



Department
for Work &
Pensions

***Triennial Review of Pensions Bodies
Stage 1: Options for delivery***

**Report by the Department for Work
and Pensions on the Pensions
Regulator, the Pensions Ombudsman,
the Pension Protection Fund
Ombudsman and the Pensions
Advisory Service**

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List of abbreviations

ABI	Association of British Insurers
DA	Defined Ambition – a pension scheme which shares characteristics of DB and DC schemes
DB	Defined Benefit – a scheme in which the benefits are defined in the scheme rules and accrue independently of the contributions payable and investment returns. Most commonly, the benefits are related to members' earnings when leaving the scheme or retiring, and the length of pensionable service. ¹
DC	Defined Contribution – a scheme in which a member's benefits are determined by the value of the pension fund at retirement. The fund, in turn, is determined by the contributions paid into it in respect of that member, and any investment returns.
DWP	Department for Work and Pensions
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
MAS	Money Advice Service
NAPF	National Association of Pension Funds
NDPB	Non-Departmental Public Body
NEST	National Employment Savings Trust
PO	Pensions Ombudsman
PPF	Pension Protection Fund
PPFO	Pension Protection Fund Ombudsman
PRA	Prudential Regulation Authority
TPAS	The Pensions Advisory Service
TPR	The Pensions Regulator

¹ These definitions are taken from a comprehensive glossary of pensions terms maintained by TPR at <http://www.thepensionsregulator.gov.uk/Glossary.aspx>

Summary of conclusions

The Pensions Regulator (TPR) should continue in its current role and should retain its Non-Departmental Public Body (NDPB) status. TPR clearly passes two of the three tests for continued delivery as an NDPB. It is a technical function which needs specialist expertise to deliver and it is a regulatory function which needs to be delivered with absolute political impartiality. (Paragraph 44)

The Pensions Advisory Service (TPAS) needs to demonstrate that it can successfully broaden its volunteer recruitment base and plan carefully to ensure that it is prepared to meet future patterns of demand. (Paragraph 78 and 79)

TPAS should continue in its current role and should retain its NDPB status. TPAS depends on the specialist expertise of its staff and volunteers. It deals with individual casework which it would be inappropriate for ministers to influence or be directly responsible for. It therefore passes two of the three tests for continued delivery as a NDPB. (Paragraph 80)

DWP should resolve the uncertainty surrounding the merger of the Pensions Ombudsman (PO) and the Pension Protection Fund Ombudsman (PPFO) by deciding whether or not it intends to proceed with the merger, and if it does intend to proceed, what legal route it considers appropriate. (Paragraph 103)

The PO and the PPFO should continue with their current status as NDPBs. Their core purpose is to determine disputes in individual cases and so must necessarily be completely free of ministerial direction. As with the other bodies, the specialist expertise required also marks the Ombudsman's work as a technical function. (Paragraph 104)

TPR should consider using qualitative research methods to build up a more detailed picture of how its services are seen by those who use them and, in the light of that, should consider whether there are any systemic or cultural issues which need to be addressed. (Paragraph 117)

DWP should arrange for an initial study of customer journeys through the dispute resolution system from the point at which a scheme member first identifies a concern to the point of final resolution. (Paragraph 121)

DWP, TPAS and the Ombudsman should work together to assess the extent to which each stage of dispute resolution is an effective filter for the next one, and the relative cost-effectiveness of closing cases at each stage, so as to ensure that the system as a whole maximises value for money and the quality of the customer experience. (Paragraph 124)

DWP and the Ombudsman should review the legal framework within which the Ombudsman operates to ensure that it represents current best practice. (Paragraph 126)

DWP should work with TPAS and the Ombudsman to test the scope for the greater integration of back office services between them. (Paragraph 129)

DWP, with other interested bodies, should look again at the regulatory gap between pensions and wider financial services regulation to identify whether a better solution can be found. (Paragraph 130)

DWP should broker discussions between TPAS and the Pension Service to explore the options for enabling TPAS to make direct referrals to the Pension Service. In the longer term, it would be desirable to find a way of providing more integrated support. (Paragraph 133 to 134)

Cabinet Office should work with smaller NDPBs to ensure that the impact of central government information requests is understood and appropriate proportionality applied. (Paragraph 137)

The review has concluded that the functions performed by the bodies under review are necessary and that the current bodies remain best placed to deliver those functions. It does not follow that this will necessarily remain the case for the indefinite future. There is not yet sufficiently clarity about how provision will develop to be confident of making well-founded decisions. It would be rash and inefficient to make changes now which might well have to be reconsidered only a relatively short time later. Equally though, it would be wrong to freeze the roles and structures of these bodies pending a future certainty and stability which may never come. Instead, the right balance is to start planning now for a longer term review. (Paragraph 138 to 145)

Introduction: public bodies and pensions

Making provision for later life

1. In an ageing society, it becomes ever more important to ensure that people plan and provide for a secure income in retirement. Some of that provision comes through pensions paid directly by the state, but an increasing share for a growing proportion of the population comes through private provision arranged either directly or through employers.
2. In some respects, saving in a pension scheme is the same as any other form of saving and investment. But there are important differences which result in distinctive needs for regulation, oversight and dispute resolution. Those differences include:
 - the need to plan and provide over very long periods: pension entitlements accumulate throughout a person's working life and provide an income throughout retirement – a span of decades, during which security and clarity are critical
 - the involvement of employers: workplace pensions are part of a wider remuneration package with decisions about the form and scale of provision in the hands of employers rather than individual savers
 - the support given by government through tax relief: recognising the social value of pension provision but also creating the need to ensure that pension contributions and schemes are kept distinct from other forms of investment and that withdrawals are strictly controlled
 - the complexity of pension schemes and rules: rights built up in and transferred between different schemes, ill health retirement and rules and records stretching back over decades can each require specialised expertise to unravel.
3. There is a strong public interest in the success of these arrangements. Confidence in the long-term stability of the system is a prerequisite for effective participation and for the delivery of secure incomes in retirement, which are at the core of government policy in this area.

Private pensions and the role of government

4. For all these reasons, there is a distinct body of legislation about pensions, which is not only very complex and technical but also often requires consideration of both the legislation and scheme rules as they apply to people at different stages of their working life. Specialist bodies have emerged to apply that legislation, to resolve disputes which are rooted in it and to provide advice to members of the public about how the system works.
5. A number of public bodies play important roles in private pensions. They include:
 - The Pensions Regulator (TPR) – which regulates workplace pension schemes

- The Pensions Ombudsman (PO) – which adjudicates on disputes between pension schemes and their members
 - The Pensions Advisory Service (TPAS) – which provides information about pensions issues and provides a voluntary dispute resolution service
 - The Pension Protection Fund (PPF) – which provides compensation for members of insolvent schemes
 - The Pension Protection Fund Ombudsman (PPFO) – which adjudicates on disputes about decisions made by the Board of the Pension Protection Fund
 - The National Employment Savings Trust (NEST) – which supports automatic enrolment by offering a low-cost defined contribution pension scheme open to all employers who wish to use it to meet their new duties.
6. All of these organisations are classified as Non-Departmental Public Bodies (NDPBs), except the Pension Protection Fund, which is a public corporation and NEST which is both a public corporation and a NDPB.² The Pensions Ombudsman and the Pension Protection Fund Ombudsman are legally distinct, but the same individual holds both offices and there is a single supporting organisation.
 7. This review covers the Pensions Regulator, the Pensions Advisory Service, the Pensions Ombudsman and the Pension Protection Fund Ombudsman. It does not cover the Pension Protection Fund, because public corporations are not included in the triennial review process, or NEST, because it is a newly created body which will be subject to a statutory review in 2017.³
 8. In addition to these specialist bodies, some forms of pension provision are also subject to general financial services regulation. There are financial services counterparts to each of the bodies being considered in this review – the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), the Money Advice Service (MAS) and the Financial Ombudsman Service (FOS). These bodies are not within the scope of this review, but they are important to an understanding of the overall landscape.
 9. Core funding for all the bodies under review is provided as grant in aid by DWP. The funding is recovered through a levy on pension schemes which is set each year to match the intended expenditure of the bodies over time and paid to the Secretary of State.⁴ The levy and the grants in aid do not necessarily match in any given year, but over time there is no

² Public bodies and their classifications are listed annually in *Public Bodies* <https://www.gov.uk/government/publications/public-bodies-reports>

³ Pensions Act 2008, s74

⁴ The levy is collected by TPR, but it does so as an agent of the Secretary of State, not on its own behalf. The power to collect the levy is in s175 of the Pension Schemes Act 1993.

net public expenditure on the core activities of the bodies under review. TPR and TPAS also currently receive additional funding from DWP to support the implementation of automatic enrolment, which is not recovered through the levy.

The review process

10. This is one of a series of triennial reviews of NDPBs across government. It has been conducted in line with guidelines produced by the Cabinet Office.⁵ For each of the bodies covered by the review, there is a sequence of questions:
 - Is the function performed by the body still a necessary one?
 - Would the function be better performed within government?
 - Would the function be better moved out of central government altogether?
 - If there is a case for continued delivery by a public body, are there alternatives to the current organisational structure which would be more efficient and effective, and does the body meet one or more of the government's 'three tests'?⁶
11. The review process is divided into two main stages. This report covers Stage 1, in which each organisation is considered in turn against these questions. Where the recommendation is for a body to continue, Stage 2 assesses the governance and controls which each organisation has in place. A report covering the stage 2 questions is being published in parallel with this one.
12. The review is not a wider audit of the function of the bodies concerned or a systematic study of their current quality of performance.
13. A consultation exercise was run between 27 June and 9 August 2013 which resulted in 30 responses. In addition, a number of interviews were held with leaders of the bodies under review and some of the other major stakeholders. Respondents to the review are listed at Annex B.

⁵ Guidance on Reviews of Non-Departmental Public Bodies, <https://www.gov.uk/public-bodies-reform#reviewing-ndpbs> The review process is described in Annex A.

⁶ The "three tests" are: is this a technical function (which needs external expertise to deliver); is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions); or is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity.

Stage 1: Options for delivery

The Pensions Regulator

14. The Pensions Regulator (TPR) is the regulator of workplace pension schemes. Its core functions are to protect the benefits of members and to promote the good administration of workplace pension schemes.
15. The role of TPR is continuing to expand and develop:
 - Under the Pensions Act 2008, it acquired an additional responsibility to ensure compliance with the duties of employers created by that Act, and in particular to oversee the introduction of automatic enrolment⁷. Automatic enrolment for large employers started in 2012 and will be gradually expanded until all employers are covered by 2018.
 - From 2015, TPR will be expanding its scope to cover public service pension schemes with new powers under the Public Service Pensions Act 2013. It is currently developing the policies and procedures by which it will exercise those powers.
 - The Pensions Bill currently before Parliament will, if enacted, give TPR a new statutory objective, to minimise adverse effects on the sustainable growth of an employer.
16. TPR is the largest of the bodies covered by this review and as a result of its additional responsibilities, it is growing rapidly. In the financial year 2012/13 its net expenditure was £48.9 million, of which £29.2 million was for core regulatory activities funded from the scheme levy and £19.7m was for costs relating to automatic enrolment funded by DWP. On average during the year, it had 380 whole-time equivalent staff. TPR has a single office in Brighton, but has a contract with Capita for contact centre services in relation to automatic enrolment which is delivered by a team based in Birmingham.
17. For 2013/14, its total expenditure is planned to increase to £66.6 million, of which £36.8 million is for core regulatory activities and the remaining £29.8 million is for automatic enrolment. By March 2014, whole-time equivalent staff numbers are expected to increase to 536. Between 2012/13 and 2015/16, expenditure on core regulation is planned to increase by over a third, and expenditure on automatic enrolment will more than double.⁸

⁷ Making enrolment into workplace pensions automatic
<https://www.gov.uk/government/policies/helping-people-save-more-for-their-retirement-through-workplace-pensions/supporting-pages/making-enrolment-into-workplace-pensions-automatic>

⁸ Figures for 2012/13 are taken from the annual report, <http://www.thepensionsregulator.gov.uk/docs/annual-report-and-accounts-2012-2013.pdf> and those for later years from the corporate plan <http://www.thepensionsregulator.gov.uk/docs/corporate-plan-2013-2016.pdf>

18. The fact of this growth is significant for two reasons. The first is that TPR provides a valuable mechanism not just for delivering well established functions but for implementing new government policy. The second is that growth – particularly growth of scale and function on this scale – risks being destabilising if the senior management of the organisation are distracted from managing their strategic priorities effectively.
19. Nor is this the limit of the change potentially faced by TPR. This year the Government announced its intention to set minimum legislative standards for workplace DC schemes⁹ and to consult on options for charges, including a charge cap for default funds.¹⁰ In September 2013, the Office of Fair Trading published a study of the market for DC pensions with recommendations intended to increase the effectiveness with which the market operates.¹¹ Potentially even more significantly, in November 2013 the government published proposals for greater flexibility in the structure of schemes, and in particular for the creation of schemes which draw attributes from both DB and DC¹². The implementation of these proposals would require quite substantial changes to the framework of regulation for TPR and potentially for other regulators too.
20. Taken together, that suggests very strongly that further additions to the volume of change to be managed by TPR in the coming years should not be made lightly. That does not mean that TPR should be exempt from scrutiny and challenge, quite the contrary, but it does mean that the case for any change would need to be a very strong one, with clear consideration of the overall balance of risk.

The need for regulation

21. Private pension provision is highly complex and highly specialised. Schemes, particularly DB schemes, have to be managed with a view to the long-term pattern of obligations which have accrued and will accrue, to manage investments accordingly, and to meet demanding legal, actuarial and wider fiduciary standards. Schemes need to be administratively efficient, again with performance sustained over very long periods if entitlements are to be accurately calculated and scheme

⁹ HC Deb, 10 May 2013, c20WS

http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130510/wmstext/130510m001.htm#130510m0001.htm_spmi8

¹⁰ Quality standards in workplace defined contribution pension schemes

<https://www.gov.uk/government/consultations/quality-standards-in-workplace-defined-contribution-pension-schemes>

¹¹ Defined contribution workplace pension market study, www.offt.gov.uk/OFTwork/markets-work/pensions/

¹² Reshaping workplace pensions for future generations

www.gov.uk/government/consultations/reshaping-workplace-pensions-for-future-generations;

rules accurately applied. Schemes also need to balance interests which will not be fully aligned between scheme members (and potentially between different groups of scheme members), employers, trustees and scheme managers. There is less intrinsic complexity in DC schemes, but the core characteristics remain similarly challenging.

22. There is no demand from the organisations which responded to the consultation on this review to remove regulation, even – and perhaps especially – from those who pay for that regulation through the levy on schemes. As the Association of Pension Lawyers put it:

An independent and specialist pensions regulator remains the most efficient and effective means of delivering those functions.

23. It would also not be appropriate to move TPR outside government altogether. That would not be consistent with its statutory role and would require a radically different approach to pensions regulation generally. The causation for any such exercise should run in the opposite direction: TPR should change as necessary to fit any future model of pension regulation; the future of pension regulation should not be driven by the organisational status of TPR.
24. The function of pension regulation continues to be necessary. It could not be performed directly by government, and it would be inappropriate to move it out of government altogether. The function should therefore continue to be performed by a public body.
25. That is not to say, though, that TPR as currently constituted, has the optimal role and structure to deliver the function. The next section of the report examines alternative approaches, particularly the idea that there should be a single regulator covering all aspects of pension regulation.

Options for organisational change

26. TPR is the specialist regulator for workplace pensions, but it is not the only regulatory body to operate in this area. The relevant responsibilities of TPR, FCA and PRA are set out below.¹³

TPR	Regulates workplace pension schemes, including administration and employer duties, trust and trustee activity, and the funding of DB schemes. This includes the administration of work-based personal pension schemes.
FCA	Regulates financial advice given to employees in relation to personal pensions and is the prudential supervisor of smaller financial services firms, including financial advisors.
PRA	Regulates large financial services organisations, such as banks and insurance companies, including the protection of

¹³ There are memoranda of understanding between TPR and FCA and between FCA and PRA which set out their respective responsibilities and how they will co-ordinate their activities <http://www.thepensionsregulator.gov.uk/docs/mou-fca-regulator.pdf> and <http://www.bankofengland.co.uk/about/Documents/mous/moumarket.pdf>

policy holders.

27. In principle, the remits of these organisations are distinct, but in practice there are some grey areas at the boundary. Perhaps more importantly, different aspects of regulation – and thus different regulators – may apply to different aspects of a single scheme’s activity. An employer offering a DC scheme, for example, will be regulated by TPR, but will typically do so by contracting with an insurance company which is regulated by FCA and PRA, often through a financial advisor also regulated by FCA.¹⁴
28. There are differences of philosophy as well as differences of remit. For workplace pensions, the employer plays a central role which has no equivalent in financial services more generally. Members of pension schemes have some of the characteristics of customers of financial service providers, but not others. And there is a fundamental difference between entities for which the provision of financial services is their core business and those for which pension provision is an employee benefit which is incidental to their primary business purpose.
29. This is not a new issue. The National Audit Office concluded in July 2012 that:

The system for regulating defined contribution schemes as a whole lacks clear, overarching objectives for what regulation seeks to achieve. The objective of protecting member benefits rests with The Pension Regulator, but it is unclear how that aligns with the roles and responsibilities of all bodies across the regulatory system.

30. Earlier this year, the Work and Pensions Committee produced a report on workplace pensions which captured similar concerns from a number of organisations which had submitted evidence:

Some witnesses expressed concerns regarding the ambiguities arising from having two separate regulators for contract-based pension schemes. The ABI told us that that this created the potential for each regulator to apply different standards or duplicate work and argued that it is vital for them to work together in a more comprehensive way if the regulation system is to do its job properly. Age UK was concerned about “the regulatory gap” that arises as a result of contract-based schemes being largely regulated by FSA and trust-based schemes being regulated by The Pensions Regulator. It argued that “there needs to be consistency in regulation to ensure fairness and greater clarity for consumers.” TPAS and the TUC agreed that there were

¹⁴ There are gaps as well as overlaps, see para 94 for an example of an activity regulated neither by TPR nor by FCA.

discrepancies between the regulation of trust-based and contract-based schemes.¹⁵

31. The government response to the select committee report recognised the need for close working between the bodies involved, but rejected recommendations for changing roles and structures:

We believe that the overall regulatory architecture is sound and, given there will always be a boundary between the roles of the FCA and TPR, there are no current plans to fundamentally change the arrangements for regulating contract-based pension schemes at this time. However, as the market is evolving in response to automatic enrolment, it will always be necessary to test whether the regulatory interventions in relation to particular issues are effective. We are clear that the regulators should work increasingly closer together to ensure that risks are jointly managed and members are protected regardless of how their pension is provided.¹⁶

32. On the specific issue of moving towards a single regulator, the government response stated that:

We are determined to ensure the best possible protection and outcomes for members, which can only be delivered through a robust regulatory framework. We acknowledge the call to establish just one regulatory body, but, as explained above, it is our view that there will always be a need for shared regulation of the different components of the pensions system. In addition, we believe that it is too soon after the creation of the FCA and less than a year into automatic enrolment to consider whether the current regulatory framework and divisions of responsibility are appropriate.

33. Respondents to the consultation exercise for this review returned to the question; this was the issue which attracted the widest range of responses.

34. The TUC focused on the problems it perceives the current structures create:

Our view is that the nature of the relationship between TPR and the FCA and PRA fundamentally inhibits TPR from achieving its statutory objectives.

It drew particular attention to master trusts and decumulation as critical areas where the different roles and approaches of TPR and FCA created regulatory risks and opportunities for gaming.

¹⁵ *Improving governance and best practice in workplace pensions* HC768, April 2013, para 96 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/768/76802.htm>

¹⁶ *Improving governance and best practice in workplace pensions: Government Response to the Committee's Sixth Report* HC485, June 2013, p8 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmworpen/485/48504.htm>

35. EEF, representing employers in manufacturing industry, was among those arguing for the continuation of specialist workplace pension regulation:
- Independent regulation is required from an organisation which can understand the particular demands occupational pensions place on employers and the unique nature of the benefits which occupational pensions bring. [...] Knowledge therefore of the unique nature of occupational pensions and their importance to employers and workers can only be maintained we believe with a regulator devoted to the area.
36. The Institute of Chartered Accountants supported a single approach to regulation from a slightly different perspective:
- We consider that a single regulatory framework is essential because, over their working lives, people are likely to accumulate pension savings in both trust-based and contract-based arrangements, and it is not helpful from the perspective of the individual member for these arrangements to be subject to two different regimes.
37. Scottish Widows, by contrast, considered that there should be a clear separation :
- While all the bodies being reviewed perform valuable functions, we believe that it would be preferable to have a single regulator for all DC pension schemes, which would most naturally be the FCA.
38. There is thus no consensus about the need for change or about what the most appropriate way forward might be. It is important to recognise that there is a question of substance and a question of timing: is there a better regulatory structure, and if there is, is now the right time to be making changes.
39. There is more agreement on the second question than the first. As already noted at paragraph 14 above, TPR is having to manage a number of major changes, and there is widespread recognition that there should be no distraction from the successful implementation of automatic enrolment in particular. The ABI, which is one of the organisations which has been critical of the current regulatory division of labour, was clear in its evidence:
- Ensuring automatic enrolment is a success must be the priority and this requires, in part, stability in the regulatory framework. Therefore we believe that 'continued delivery' is the best course of action for the bodies under review.
40. Financial services regulation has itself been through recent major changes, with FCA and PRA existing in their current form only since April 2013; further significant disruption before those changes have become firmly embedded does not appear immediately attractive.
41. Nor is it the case that there is a clear alternative which would work better. Conceptually, there are three possible basic models:

- A single regulator covering all aspects of workplace pensions
- A single financial services regulator, including pensions
- Two (or more) specialised bodies, though not necessarily with the boundaries falling as they do now.

None of these is without difficulties.

42. In practice, pension regulation and financial services regulation cannot be fully separated, not least because insurance companies play important roles both in pensions provision and in relation to financial services generally (as similarly do financial advisers). A single pensions regulator might be able to do more to ensure consistency of approach, regardless of the structure of the underlying scheme or product, but it is hard to see how such a regulator could also be the broader financial supervisor of providers which straddle the boundary between pensions and wider financial services. In practice, therefore, the first and third options come to much the same thing.
43. A single financial services regulator could in principle avoid this problem, but would bring a different set of issues. Three in particular are:
 - the strongly held view, by representatives of employers in particular, that workplace pensions are distinct from financial services, not a subset of them: the underlying purpose which an employer has in sponsoring a pension scheme is quite different from the purpose a financial service provider has in selling products
 - the related concern that blurring the differences between funded pension schemes and other forms of investment management could lead to the creation of artificial and additional requirements for scheme solvency which would be a major burden on employers and schemes
 - the different nature of the customer relationship, where the choices made by both scheme members and employers as customers of provider companies do not map neatly onto the normal client role.

Conclusion

44. TPR clearly passes two of the three tests for continued delivery as an NDPB. It is a technical function which needs specialist expertise to deliver and it is a regulatory function which needs to be delivered with absolute political impartiality.
45. That does not mean that there is no structure which could be better than the current one, but it does mean that there is not a structure which is clearly and unambiguously better than what we have now. It follows that the threshold for immediate change set out at paragraph 20 has not been reached and TPR should continue in its current role and retain its NDPB status.
46. For the longer-term, the important question is not about organisational structures, but about regulatory objectives and the best means of

meeting them. That issue is considered further from paragraph 138 below.

The Pensions Advisory Service

47. The Pensions Advisory Service (TPAS) provides information and guidance to members of the public on pension issues; and also helps members of the public who have a problem, complaint or dispute with their occupational or private pension arrangements. The service is free to users and is funded primarily by a grant-in-aid from DWP which was £3.1 million for 2012/13. As with the other bodies covered by this review, this is recovered from the general levy of pension schemes. TPAS also received funding of £0.2 million from DWP specifically to support communications on automatic enrolment.¹⁷ DWP has no statutory obligation to fund TPAS, but it does have a power to make grants to bodies providing information and assistance on pensions issues and has exercised that power in favour of TPAS for many years.
48. TPAS was founded as the Occupational Pensions Advisory Service in 1983 and is a company limited by guarantee. It changed its name to TPAS in 2004 and was first classified as an executive NDPB in 2006. Unlike most NDPBs, therefore, it is not a creation of government nor, strictly, is it within the power of government to abolish it or even change its nature. DWP strengthened its influence over TPAS in 2010 through a framework document which gave the Secretary of State the power to appoint the Chairman. Other board members and the chief executive are appointed subject to the approval of the Secretary of State.¹⁸
49. TPAS does not have any statutory powers, though schemes are obliged to inform their members that TPAS exists as part of their internal dispute resolution process. This means that in relation to complaints or dispute handling it can only effect a resolution through persuasion and conciliation. Where that approach has not succeeded or is judged unlikely to succeed, TPAS may suggest that complainants take their case to the Pensions Ombudsman.
50. From the outset, the bulk of TPAS casework has been undertaken by volunteers, of whom there were 342 at the end of 2012/13, significantly outnumbering the paid staff of 39. The cost of replacing the volunteers by paid staff would be in the order of £2.5 million, which would virtually double TPAS' costs of operation, and even then might well not replace the level of skill and experience of the volunteers, many of whom are highly qualified pensions professionals.¹⁹ There are also indirect savings

¹⁷ The figures are taken from the annual accounts
http://www.pensionsadvisoryservice.org.uk/media/948356/annual_report_and_accounts2012-13.pdf

¹⁸ Framework Document between The Pensions Advisory Service and the Department for Work and Pensions
<http://www.pensionsadvisoryservice.org.uk/media/390698/tpas%20framework%20document.pdf>

¹⁹ The valuation of volunteer activity is inevitably imprecise. Two different approaches have been used to assess it. One is to measure the cost customers would incur if they had to purchase the service they obtain free from TPAS. On that measure, the value has been estimated at around £10 million. The second is to measure the cost of employing suitably qualified staff to undertake the work currently done by volunteers, which TPAS estimate to be

from the use of volunteers. TPAS permanent staff are based in a single office in central London. Some volunteer activity takes place there, but most is done by the volunteers in their own homes or workplaces, so the space requirement in London is much smaller than it would otherwise be.

51. The ethos of TPAS as a volunteer non-government service has contributed strongly to its reputation and perceived value. When Paul Thornton reviewed pensions institutions in 2007, he barely felt it necessary to consider TPAS, largely for this reason:

My firm view is that the current structure of TPAS works effectively and efficiently. I have seen no evidence that the current structure should be altered. TPAS is predominantly a voluntary organisation: there is great social and financial value in this and it gives the body a unique place in the pensions landscape in the UK.²⁰

52. There is still strong support for that view from a wide range of stakeholders. The NAPF, for example, take the view that:

TPAS turns potential complainants into satisfied customers and acts as a valuable filter for both the Ombudsman and the Pensions Regulator.

The Pensions Management Institute is equally clear that:

TPAS continues to provide a vital service to the general public. Its mediation role after a scheme dispute has not been resolved by the Internal Dispute Resolution Procedure (IDRP), and indeed those instances where TPAS supports a scheme member through the IDRP process itself, plays a central part in the system of dispute resolution. Its provision of information is of particular value.

The need for impartial information and mediation

53. There is a clear need for an information provider of this kind, not just as a result of the continuing strong demand for its services but also because there is no other source of supply which is both disinterested and expert. Given both the underlying complexity of schemes and rights and the strong public interest in encouraging and securing saving for retirement, the case for the continuing need for the function is strong.
54. While in principle, this is a service which could be directly provided by government, there are good reasons for it remaining at arm's length. A large part of TPAS' work is about advising on and mediating individual disputes, many of them with public service pension schemes. So

about £2.6 million. The second approach is used here, but should not be taken as anything other than a very broad estimate.

²⁰ Paul Thornton, *A Review of Pensions Institutions* HMSO, 2007
<http://webarchive.nationalarchives.gov.uk/20100113232942/dwp.gov.uk/policy/pensions-reform/institutional-review/>

although it is not formally resolving disputes, the need for technical expertise and political impartiality are still very strong.

55. Particularly given the absence of any statutory powers, there may be a stronger argument for moving TPAS further from government: it is not self-evident that it must necessarily be an NDPB. Although there is little sense from the consultation responses that the current arrangements are inappropriate or problematic, NAPF does challenge them directly, arguing that:

There is little evidence to support the case that TPAS should be run as an NDPB.
56. TPAS is already some way from a conventional NDPB model. Its legal structure and strong volunteer element reflect its charitable origins, though that has to some extent been submerged below an overlay of NDPB governance. Although formally it is funded by government, in effect its funding comes from pension schemes, through the levy.
57. In one sense, therefore, there is some force to NAPF's argument: there is nothing in what it does which absolutely requires it to be a state entity. Any change of status, though, would depend on there being an alternative approach to funding which matched the efficiency and effectiveness of the current model.
58. The current levy structure provides a very efficient mechanism for funding TPAS and avoids the need for it to incur the overhead of a more complicated fundraising structure. The nature of its services means that it needs clear independence from pension providers and the indirect nature of its funding provides a very effective way of doing that.
59. If the levy were collected by a third party rather than by the Secretary of State, the question of its status might look rather different. There is a clear parallel with MAS, which is similarly funded by an industry levy. But because the levy is collected by FCA rather than the government, payments to MAS are not grant in aid and it does not have NDPB status, despite its accounts being consolidated into those of the Treasury.
60. In that sense, the current status of TPAS is arbitrary. But to change the basis of the levy would require primary legislation, which would be an extreme approach to achieving a minor classification change. In the absence of a more broadly-based need to legislate in this area, the balance of advantage remains in funding TPAS through the existing levy mechanism, with the accounting and classification consequences which flow from that.
61. The provision of disinterested information and mediation continues to be necessary. It should not be performed directly by government, and its underlying structure already places it at a long arm's length from government. The scheme levy continues to provide an efficient funding route which avoids a direct burden on government, and it remains appropriate for the function to continue to be performed by a public body.
62. That is not to say, though, that TPAS as currently constituted, has the optimal role and structure to deliver the function. The next section of the

report examines alternative approaches, including options for moving some of its functions to other organisations.

Options for organisational change

63. The importance of the function does not make it self-evident that TPAS should continue in its current form. It was set up at a time when there was no Pensions Ombudsman and long before the creation of the Money Advice Service. In its thirty years of existence the wider context has changed enormously as a result of changing patterns of provision, most recently the drive for automatic enrolment.²¹ A number of respondents to the consultation expressed concern about the risk of confusion and overlap. Evidence submitted on behalf of JLT Benefit Solutions and the Pensions Administration Standards Association noted that:

TPAS provides services similar to those provided by the Money Advice Service and it could be merged with this body, but by doing so it would probably lose some of its charm. Volunteers would disappear and along with them, their free expertise.

64. The trade off suggested in that comment is a fairly widely held view – though not always expressed so explicitly – but it elides two questions which were better considered separately. The first question should be whether the present arrangements provide the most efficient and effective service to those who need it. There is then a second question to be asked about whether the current division of responsibilities, and in particular, the contribution of the volunteers, should change the answer to the first question.

65. TPAS has two primary functions: general information and specific problems and disputes. There is no other organisation which does both of those things, but there are organisations which do versions of each of them.

Merging information work with MAS

66. TPAS' first role is essentially as a specialist financial information provider. It has significantly increased the visibility and effectiveness of that work through greater emphasis on its website as a delivery channel, but the strength which comes from its highly specialised expertise is also something of a weakness in making itself visible to those who might benefit from its services. MAS, which provides an analogous service for personal finance information more generally, has the twin advantages of breadth of coverage and scale which together mean it is more likely to be known to or be discovered by members of the public. As one example of the advantage that scale brings, the material on MAS' website about automatic enrolment (which it is not explicitly funded by government to

²¹ It is important not to forget, though, that changes tend to have a strongly lagging effect on the work of TPAS: queries at or near the point of retirement may relate to rights accumulated over a working life.

provide) is more visually striking and written in more customer-focused language than the equivalent material on TPAS' site (which it is funded to produce).²²

67. There is a case, therefore, for positioning TPAS as a specialist practice within MAS. This could be achieved either by maintaining the separate organisations but promoting MAS as the single gateway to money information in a wider sense, or by full organisational integration.
68. The two organisations are already working closely together in many ways, with a memorandum of understanding in place since 2010 setting out their respective roles.²³ It does not follow though that they are doing versions of the same thing or that TPAS is simply a smaller and more specialised version of MAS. As MAS itself puts it:

There are overlaps between the two services in types of pension information but overall our service's role is to address peoples' financial planning needs while TPAS deals with complex pension queries.

TPAS figures suggest that 6% of their customers need broader financial information (for which they will typically be referred to MAS, leaving 94% who have a contained pensions issue).

Merging casework with the Pensions Ombudsman

69. There is no equivalent in MAS of TPAS' second role in informal dispute resolution. That aspect of the work has much stronger parallels with the pre-determination work of the Pensions Ombudsman. A second potential realignment would be to merge the case investigation and resolution work of TPAS with the closely related work of the Ombudsman. The present division of labour between the two is an accident of history, and as the Ombudsman observed in his evidence to the review, 'no other ombudsman service operating in the private sector has an equivalent filter (so our standard of accessibility is inconsistent with others)'.
70. For cases which currently are considered by the Ombudsman after TPAS has been unable to reach a satisfactory resolution, there is already an element of double handling – though it is important to remember that this is only a very small proportion of the cases dealt with TPAS, which is generally very effective in avoiding the need for the Ombudsman to intervene.
71. There also appear to be some practical inefficiencies which result from the current division of labour between the two bodies, which are explored in more detail later in this report, from paragraph 106 onwards.

²² Compare <http://www.pensionsadvisoryservice.org.uk/automatic-enrolment> with <https://www.moneyadviceservice.org.uk/en/articles/automatic-enrolment-into-a-workplace-pension>

²³ There remains scope for further improvement here. It is interesting that while MAS' web page on 'Your options if things go wrong with your pension' includes a link to TPAS' service, its page on 'When and where to get pensions help and advice' is solely about financial advisers and annuity brokers and does not mention TPAS at all.

But as discussed there, one important issue is the lack of systematic information about customer journeys through the whole dispute resolution process. That is a gap which should be filled, but while it exists, it would be premature to reach conclusions which cannot be supported by evidence.

72. On the face of it, therefore, there is a case for splitting the current functions of TPAS between MAS and the Pensions Ombudsman. Against that, there are undoubtedly advantages in keeping the work together. TPAS is a small organisation to start with and securing appropriate standards of professional expertise and rigour is likely to be more difficult if it were to lose even its current economies of scale. Although superficially related, in practice the knowledge required of a pensions specialist within MAS would have relatively little overlap with its existing domains of expertise. Apart from undermining the logic of a merger, that also puts in question the extent to which there would be any net efficiency benefit from doing so.

Volunteering

73. But all of that is to ignore the larger problem of the fundamental difference in the business models between TPAS and MAS (and for that matter, between TPAS and the Ombudsman). It is one thing for volunteers to work alongside paid staff in an organisation where they have a strong collective voice, a long history, a well-established culture and an ethos that a core purpose of the organisation is to support the effectiveness of its volunteers. It is quite another to assume that the volunteering model could simply be translated into very different organisations which do not share TPAS' distinctive characteristics.
74. TPAS does not exist for the benefit and convenience of its volunteers, and the volunteering model is not, in that sense, sacrosanct. If it were clear that more efficient and effective arrangements could be made which did not depend on volunteers, there would be a strong case for adopting them. But that is not the current situation.
75. The wider context is also important here. Government policy is to support volunteering, and indeed the recent Cabinet Office White Paper specifically identifies the value of volunteers with professional skills:
- We can do a better job of matching people with valuable skills to the organisations that need them – by, for example, encouraging more professionals such as accountants or lawyers, and others with specialist knowledge or experience, to use their skills to help charities.²⁴
76. TPAS is in many ways the embodiment of that approach and its model should not be put at risk without good reason. In the short to medium term, the social and economic value of the voluntary approach clearly outweighs any theoretical efficiency benefits which might flow from organising the work differently.

²⁴ *Giving White Paper Cm8084, May 2011*

77. In the slightly longer-term, the viability of TPAS' business model depends on its ability to respond to changes in its environment. It is likely that over the next five to ten years the volume and nature of its workload will shift significantly. The delivery of automatic enrolment through large-scale master trust structures will reinforce the existing change in the balance of provision away from traditional DB schemes. That has two potential effects for which TPAS needs to be prepared.
78. The first is the characteristics of the advisor population. Understandably, there is greater awareness of TPAS and a greater willingness to support it in firms predominantly working with employer-based schemes than in more general financial services companies. The former expertise will continue to be invaluable, but is likely to become proportionately less dominant over time. TPAS is aware of this issue but will need to demonstrate that it can successfully broaden its volunteer recruitment base if longer term confidence in the approach is to be retained.
79. The second consequence is that over the next four years the expansion of automatic enrolment will bring large numbers of people into workplace pensions for the first time, many of them with relatively volatile patterns of employment. There can be no certainty about the impact of that on demand for TPAS' services, but it is plausible to assume that it might rise quite significantly. That can happen to any organisation and any organisational structure, of course, but one heavily dependent on volunteers is likely to find it harder to adapt to rapid changes in the scale and pattern of demand than one with a paid workforce. TPAS will need to plan carefully to ensure that it is prepared to meet future patterns of demand.

Conclusion

80. TPAS depends on the specialist expertise of its staff and volunteers. It deals with individual casework which it would be inappropriate for Ministers to influence or be directly responsible for. It therefore passes two of the three tests for continued delivery as an NDPB.
81. TPAS is already – and rightly – further from the ambit of government than many NDPBs. It was not created by statute and does not exercise statutory powers. Its status as a company limited by guarantee gives it considerable flexibility to operate at a greater distance from government, were suitable alternative funding arrangements available.
82. In the short to medium term the risk to the efficiency of delivery and in particular the risk of loss of volunteers and the capacity they bring outweighs any advantage which might come from alternative organisational arrangements.
83. The funding for TPAS should continue to come from the schemes whose members it supports and should do so in a way which does not compromise its independence or integrity. The current levy structure provides a simple and efficient way of achieving that, with the consequence that TPAS' income should continue to be in the form of grant in aid and its status remain an NDPB.

The Pensions Ombudsman and Pension Protection Fund Ombudsman

84. The Pensions Ombudsman is an independent commissioner responsible for investigating and determining complaints and disputes about pension schemes. The Pension Protection Fund Ombudsman is responsible for investigating and determining complaints and disputes concerning the Pension Protection Fund Board and is also responsible for dealing with appeals against decisions made by the Board of the Pension Protection Fund in respect of the Financial Assistance Scheme. The powers granted to the Ombudsman in legislation are similar to those of the courts. The Ombudsman's decision is final and binding on all the parties and can be enforced, if necessary, in the courts. Any decision made by the Ombudsman can only be changed by appealing to the appropriate court on a point of law. The Ombudsman will usually only investigate once the complainant has raised the issue with the respondent or used their pension scheme's internal dispute resolution process (TPAS provides help with this part of the process).
85. Although formally and legally distinct, in practice the two offices are held by a single individual supported by a single organisation. The Pensions Ombudsman role is overwhelmingly dominant, accounting for 98% of the joint activity. There are currently around 38 staff based in a single site in central London. The offices of TPAS and the Ombudsman are in the same building, but each occupies a separate space. The Ombudsman's office is funded by a grant-in-aid from the DWP of £3 million in 2012/13.²⁵ This funding is met from the pension scheme levy.

The need for impartial dispute resolution

86. In principle, the disputes resolved by the Ombudsman could be dealt with by other means, thus avoiding the need for a specialist service. In practice, though, the current approach has considerable advantages. The interaction of pension laws and scheme rules is complicated in its own right and made much more so by the fact that different combinations of law and rules may be relevant for different time periods in relation to the same case. The case for specialist expertise is therefore very strong, as is an approach which combines informality and flexibility with the legal power to provide a final determination.
87. The Ombudsman takes decisions about the rights of individuals and schemes, including, for public service schemes, the rights of individuals against the state. It would be inappropriate for those decisions to be influenced by ministers. Equally, given the judicial nature of the role and the enforceability of the decisions made by the Ombudsman, it is right for the function to remain within the boundaries of state activity.

²⁵ Figures are taken from the annual report - <http://www.pensions-ombudsman.org.uk/Publications/docs/AnnualReport2012-13.pdf>

88. The dispute resolution function is therefore one properly delivered by a public body, but as with the other bodies, that leaves open the question of whether the present structure remains the optimal one.

Options for organisational change

89. Leaving aside any greater integration with TPAS as discussed in the previous section, there are two potential alternatives to the current structure which should be considered. One would be to integrate with other judicial services, the other would be to widen the scope of dispute resolution for financial services.

Integration with the tribunal service

90. The Ombudsman is classified as a tribunal NDPB, on which the general policy is that where possible their functions should be moved to the First-tier or Upper Tribunals administered by the Ministry of Justice. This has clear advantages of administrative efficiency and of clarity of process for potential appellants. But there is good reason to think that this may not be the right approach for the Pensions Ombudsman.
91. In general, tribunals operate to give rights of appeal against decisions made by central government bodies, which is a much narrower remit than that of the Pensions Ombudsman.²⁶ That argument carries some weight, but cannot be decisive, since employment tribunals are part of this structure, where appeals by employees against decisions made by their employer are reasonably analogous to the role of the Pensions Ombudsman.
92. The much more important reason is that there are important differences between an ombudsman and a tribunal in both objectives and methods. Formal determinations by the Ombudsman are the end of a process, and in some ways a last resort. Before it gets to that, his office first investigates and then may attempt to arbitrate informally before there is any exercise of formal legal powers. In short, an Ombudsman is not a tribunal.²⁷

Merger with the Financial Ombudsman Service

93. In 2007, the Thornton Review suggested that the functions of the Pensions Ombudsman should be combined with the Financial Ombudsman Service. There is an obvious attractiveness to this idea. Both bodies deal with complaints by individuals in relation to their personal finances, both have relatively informal processes, and both can require regulated entities to take remedial action. There is, moreover, scope for confusion about which Ombudsman is more appropriate in a

²⁶ Because the Pensions Ombudsman does cover disputes involving public service schemes, some of the decisions it reviews are made by government bodies (though in many cases, not central government bodies). But these are decisions affecting government as employer and pension scheme sponsor, rather than government as operating the power of the state, and in that sense there is no difference between government employers and any others.

²⁷ That does not make the classification of the Pensions Ombudsman as a tribunal NDPB wrong. It does mean that that should not be interpreted deterministically.

particular case. The Pensions Ombudsman and the Financial Ombudsman Service have agreed a memorandum of understanding which explains their respective responsibilities and attempts to set out which cases are appropriate for each body.²⁸ That is helpful, but does not entirely resolve the issue and several areas of concern remain. As the Pensions Ombudsman put in responding to the consultation:

Rules, made by what is now the Financial Conduct Authority, require firms carrying out a regulated activity to direct consumers to the Financial Ombudsman Service. In the case of personal pension administration complaints that is inconsistent with the memorandum of understanding. Attempts to have the rules changed have not borne fruit.

94. In principle such cases should be forwarded by FOS to the Pensions Ombudsman, but even if cases are correctly identified, there is an unhelpful additional step in the process, and there is a risk that cases will not be handled consistently as a result of the route they happen to take.
95. As the Financial Ombudsman Service highlighted in their consultation response for this review, there is a small number of complaints which fall between the remits of the two bodies and cannot be dealt with by either. Where the complaint relates to advice to an individual about whether to leave or join an occupational scheme or about the level of contributions to make, it cannot be considered by the Financial Ombudsman Service because it does not relate to activity regulated by the Financial Conduct Authority, and it cannot be considered by the Pensions Ombudsman because it does not relate to anything done or not done by the occupational scheme.²⁹
96. Extensive work was undertaken after the 2007 review to prepare for a merger between the organisations. The conclusion of the work, however, was that the obstacles to merger could not be overcome and that on balance the public interest was best served by their remaining separate. Although the two bodies are superficially very similar, there are substantial structural differences. They not only have different powers, different approaches to decision-making, different abilities to award compensation, and different relationships with the courts, but are closely linked to regulatory regimes which are themselves very different.
97. This is not just a matter of legislative inconsistency. FOS, for example, has a ceiling on awards of compensation of £150,000 which gives financial service companies confidence that its 'fair and reasonable' approach to decision-making will not unreasonably disadvantage them. The Pensions Ombudsman is able to make unlimited awards which is important not just because actual losses may exceed that amount, but

²⁸ The memorandum is published at http://www.pensions-ombudsman.org.uk/Publications/docs/Memorandum-of-Understanding_0613.pdf

²⁹ Though the number of cases is very small, it is a long running issue, described by TPAS as a 'jurisdictional black hole' in its annual review for 2004/5 with cases going back at least to 1999/2000 http://www.pensionsadvisoryservice.org.uk/media/82984/case_review_2004-2005.pdf

also because the actual cost of restoring wrongly lost rights may not be fully determined at the point of decision.

98. In practice, therefore, any organisational integration would be necessarily superficial. It would not be possible to integrate the work and a version of the Pension Ombudsman team would need to be recreated within FOS. The result would be considerable disruption to little real purpose.
99. The situation would of course be different if the integration of dispute resolution were a consequence of the wider regulatory integration discussed at paragraph 42 above. But in the absence of a wider strategy intended to achieve a single regulatory system, it is not sensible to pursue this in isolation.

The merger of the Pensions Ombudsman and PPFO

100. The fact that the Pensions Ombudsman and the PPF Ombudsman are legally distinct is undoubtedly anomalous. But it is an anomaly almost completely devoid of practical consequences. The formal integration of the two offices would have no impact on the overall cost or efficiency of operations and would not remove any duplication of activity. The Public Bodies Act 2011 provides a power to merge the two bodies by order, but it has not been exercised, for two main reasons.
101. The first is that the power can only be exercised if the Minister considers that to do so 'serves the purpose of improving the exercise of public functions', having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers.³⁰ Since in every practical respect the two bodies already act as one, it is not easy to see how a formal merger would lead to any such improvement – and indeed, since the merger process itself would have costs, the net effect would arguably be detrimental to the exercise of public functions, rather than improving them. Respondents to the consultation did not generally see this as an urgent or important issue. The Association of Member Nominated Trustees said that:

It might be thought tidy to merge these two offices, but from our standpoint there seems to be no need to do so. Our main concern would be that the quality of service should not be impaired by over-optimistic assumptions of the money that could be derived from the administrative savings in a merger.
102. The second reason is that the current powers of the Pensions Ombudsman and PPFO are set out in different statutes and different secondary legislation. Although in principle the two sets of powers could be brought together through a single order, in practice neither the process nor the result would be straightforward. Given the underlying complexity, if the bodies were to be merged, there would be a strong case for doing so by the conventional process of amending primary and secondary legislation.

³⁰ Public Bodies Act 2011, s8(1)

103. The result of all that is an unhelpful state of uncertainty. There is an apparent power to merge the Pensions Ombudsman and PPFO under the Public Bodies Act which it may well in fact not be possible to exercise, not least because doing so would have such limited consequences. It is unsatisfactory to leave the uncertainty unresolved, so DWP should resolve it by deciding whether or not it intends to proceed with the merger, and if it does intend to proceed, what legal route it considers appropriate.

Conclusion

104. The Pensions Ombudsman and PPFO pass two of the tests for NDPB status. Their core purpose is to determine disputes in individual cases and so must necessarily be completely free of ministerial direction. As with the other bodies, the specialist expertise required also marks the Ombudsman's work as a technical function.

105. The Pensions Ombudsman and PPFO should continue with their current status as tribunal NDPBs.

Opportunities for improvement

106. The primary purpose of this review has been to apply the tests set down by Cabinet Office to determine whether NDPBs continue to be necessary and should continue to operate as NDPBs, and that has been the focus of this report up to this point.
107. As noted in the introduction, this was not intended to be, and was not, a systematic review of all aspects of each body's performance. Inevitably though, a number of contextual issues came up in the course of interviews and visits and from the consultation responses. This part of the report discusses some of those issues.
108. The fact that this review covers a number of organisations, instead of each one being reviewed individually also makes it possible to look at how their roles interact as well as how each operates individually.
109. One starting point might be to ask whether all these bodies need to exist individually, or could operate more efficiently and effectively if they were brought together. While there might be some superficial attractiveness in that, there is little reason to think that the benefits of doing so would be significant, still less that those benefits would justify the cost and disruption which would be caused. There is a clear distinction between TPR, which is focused on schemes, trustees and employers and TPAS and the Pensions Ombudsman which are focused on individual scheme members.
110. In any case, as is apparent throughout the report, the bodies being reviewed here are themselves only part of a wider landscape. The question of large-scale changes to that landscape is discussed in the next section of the report from paragraph 138. Some more immediate and smaller scale issues are set out in the remainder of this section.

Regulatory style

111. Both in responses to the consultation and in informal discussions, a number of stakeholders expressed concern about perceived inconsistencies in TPR's decision-making on regulatory cases and in its style of engagement.
112. TPR is a regulator and nobody questioned its right to regulate and, where necessary, to be challenging in doing so. The issue is not its perceived toughness (indeed, some respondents felt that, compared with FCA, TPR was not tough enough), but its apparent rigidity in the methods by which it deals with schemes combined with inconsistency of approach at working level. The NAPF was concerned that:

There is a wider concern about the inconsistent and sometimes unhelpful behaviour of the Regulator, in particular its caseworker team. It appears that the response schemes receive when contacting the Regulator still very much depend on which caseworker they are dealing with.
113. It is important to recognise that apparently similar cases may receive different responses for reasons which may not be obvious to external

parties who, by default, will not have a detailed knowledge of all the schemes affected, and which TPR very properly cannot share or discuss. But even if the problem is at least to some extent one of perception, that does not stop it being a problem; it is clearly important for TPR to be seen to be fair and even handed as well as actually to be so.

114. TPR recognises that consistency is essential and actively seeks to improve consistency through a commitment to training and the use of formal case team procedures. It commissions regular research on the perception of it held by key groups of its stakeholders. In the most recent report, two thirds of respondents give an overall performance rating of 'good' or 'very good', a proportion which has been broadly stable for several years. The same research shows increasing confidence in the consistency of TPR's decision making: 68% either 'strongly agree' or 'agree' that TPR is consistent in its approach to regulation, up from 63% in the equivalent survey in 2010.³¹
115. The second dimension of this issue is summarised by the Association of Pension Lawyers, which observed that:

There is a perceived lack of consistency between the more flexible approach advocated by senior managers (which is welcomed), and the more rigid application of the rules by case managers. There is perceived to be a conflict between what TPR says at high level, and what it does on the ground.
116. Other organisations made very similar points, not limited to any one area of TPR's work. It would be wrong to take these concerns as evidence of a widespread problem. Equally though, the fact that they are strongly felt by different stakeholders with different relationships with TPR suggests more than a few isolated instances.
117. TPR already carries out qualitative research which should help it understand what may lie behind these perceptions. They should use this material – adding to it if necessary – to build up a more detailed picture of how its services are seen by those who use them and, in the light of that, should consider whether there are any systemic or cultural issues which need to be addressed.

Customer journeys

118. The process of resolving a pensions dispute can be long and potentially arduous. A case might start with an internal dispute resolution within a scheme, itself including an appeal stage. The scheme member will then be advised to take their case to TPAS where a further attempt may be

³¹ Perceptions of the Pensions Regulator: A report on the 2013 perceptions tracker survey <http://www.thepensionsregulator.gov.uk/docs/perceptions-tracker-2013.pdf> Only 4% of respondents rate overall performance as 'poor' or 'very poor'.

made to resolve the issue, but if that fails the Ombudsman may be asked to investigate and resolve the case.³²

119. It is unclear how long this overall process typically takes, still less where the outliers are. That is because nobody is responsible for the process as a whole and nobody attempts to understand and measure the overall customer experience.
120. TPAS and the Pensions Ombudsman each track the cases they are currently handling, which is important for managing their caseload and monitoring immediate service quality. There is no reason to think that what they do for those purposes is inadequate. But the fragmented and incomplete monitoring means that it is impossible to understand the overall customer experience. The Association of Member Nominated Trustees illustrated the need to look at this at the level of the overall system:

Where a member has been competently advised by (e.g.) a solicitor or a trade union, and the IDR [Internal Dispute Resolution] has been completed, TPAS is sometimes involved only because of an assumption that if the complainant tells the PO that it has not been, that will lead to the PO refusing to investigate until that step has been taken. In these circumstances TPAS may well add nothing to the case, so that there is waste of all participants' time and/or money.

121. A starting point should be a proper mapping of customer journeys, drawing on the experience of people who have been through it. This is an issue which does not solely belong to either TPAS or the Pensions Ombudsman and they do not in any case have the capacity or specialist skills to undertake it. Instead, DWP should arrange for an initial study based on customer insight techniques, the results of which can be used to support decisions on how best to approach this for the longer-term.

Process alignment

122. The absence of customer experience information reflects a slightly wider disconnection between TPAS and the Pensions Ombudsman. They are separate organisations with separate duties, which it is important to respect, particularly given the judicial role of the Ombudsman. But there appears to be scope for closer collaboration on some aspects of their work.
123. As the Ombudsman pointed out in his evidence to the review, he currently exercises his discretion on which cases to accept by requiring complainants to have sought the help of TPAS first, and there is an important question about whether this is the most effective approach in terms of either efficiency or customer service:

³² That is, of course, only one possible scenario. Another is that the process might start with a complaint to an FCA-regulated body which is referred initially to FOS before then being directed to TPAS.

If any cost benefit analysis of the present arrangement was carried out in the early 1990s it is lost in the past and would be largely irrelevant now. There is good reason to review the arrangement to ensure that our discretion is being exercised on supportable grounds... Although the existing arrangement *may* be the right one for today, our present concern is that it has not been recently reviewed.

124. It is beyond the scope of this review to have conducted such an analysis, but it would be sensible to build on the customer journey study recommended at paragraph 121 by assessing the extent to which each stage of dispute resolution is an effective filter for the next one, and the relative cost effectiveness of closing cases at each stage. It can only be for the Ombudsman to decide how he should exercise his discretion, but clearly the question is one of interest to and with implications for TPAS and DWP as well. All three bodies should work together to ensure that the system as a whole maximises value for money and the quality of customer experience.
125. The process as a whole remains a relatively informal one, but is constrained in some respects by the rules which govern the Ombudsman's procedures, which were most recently revised in 1996.³³ The Ombudsman has noted that:
- [The rules] do not reflect modern practice in the proportionate and early resolution of complaints and disputes. They also set out unnecessary procedural detail, which seeks to match (but in particular cases oversteps) the demands of natural justice.
126. There is no evidence from other responses to the consultation that this is seen as making the process more difficult and cumbersome than it need be. Nevertheless, it is clearly sensible for such rules to be reviewed periodically to ensure that they remain fully fit for purpose. The Ombudsman has also drawn attention to other legal developments, in particular a new EU directive on alternative dispute resolution, which is due to be implemented by 2015.³⁴ DWP and the Ombudsman should review the legal framework within which the Ombudsman operates to ensure that it represents current best practice.

Common services

127. On the face of it, there should also be opportunities to drive improved administrative efficiency through shared working. TPAS and the Ombudsman occupy adjacent space in the same building, but little advantage is taken of the opportunities for collaboration that that apparently brings. There appears to be scope for sharing services in supporting functions such as finance, HR and IT, which ought to help

³³ The Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995, as amended.

³⁴ Directive 2013/11/EU, 21 May 2013

two very small organisations achieve a more efficient scale. Those efficiencies would be harder to capture than it might first appear however. Despite some close parallels between elements of the work of the two organisations, they have, for example, different case management systems and different grading structures.

128. Precisely because of the small scale, however, it is far from clear that a positive business case for merging functions could be created. The cost of aligning and integrating systems is likely to be high in proportion to savings from what is, in absolute terms, a very low cost base. The government's strategic approach is in any case to manage shared services on a much larger scale, although there is no immediate prospect of that extending to organisations as small as these.
129. Nevertheless, it would be sensible for the DWP stewardship team to work with the two bodies to test what scope there might be for greater integration of this kind.

Boundaries

130. It is unsatisfactory that the regulatory gap described at paragraph 95 remains despite being known about for over a decade and despite attempts by DWP, FOS and the Ombudsman to find a solution. It is not a major problem (though the consequences for those affected may be acute), but the fact that both FOS and the Ombudsman made specific reference to it in their responses to the consultation and that TPAS has recorded concerns in past annual reports strongly suggests that real difficulties are being caused, albeit on a small scale. There may not be an easy answer – there are clear reasons why the cases concerned do not naturally belong on either side of the operational boundary – but it would worth looking at the issue again to see if a more satisfactory solution can be identified.

State and private pensions

131. Formally, none of the bodies under review has a remit to deal with state pensions, and they are not funded to do so. Entirely understandably, though, this is a distinction not appreciated by many of the users of TPAS' service – and indeed it may not be self-evident at the outset on which side of the divide a problem falls. Though the distinction makes good sense from a government service provider perspective, it reflects neither how many people see their pension entitlement nor, increasingly, how the government wishes people to think about pensions. The expansion of automatic enrolment over the next few years and planned changes to state pension will mean that the interaction of the two systems will be an important factor in retirement planning, and that trying to enforce the distinction will become even more difficult than it is now.
132. In practice, TPAS and DWP have agreed a pragmatically sensible approach, whereby TPAS will discuss state pensions as an element of a conversation primarily about private pensions, but refers customers whose primary issue is about state pensions to the Pension Service. It is not clear how consistently this is being applied in practice, and there

would be value in ensuring that all concerned had a clear and consistent understanding of what is intended.

133. It would be easier for TPAS to avoid being drawn in to state pension issues if they were able to refer callers directly to the Pension Service as they can with MAS. Past attempts to arrange that have not been successful, so DWP should broker discussions between TPAS and the Pension Service to explore what might be possible.
134. For the longer term, in the context of wider state pension reforms, it would be desirable to find a way of providing more integrated support, reflecting people's need to plan their retirement income as a whole.

Proportionate governance

135. Public bodies spend public money and are rightly held accountable for the way in which they do so. Each has an Accounting Officer who is primarily responsible for governance, propriety and value for money. Of course it is right that there should be appropriate external scrutiny of the way in which those responsibilities are discharged, but the general principle should be that the primary responsibility rests with the bodies themselves and that oversight should be the minimum necessary.
136. Set against that, there is a strong desire for the government to have an accurate, complete and detailed picture of how public money is spent and to be able to use that information to ensure maximum value for money for government as a whole, as well as individual parts of it, for example by aggregating procurement.
137. This can though create real burdens for smaller bodies, such as TPAS and the Pensions Ombudsman, for whom the cost of complying with very detailed scrutiny takes a significant proportion of their limited administrative support resources. It is very easy for those imposing requirements of this kind to underestimate the costs of compliance and to overestimate the balance between the value of the information gathered and the cost of collecting it. Cabinet Office should work with some of the smaller NDPBs to ensure that the impact of central government information requests is understood and appropriate proportionality is applied.

Longer term direction

138. A review of this kind is a snapshot at a point in time. It has concluded that the functions performed by the bodies under review are necessary and that the current bodies remain best placed to deliver those functions. It does not follow that this will necessarily remain the case for the indefinite future.
139. Substantial changes are in prospect over the next few years. By 2018, every employer will be automatically enrolling staff in a pension scheme, and it is expected that 6 to 9 million people will be newly saving or saving more for their retirement. Subject to parliamentary approval, there will have been major reform of the state pension system and a very different pattern of interaction between state and private provision.
140. That is likely to lead to changes on the supply side too, with the direction of change already becoming apparent. The consolidation of retirement savings provision through schemes such as NEST, as opposed to the bespoke individualised schemes currently operated by individual employers, will lead not just to greater scale and consolidation, but also to a rather different role for employers and a structure of scheme governance through master trusts which does not fit quite comfortably into current regulatory models.
141. The greater flexibility of provision offered by the government's new proposals for defined ambition schemes, combining characteristics of defined benefit and defined contribution schemes will require new regulatory structures within TPR and may also have implications for how TPR and FCA work together.
142. The end of automatic enrolment implementation in 2018 will also bring an opportunity to re-examine organisational roles. In the meantime, it would not be productive to speculate about how the future will actually turn out. We are currently in a transitional period with change in prospect which is likely to have implications for the bodies covered by this review, but in ways which cannot yet be confidently predicted.
143. That fact strongly reinforces the conclusion that now is not the time for significant organisational change. There is a risk of any such change being an unhelpful distraction from the challenge of safe delivery of the current reforms. More importantly in this context, though, there is not yet sufficiently clarity about how provision will develop to be confident of making well-founded decisions. It would be rash and inefficient to make changes now which might well have to be reconsidered only a relatively short time later.
144. Equally though, it would be wrong to freeze the roles and structures of these bodies pending a future certainty and stability which may never come. Instead, the right balance is to expect that a more comprehensive review of the regulatory landscape is likely to take place during the next parliament. It should not be limited to the pensions-specific bodies, and should be designed to answer two questions:
 - what are the risks for which regulation is the most effective mitigation?

- given the answer to the first question, what regulatory structures will be most effective in delivering that mitigation?
145. That would provide the foundations for ensuring that the right legislative and regulatory structures are in place to support pensions provision for the next decade and beyond.

Annex A: The review process

1. It is Government policy that a non-departmental public body (NDPB) should only be set up, or remain in existence, where the model can be clearly evidenced as the most appropriate and cost-effective way of delivering the function in question.
2. In April 2011, Cabinet Office announced that all NDPBs still in existence following the reforms brought about by the Public Bodies Act would have to undergo a substantive review at least once every three years. These triennial reviews would have two purposes:
 - To provide a robust challenge of the continuing need for individual NDPBs – both their function and their form, employing the ‘three tests’ discipline:
 - Does it perform a technical function?
 - Do its activities require political impartiality?
 - Does it need to act independently to establish facts?
 - Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.
3. All triennial reviews are carried out in line with Cabinet Office guidance *Guidance on Reviews of Non Departmental Public Bodies*.³⁵ Reviews should be:
 - Proportionate
 - Timely
 - Challenging
 - Inclusive
 - Transparent
 - Value for Money
4. For each of the organisations, the review considered whether its functions remain necessary, whether there are better ways of delivering those functions, and as a result in what form the organisations should continue. As well as considering each organisation individually, the review looked at the roles of these bodies in relation to each other, and in the wider context of regulation and information.
5. The Cabinet Office requires that reviews should not be overly bureaucratic and should be appropriate to the size and nature of the NDPBs in question. The Department considered that, in light of these factors, an internal review led by a DWP Senior Civil Servant, independent of the pension bodies and the stewardship team was

³⁵ <https://www.gov.uk/public-bodies-reform#reviewing-ndpbs>

appropriate and would provide value for money for the tax payer. The lead reviewer was supported by a small team of DWP staff.

6. The review was announced by a Written Ministerial Statement on 27 June 2013. A call for evidence paper was published on 27 June 2013³⁶. It was sent to a range of stakeholder organisations and to the Work and Pensions Committee. Thirty formal responses to the consultation were received from a range of stakeholders – the respondents are listed at Annex B.
7. Informal consultation meetings took place with the Minister for Pensions, with the leaders of the bodies under review, and with some of the other major stakeholders. The lead reviewer also spent time observing operations and talking to staff in TPR and TPAS. The Pensions Regulator, the Pensions Ombudsman, and the Pensions Advisory Service were invited to contribute to the review and were asked to comment on a draft version of the report.
8. The draft report and its recommendations were reviewed by a member of the DWP Executive Team and by a DWP Non Executive Director on behalf of the Departmental Board. It was also scrutinised by Treasury and by the Cabinet Office.
9. The staff cost of the review was met from within existing resources. The additional costs attributable to the review total were less than £100 for travel.
10. This document is available on the GOV.UK website at:
<https://www.gov.uk/government/consultations/triennial-review-of-pensions-bodies>
11. This document can also be obtained from:
Pension Protection and Stewardship Team
1st Floor, Caxton House
Tothill Street
London
SW1H 9HN
PPSD.TRIENNIALREVIEWS@DWP.GSI.GOV.UK

³⁶ Triennial review of pensions bodies: call for evidence
<https://www.gov.uk/government/consultations/triennial-review-of-pensions-bodies>

Annex B: List of respondents

Association of British Insurers
Association of Pension Lawyers – Main Committee
Association of Pension Lawyers – Pensions Litigation Sub-committee
Association of Member Nominated Trustees
Aviva
B&CE (the People's Pension)
EEF
Financial Ombudsman Service
HMRC
Institute of Chartered Accountants in England and Wales
Institute & Faculty of Actuaries
JLT Benefit Solutions & the Pensions Administration Standards Association
Long-Term Practical Perspectives Ltd
National Association of Pension Funds
NHS Pension Scheme
Northern Ireland Public Services Alliance
Money Advice Service
Ombudsman Association
Pensions Management Institute
Pensions Ombudsman and Pension Protection Fund Ombudsman
Pension Protection Fund
Railways Pension Trustee Company and RPMI
Superannuation arrangements of the University of London
Scottish Widows
Serious Organised Crime Agency
Society of Pension Consultants
Standard Life
The Pensions Regulator
The Pensions Advisory Service
TUC

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