	✗
	Seamless and frictionless border	✓	Partial	Partial	Partial	Partial	✗	✗
	Voluntary participation in EU programmes	✓	✓	✓	✓	✓	Partial	✗
	Speed of negotiation (within Article 50 process)	✓	✓	✓	✗	✗	✗	N/A

Source: Institute for Government analysis, June 2017.

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Scale of Impact for Product Providers

6 million policies in the UK and 30 million in the EU27 affected

Bank of England, Financial Stability Report November 2017

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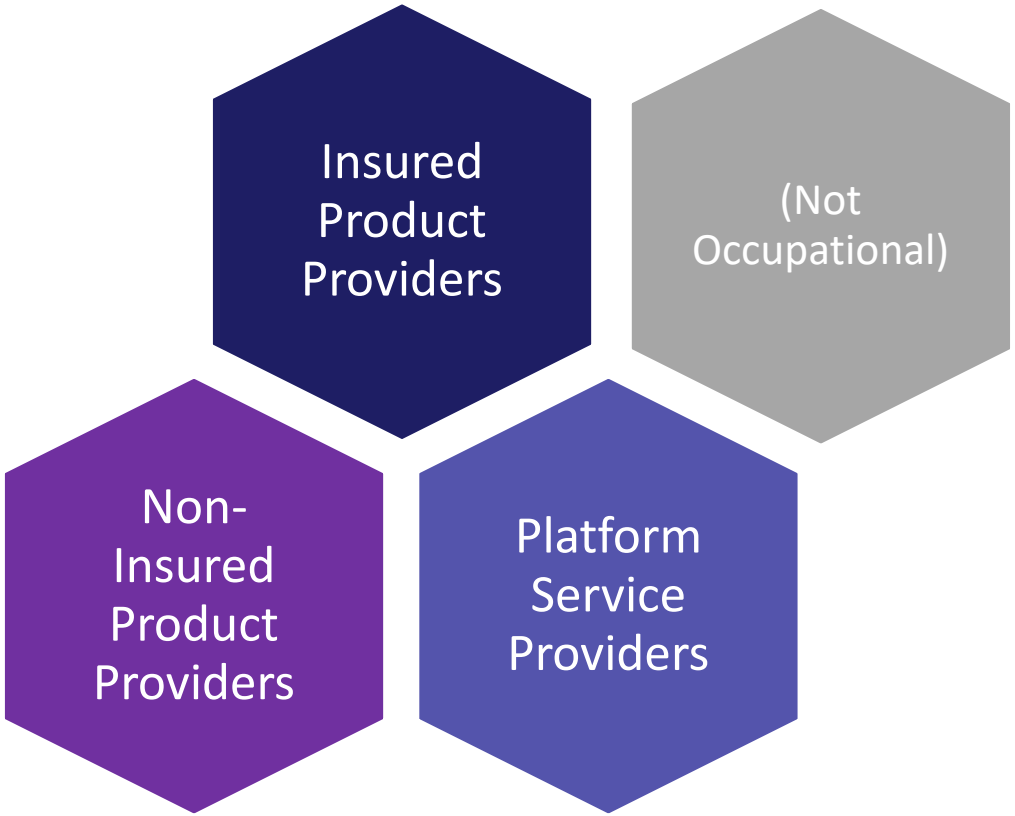
Relevant Types of Pension Provider



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Assumptions?

No trade deal?

Trade deal may not include Financial Services?

Assume no passporting/ equivalence?

Regulators expect early readiness & implementation

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Pension Provider Issues

New Business in EU

- Selling and marketing products in EU Member States
- Customers can still migrate
- Compliance with local regulations?
- In UK existing rules apply

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Pension Provider Issues

Existing Business: Contract Continuity

- Paying to customers across borders
- Taking payments/premiums from customers in EU Member States
- Administration of claims and portfolios and communicating with customers cross-border
- Migrating customers' products across jurisdictions?
- Compliance with local regulations?
- In UK existing rules continue to apply

Some other potential issues

Investing

- Market implications for capital
- Cross-border capital investments
- Cross-border customer investments

Cross-border Intermediaries

- Using Passports now?
- Level of information about intermediaries?
- Controlling post-Brexit approach

Transferring customers to local entity

- Loss of FSCS Protection
- Tax?
- Locating customers

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Planning for Brexit

Do you have a Brexit plan for your business?

1. Yes
2. Developing a Plan
3. No need
4. No (but may need one)

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Developments and Guidance

Transition Period	• Withdrawal Treaty by Brexit Day • Regulatory status quo maintained until December 2020 (if agreed)
ABI	• Protection of customers' rights and certainty • Major concern with existing contracts: "break their promise to customers or risk breaking the law"
EIOPA	• Discouraging fronting and encouraging consistency • Move to implement plans
PRA/FCA	• Do not rely on successful negotiations • Communicate with customers • Temporary permissions and other leniency (wholesale?)

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Transition Period

Do you expect a Transition Period to help with your Brexit planning?

1. Yes
2. Not sure
3. Not applicable
4. No (but wish it did)

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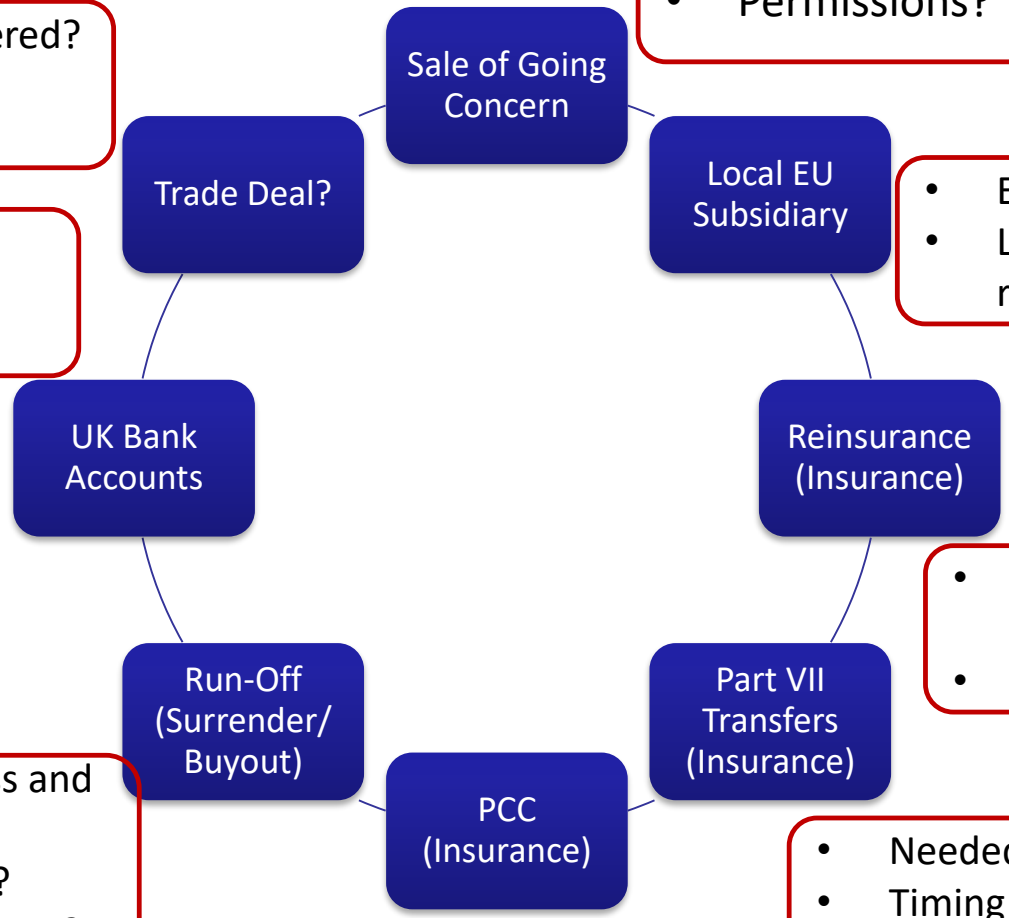
What can be done about existing EU cross-border business?



- Finding a buyer
- Permissions?

- Entity or Branch?
- Local law and capital requirements

- EIOPA Guidelines – 10% risk retention
- Local presence

- Needed for insurance transfers
- Timing and cost
- Finish pre-Brexit

- E.g. Malta
- Part of wider entity
- Consider impact on customers and communication

- Long-term business and timing
- Contractual terms?
- Customer alternatives?

- Can reduce cross-border activity
- Other activities?

- Passporting covered?
- Limitations on Equivalence

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Implementation

Have you started implementing any Brexit plans yet?

1. Yes
2. Not sure
3. No (but probably need to)
4. Not applicable

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Possible Help?

Grandfathering?

- Transition (long-term business question)
- Trade deal?
- Overseas exemption? (UK **and** EU?)

UK Regulators' Forbearance

- BoE / PRA (Wholesale?)
- Temporary permissions
- Inwards (to UK) only?

May have until December 2020

- Uncertainty around transition
- Ultimate outcome will be the same

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Brexit GC Report

- **94%** of board members say they are ready for Brexit, but only half of GCs agree
- **51%** of companies have already triggered Brexit contingency plans envisaging a no-deal scenario
- **57%** of board members see their GC as a strategic advisor on Brexit. 25% would welcome an even greater role for the GC
- **70%** of board members expect a detailed legal risk assessment by June 2018. 47% of GCs expect to be in a position to provide this
- **61%** of board members see the GCs role as being responsible for Brexit scenario. 37% of GCs see this as their role

https://www.pinsentmasons.com/en/expertise/services/the-legal-impact-of-brexit/general-counsel-planning-business-brexit/

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What Next?

Regulators

- Timing
- Customer Communications
- Discussions with Regulators
- Changes in law?

Negotiations

- Transition?
- Deal or hard exit?
- Financial Services – Third country?
- Equivalence?

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OPEN QUESTIONS

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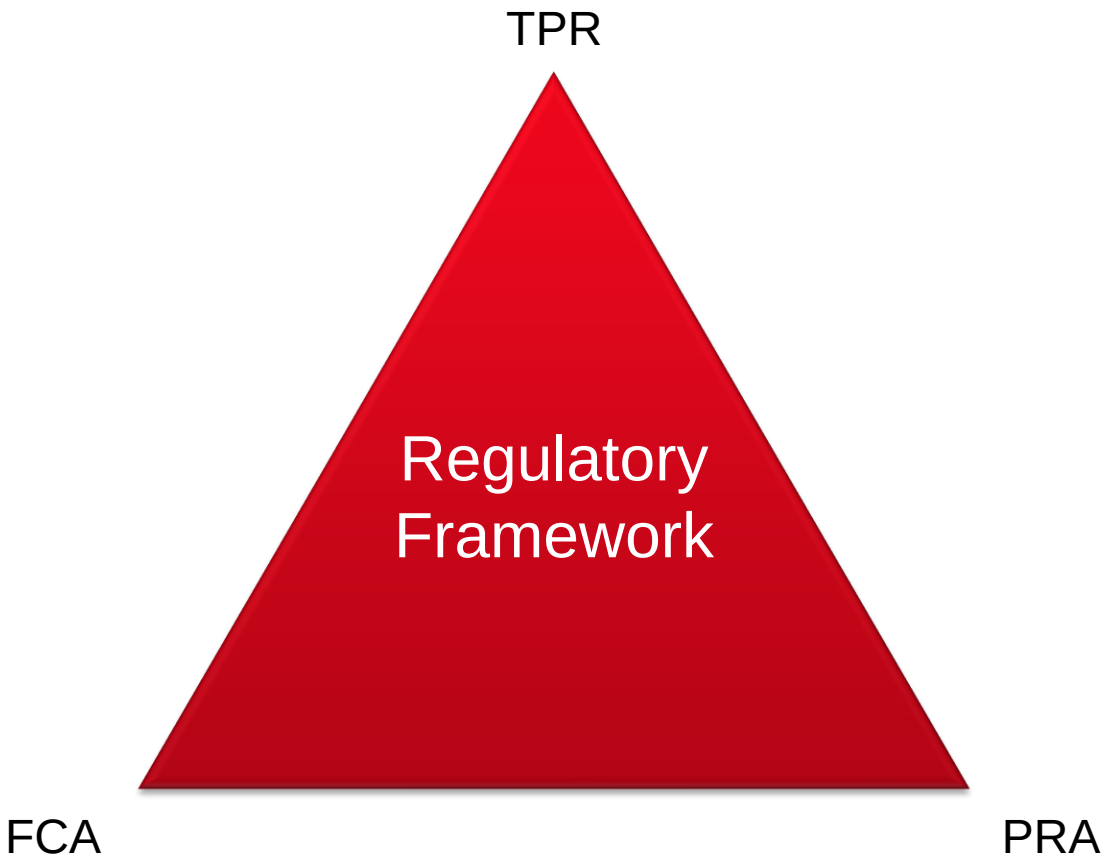
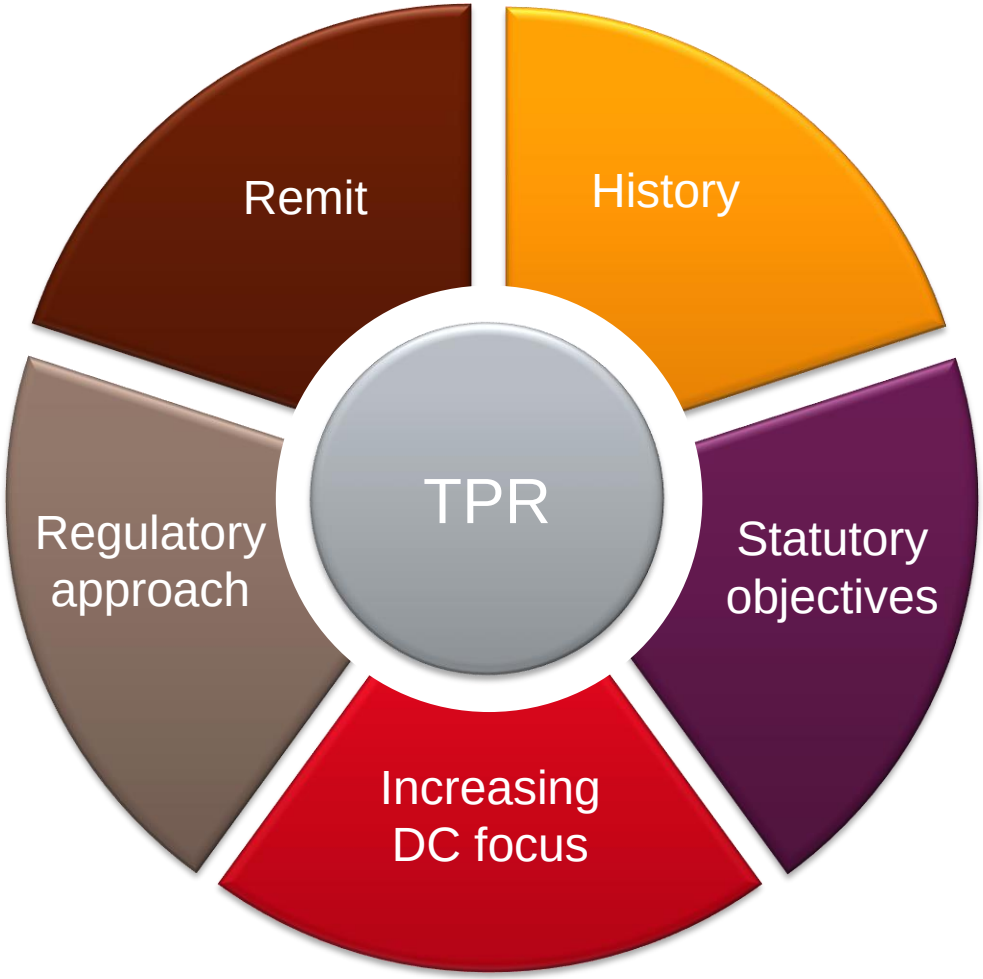
Sackers

TPR and FCA: A regulatory analysis

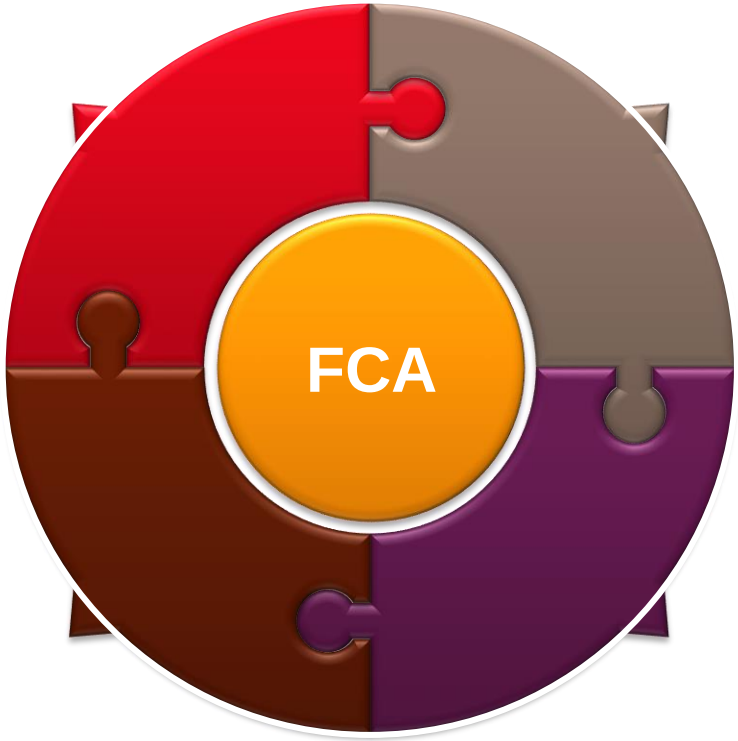
Lucy Dunbar, Partner


TPR
Regulatory Framework
FCA
PRA


Remit
History
TPR
Regulatory approach
Statutory objectives
Increasing DC focus

Remit

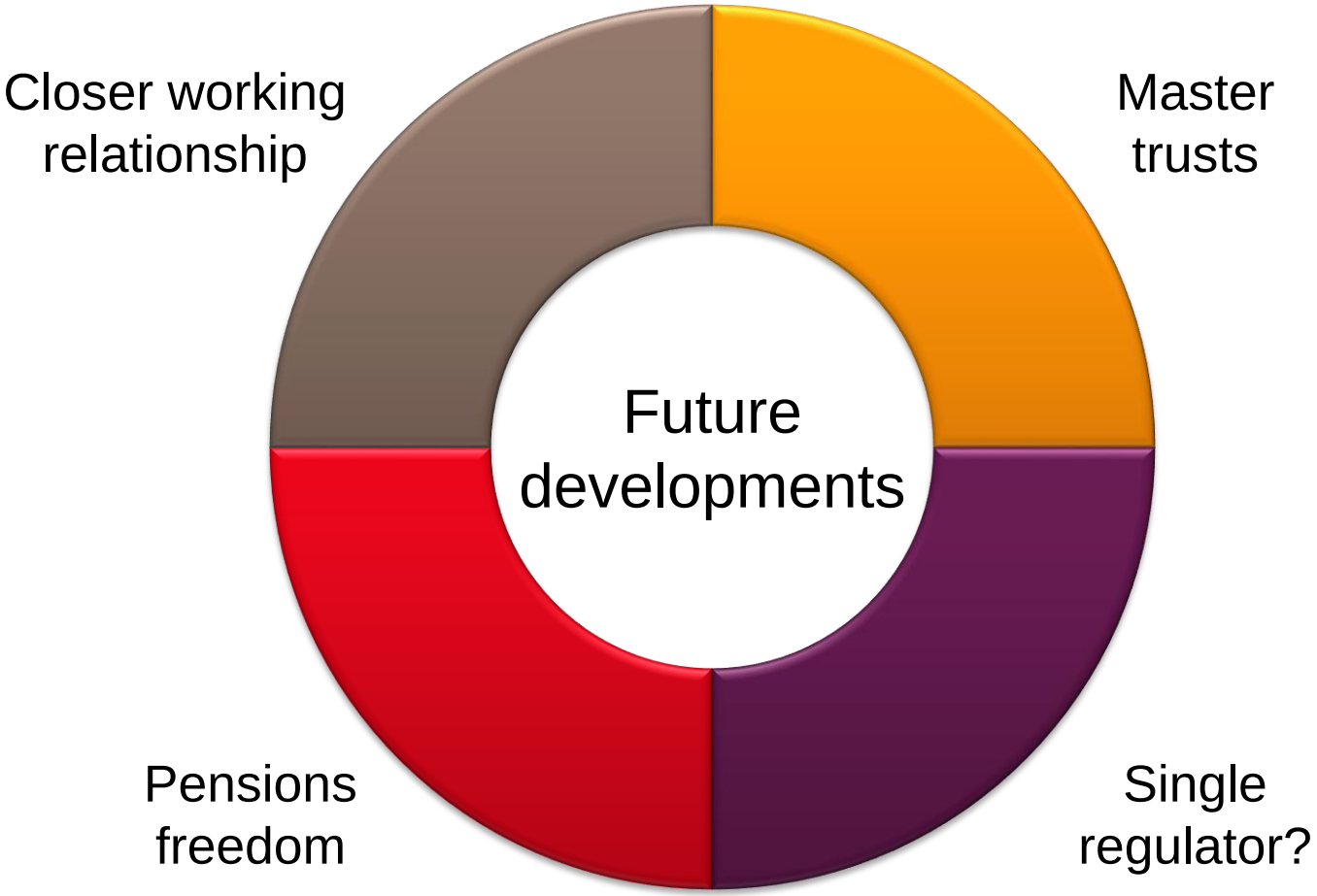
History



Regulatory approach

Strategic objectives


2013
MOU
Joint
approach
2018
consultation


Closer working relationship
Master trusts
Future developments
Pensions freedom
Single regulator?

Sackers

Lucy Dunbar

lucy.dunbar@sackers.com

Port Talbot and its lessons

"I wonder how many of the financial advisors who recommended transfers out , predicted a 10% drop in the stock market in one week? Not many is my bet".

BSPS member - Facebook

Henry Tapper
AMPS Annual conference – May 22nd

first

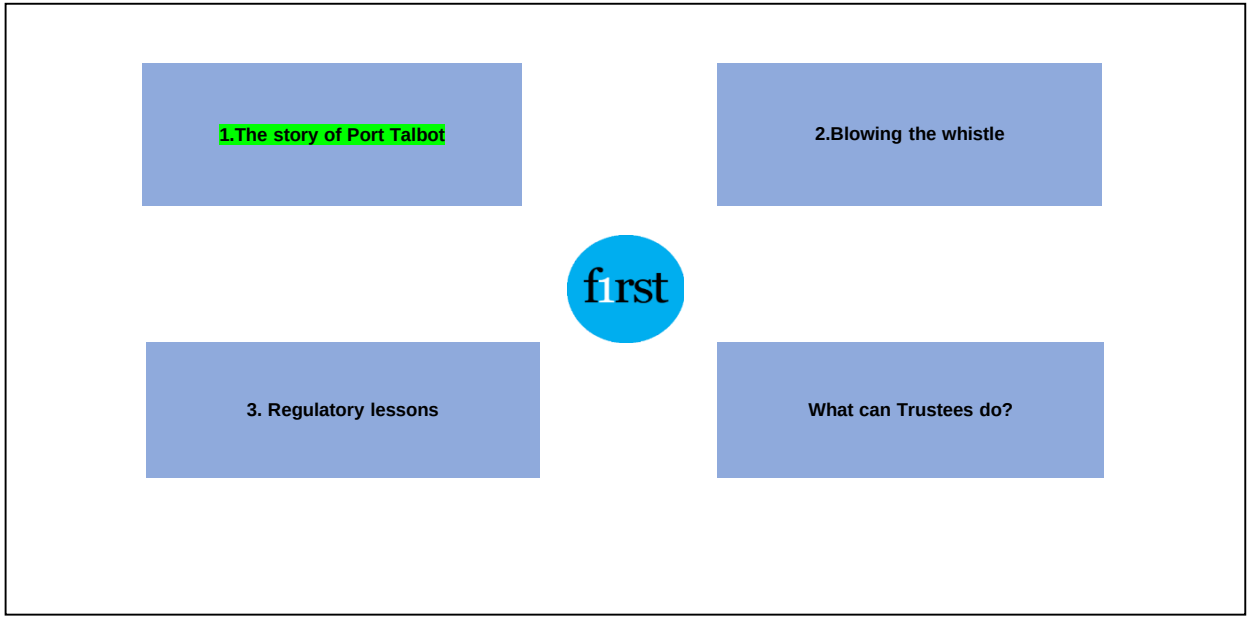
Transfers out of DB pensions tripled last year to record levels

4.3 FUNDS'[1] INCOME AND EXPENDITURE

	2012	2013	2014	2015	2016	2017
Transfers to other pension schemes[10]	6,810	6,084	5,363	13,221	12,777	34,245

Source ONS MQ5 Tables – March 2017 (figures in £m)

The Story of Port Talbot



The power of the sausage and chip supper

Time to choose for BSPS members

Trustees said "Time to Choose" between

- BSPS 2
- PPF

" Deferred" members *heard* three choices

- BSPS 2
- PPF
- **A transfer value of £400,000**

What happens when the Trustee loses the dressing room

What the Trustee said

"The Trustees believe the vast majority of members would be better off in the new BSPS"

"We underestimated demand for CETVs"

"We saw no need for a Transfer helpline"

Allan Johnston – BSPS Chair

What members did

97,000 out of 122,000 members voted

Voters split 83/17 in favour of the new BSPS

25,000 people defaulted into PPF

Estimated 7,000/43000 deferred members transferred

Total loss to £12bn fund from transfers - £3.0bn

Why did members “cut and run”?

- Member’s gave up on employer -
- Time-bound offer; “Buy now while stocks last”
- Advisers offered better service than trustees
- Key influencers in steelworks were paid by Celtic (£80 a lead)
- The Lionel Messi effect; “I did what my foreman did”

- **Telephone numbers (“I thought my pension was £30k – it turned out to be worth £750,000!”)**

Port Talbot – lessons?

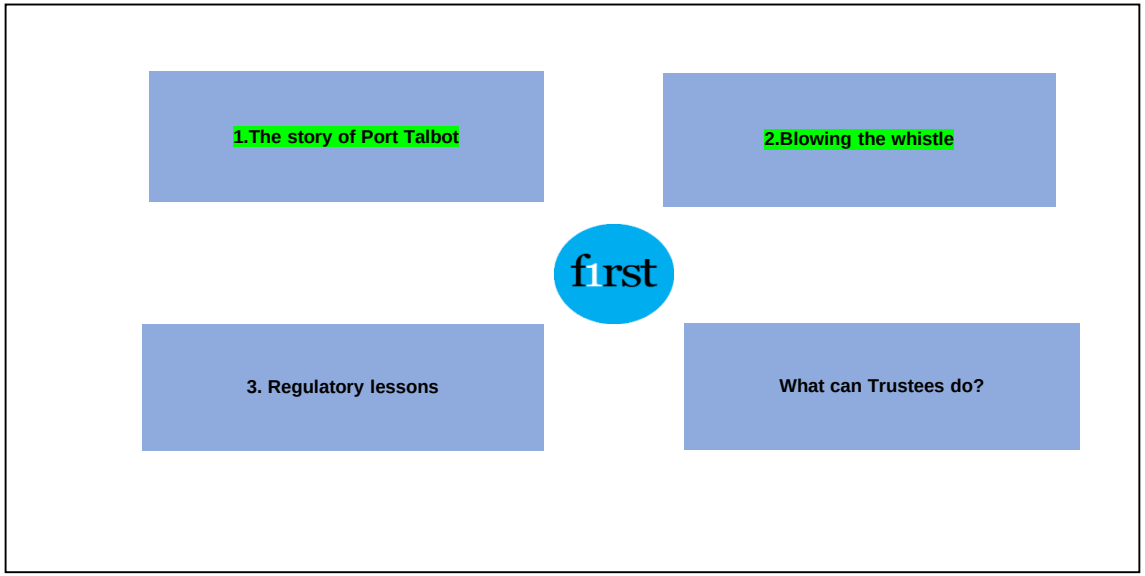
- “Guidance” isn’t enough to protect members
- Workers organise around Facebook;- “another country” – to Trustees
- Social media spreads bad news quickly..
- Trustees/administrators slow to react
- Many members who transferred were “vulnerable”

“

Question

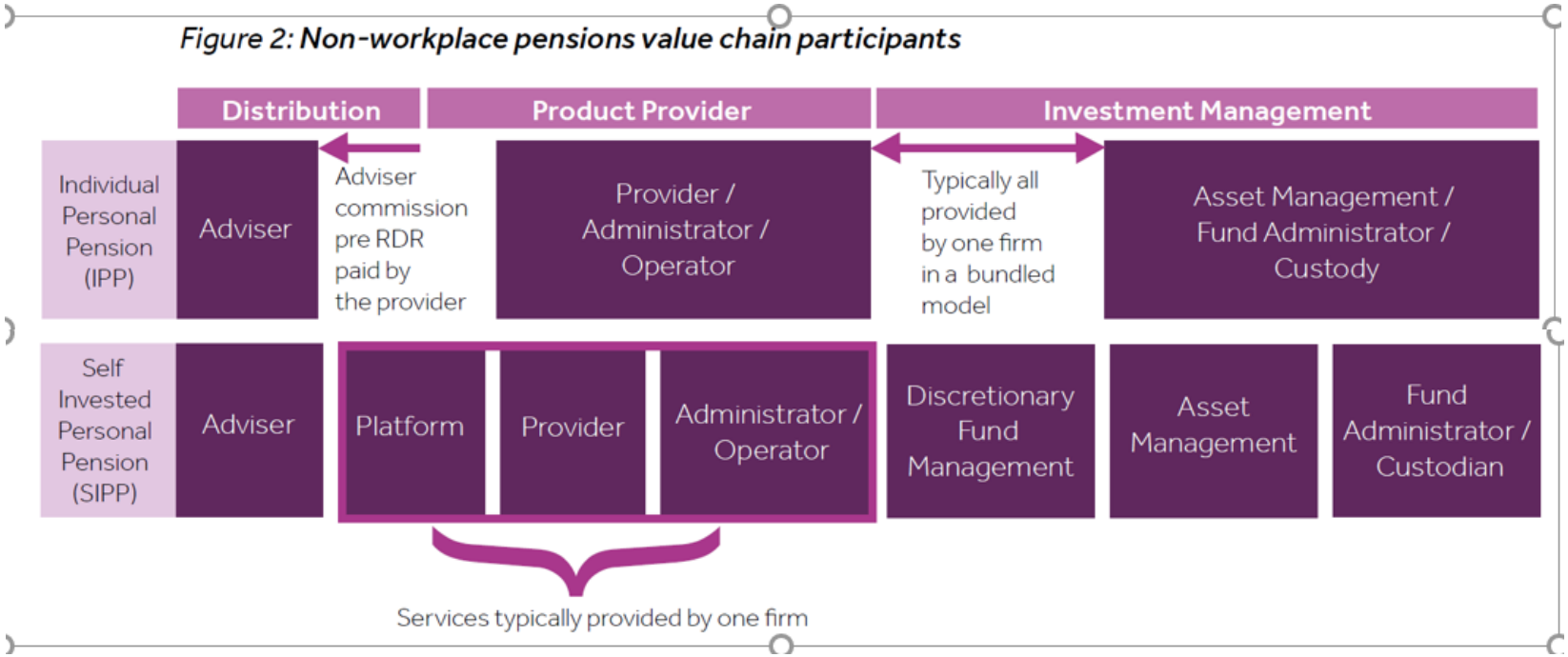
Does this ring any bells with you?

Session two – blowing the whistle



Don’t let them get away with it!

Advisers use complicated structures where no one is accountable



How it worked at Port Talbot.

Stage one – foremen paid £80 by Celtic Wealth for “bums on seats”

Stage two – sausage and chips dinners to set up meetings with Active Wealth Celtic paid £700

Stage three – Active Wealth advise ,TVAS outsourced - Client charged £1,500

Money transferred to SIPP (Momentum/IP)

SIPP instructed to invest through Gallium who invest in Vega which invests into 5Alpha, which invests into various funds which invests into assets.

Complex fund disclosures ; 5Alpha has a 2.51%pa OCF, Vega adds 0.66% with further deductions by Gallium and SIPP providers

Class E shares in 5Alpha carry 5% marketing fee + dilution levies

Redemption values typically 10% lower than CETVs

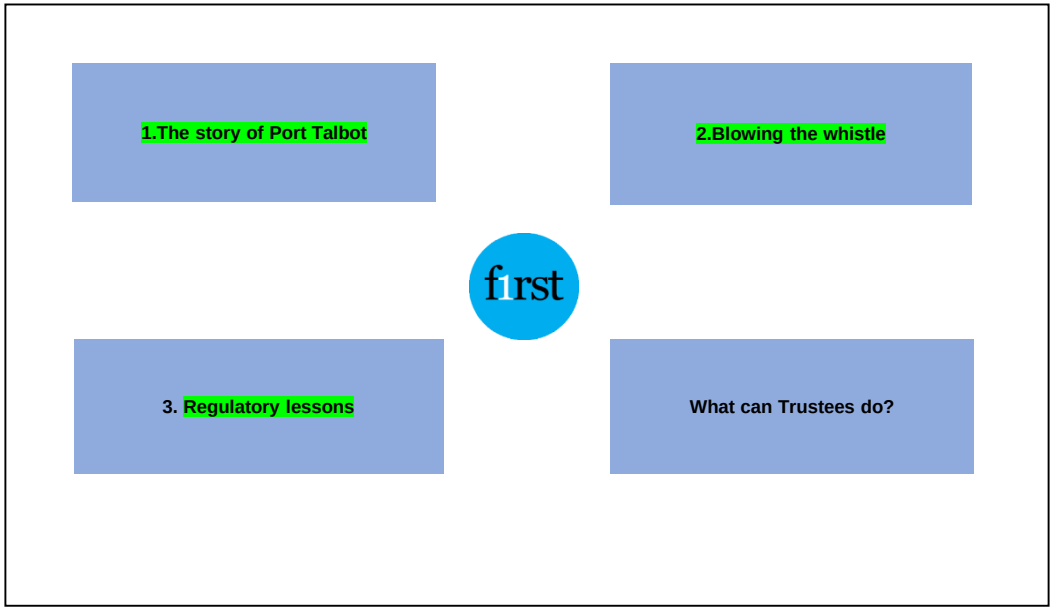
Why it’s risky - blowing the whistle…

- **Defamation**; Typically from institutional end of chain (with assets to fund legals)
- **Tipping off**; publicising risks to members could be deemed tipping off
- **Member trust**; being seen to obstruct freedom and choice can be deemed a breach of fiduciary duty
- **Being wrong**; for some members it is in their best interests to transfer

Question

If you were asked by a member of the your defined benefit scheme, what to do, what would you say?

Session three – operational lessons



Could Government do better?

What is Government doing about this?

Work and Pension Select Committee lunched probe into Port Talbot as part of Pension Freedoms enquiry

- FCA suggest 10 advisers make “voluntary” agreements to cease transfers
- FCA’s initiate general review of advisers
- Publish research suggests 53% of CETVs are questionably or poorly advised
- 30% of CETV’s deemed to be wrong in recent paper
- FCA and tPR launch project to establish a joint pensions strategy

Megan Butler asks Clive Gordon to “reach out to occupational pension schemes”

The Regulatory agenda

- CP 18/6 *" an adviser should start from the assumption that a transfer*

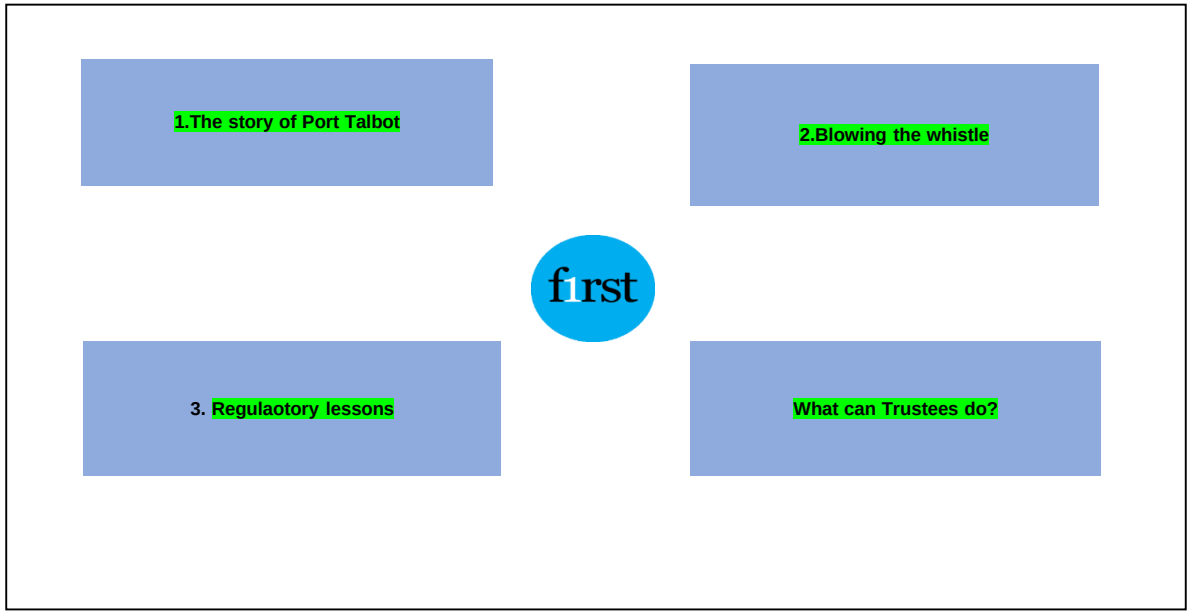
will be unsuitable (the 'starting assumption"

- CP 18/7
- Proposed ban on contingent fees (after further consultation)
- Increased requirements on advisers (exams)
- PI insurers more likely to drive immediate change

Question

Do you think the Government should be encouraging more transfers or intervening to stop the rush?

Session four – What can Trustees do?



Can or should trustees help?

How can Trustees Help?

- LBG saw £3bn transfer from DB to private “DC” pensions in 2017
- Some of this money was through advisers who have now ”volunteered” to hand back transfer certificates
- Problem acute in financial services where transfer values are high – Barclays saw transfers of £4.2 bn. over the period.

Can Trustees intervene?

- Officials cannot advise but can inform – FCA says transfers are generally not in member’s interests
- Trustees can whistle blow on bad and fraudulent practice
- Trustees can support member education programs

What can Trustees say to members?

- Financial services covenants are strong – member benefits are not at risk
- FCA consider members are generally better off in the DB scheme
- Pick your advisers carefully
  - Be aware of impact of charges– and how “contingent fees” work
  - Take a second opinion (especially if the adviser is offering to manage the transferred money)
  - If you don’t understand what is happening, stop
- Trustees work in the interests of members (not the employers)

Help at hand?

- The Pension Advisory Service ; Michelle Cracknell
  - Helpline ; 0300 123 1047
  - Website ; *https://www.**pensionsadvisoryservice**.org.uk*

- The FCA; Clive Gordon 020 7066 1412 Clive.Gordon@fca.org.uk
- The Pensions Regulator; Michael Broomfield 0345 6001011 michael.broomfield@tpr.gsi.gov.uk
- Action Fraud; 0800 123 2040 https://actionfraud.police.uk/
- First Actuarial ; 07785 377768 henry.h.tapper@firstactuarial.co.uk

Questions

I’m very keen to hear your views

CHAIRS CLOSE

Zachary Gallagher

AMPS Committee Member &
Berkley Burke

AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

CHAIRMAN'S CLOSE

- Thank you for your attendance.
- Thanks to the AV crew & Amayzed team.
- A CPD will be emailed
- Safe journey

AMPS ASSOCIATION OF MEMBER-DIRECTED PENSION SCHEMES

THANK YOU & DISCLAIMER

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